DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 718, 761, 762, 763, 764, 765, 766, 767, 768, and 769

Commodity Credit Corporation

7 CFR Part 1405

RIN 0560–AF60

Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule streamlines the Farm Service Agency's (FSA) regulations governing its direct Farm Loan Programs. The final rule simplifies and clarifies FSA's direct loan regulations; implements the recommendations of the USDA Civil Rights Action Team; meets the objectives of the Paperwork Reduction Act of 1995; and separates FSA's direct Farm Loan Programs regulations from the Rural Development mission area's loan program regulations.

DATES: *Effective Date:* December 31, 2007.

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:

Discussion of the Final Rule

On February 9, 2004, the agency published a proposed rule (69 FR 6056–6121) to streamline regulations governing its direct Farm Loan Programs (FLP). The comment period closed on April 9, 2004. The agency received several comments requesting the comment period to be reopened. The agency reopened the comment period until May 4, 2004 (69 FR 20834). In response to the proposed rule the agency received 1,583 comments from 593 individuals and organizations, including 181 banks or banking organizations, 168 individuals, 81 FSA employees, 71 Farm Credit Administration offices or employees, 42 agricultural organizations, 18 state agencies or officials, 13 Farm Bureaus, five State representatives, three Federal agencies, two FSA County Committee members, one tribal association, one university and one loan packager. In addition, six comment letters signed by multiple Members of the United States Congress were received.

Seven comments addressed the agency's decision to move the administrative provisions of program delivery from the Code of Federal Regulations (CFR) to a series of agency handbooks. Three comments opposed the agency's decision while four comments supported it. In accordance with the Administrative Procedures Act, both the proposed and the final rules provide the substantive requirements applicable to the public requesting assistance or benefits from FSA, not internal agency procedures and processes. The agency will issue its internal guidance in handbooks simultaneously with the final rule, since internal guidance only describes the operating procedures of the agency and does not impact services provided to applicants and borrowers. Further, the agency is working on making all its handbooks available on the internet so that any interested party may view, download, and print agency handbooks as appropriate. Therefore, these comments were not adopted.

Four comments were received requesting the agency reopen the comment period. As noted above, the agency reopened and extended the comment period from April 9, 2004, to May 4, 2004, and published a **Federal Register** notice to that effect on April 19, 2004.

Eleven comments provided general comments not related to any specific part, section, or policy of the proposed rule. Therefore, the agency did not take any action regarding these comments.

The following provides a summary of the comments received and the agency's response by CFR part.

Part 761—General Program Administration

The following discussion addresses the comments received on Part 761.

Section 761.2 Abbreviations and Definitions

Three comments were received on the ''active borrower'' and ''borrower'' definitions. Two comments stated the definitions as written are very similar, and therefore, the definition of ''active borrower'' should be removed from the CFR. The other comment stated the term ''active borrower'' is not used in the proposed rule. The agency agrees with the comments and has removed the definition.

One comment was received on the ''agreement for the use of proceeds'' definition. The comment stated the agreement for the use of proceeds has not benefited borrowers or the agency since its inception. Further, the comment stated if the comment is not adopted, the agency should initiate a study on how the agreement for the use of proceeds has benefited the agency's borrowers. Section 335(f) of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1985(f)) requires the agency to release normal income security proceeds to borrowers for essential family living and farm operating expenses until the loan is accelerated. Further, Section 335(f)(6) of the Act provides if a borrower is required to plan or report how proceeds from the sale of security will be used, the agency must notify the borrower of (a) the reporting requirement; (b) the right to release proceeds; and (c) how to request such funds. The agency implemented the Act's requirement with the agreement for the use of proceeds that provides a means for reaching a consensus with a borrower regarding the use of proceeds from the sale of security property when the farm operating plan is developed. In addition, the agency delegates the authority to release proceeds to borrowers according to an established agreement for the use of proceeds to agency officials who do not have loan approval authority. Further, the agency utilizes the agreement for the use of proceeds to account for the agency's security. Moreover, the agency continuously evaluates forms utilized in administering its programs for effectiveness. Therefore, based on this comment as well as the comments received on § 765.302, the agency may conduct further analysis to determine if changes are warranted. Lastly, the agency did not propose to make changes to the agreement for the use of proceeds; therefore, the agency will not take any action on this comment at this time.

One comment stated the term ''agribusiness'' is not defined in the proposed rule. The agency does not use the term in the CFR; therefore, it does not need to include a definition for ''agribusiness.''

Two comments were received on the ''agricultural commodity'' definition. One comment stated the agency must define ''agriculture'' in general to clarify and distinguish that agriculture does not solely consist of commodities and large-scale operations. The definition as written, the comment stated, will make many Indian farm operators ineligible for loans. The other comment stated that the narrow definition of ''agricultural commodity'' adversely impacts the definition of ''basic part of the applicant's total farming operation'' and urged that the definition of ''agricultural commodity'' be broadened to include a

specific list of agricultural products. The agency believes the definition is reasonably broad and provides the agency discretion in determining what constitutes an agricultural commodity. The agency does not use this term in the regulations to suggest that agriculture consists only of commodities and large-scale operations. Furthermore, the definitions of both ''agricultural commodity'' and ''basic part of an applicant's total farming operation'' included in the proposed rule are identical to existing definitions established in the agency's emergency loan regulations by a final rule (67 FR 791–801) published on January 8, 2002, after considering public comments. Based on reviews of assistance provided since the implementation of that final rule, the agency believes both definitions have resulted in the achievement of the program's mission and the agency is not aware of any adverse impact on the public. Therefore, neither comment is adopted.

Two comments were received on the ''applicant'' definition. One comment stated the definition is not clear if husband and wife applicants are considered as a joint operation. Further, the comment objected to husband and wife applicants being considered joint operations. The agency has not revised the definition based on this comment, but, the agency has revised the applicant eligibility requirements under § 764.51, as discussed under that section heading. The other comment stated the agency should eliminate the definition and use ''lender applicant'' in the guaranteed loan program. The agency clarified the definition of ''applicant'' to be applicable to both direct and guaranteed loan programs. The agency believes using the terms ''lender applicant'' and ''lender'' in the guaranteed loan program, however, would be confusing, therefore, the comment is not adopted. Further, to avoid confusion, the agency removed the definition ''loan applicant'' in the final rule. Therefore, the comment is not adopted.

One comment was received on the ''approval official'' definition. The comment stated the definition as written is confusing, because it contains the term ''field official'' which is not defined. The agency agrees with the comment, and removed the definition and replaced the term in the text with the word ''Agency.''

One comment was received on the ''aquaculture'' definition. The comment stated the agency should work with Tribes in the Northwestern, Northeastern and Midwestern United States to ensure the definition covers aquaculture on Tribal reservations. The agency believes the definition as written is broad enough to cover aquaculture operations in every part of the country. Further, the agency evaluates each operation on its merits. Therefore, the comment is not adopted.

Three comments were received on the ''average farm customer'' definition. Two comments supported the definition as written. One comment stated the definition as proposed eliminates Indian producers with niche markets who farm traditionally and practice sustainable agriculture. The agency does not foresee that Indian producers will be impacted by the definition since producers eligible to receive guaranteed loans will remain eligible. Therefore, the comment is not adopted.

One comment was received on the ''basic part of an applicant's total farming operation'' definition. The comment stated the definition as written is narrowly based on the definition of ''agricultural commodity'' without a definition of agriculture. Section 329 of the Act (7 U.S.C. 1970), in part, provides the agency may make emergency loans to applicants based on production losses if the applicant shows that a single enterprise that is a ''basic part of the applicant's farming, ranching, or aquaculture operation'' has suffered at least a 30 percent loss of normal per acre or per animal production. The definition clarifies the agency's implementation of the Act's provisions and as discussed in the agency's response to comments on the definition of ''agricultural commodity,'' the agency does not believe either definition as written, has an adverse impact on an applicant's eligibility. Therefore, the comment is not adopted.

Five comments were received on the ''beginning farmer'' definition. Three comments stated that the definition precludes applicants with less than 3 years of experience from meeting the conditions of the beginning farmer definition. Further, the comments stated an applicant with less than 3 years of experience is eligible for a direct farm ownership loan, but is not eligible for a beginning farmer downpayment farm ownership loan. The agency agrees with the comments and has revised the definition accordingly. One comment stated the agency should revise the definition to remove the word ''direct'' in describing ''OL applicant'' from subparagraph (5). The subparagraph is not applicable to direct or guaranteed operating loans (OL) under the statutory definition, therefore, the agency agrees and has revised the definition accordingly. Further, the comment stated the agency should use the median acreage, as provided in Section 343(a)(11)(F) (7 U.S.C. 1991(a)(11)(F)) of the Act, to determine if an applicant is a beginning farmer. Section 343(a)(11)(F) of the Act was enacted under the provisions of the Agricultural Credit Improvement Act of 1992. As addressed in the preamble of the agency's 1993 final rule (58 FR 48275) published on September 15, 1993, implementing the regulatory definition of ''beginning farmer,'' while the statute referred to ''the median acreage of farm * * * as reported in the most recent census of agriculture,'' the agency utilized the term ''average acreage'' in its regulations as the census of agriculture did not capture ''median acreage'' at that time. The National Agricultural Statistics Service now publishes both the median and average farm size by county. Analysis of the data reveals that the median acreage is typically lower than the average acreage. Adoption of the comment may result in some applicants, who meet the existing requirements of the definition, not being considered a ''beginning farmer.'' However, the comment is correct in that both the existing and proposed regulations do not match the statute. Therefore, the comment is adopted and the definition has been revised accordingly.

One comment stated the agency should remove the requirement that all members of an entity must materially and substantially participate in the operation. Section 343(a)(11) (7 U.S.C. 1991(a)(11)) of the Act defines the term ''qualified beginning farmer or rancher'' and provides that for loans made to entities, the entity members must materially and substantially participate in the operation of the farm. The definition was based on the Act's provision, therefore, the comment cannot be adopted.

Three comments were received on the ''borrower'' definition. One comment stated the definition does not seem to be applicable to the guaranteed loan program. The agency agrees with the comment and has revised the definition accordingly. Another comment stated the agency should revise the definition to exclude cosigners since cosigners merely sign the promissory note to assure repayment of the loan and are not program borrowers as defined in the agency's regulations. The agency does not agree with the comment because a cosigner has the same liability for the debt as any other borrower who signed the promissory note. Therefore, the comment is not adopted. The last comment stated the agency should clarify the definition to provide if the borrower's name should match the

operator's name utilized by Farm Programs in their internal agency systems. The agency believes the definition as written is clear; signature requirements are a separate issue. Further, as stated in § 761.2, the definitions included in this part are applicable to FLP only. Therefore, the comment is not adopted.

One comment was received on the ''cash flow budget'' definition. The comment stated that commercial lenders have adopted the practice of not including advances or principal repayments on lines of credit in the cash flow, since they are considered cash flow neutral. The comment stated the agency should revise the definition to match commercial lenders' standards. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''chattel security'' definition. The comment stated the agency should clarify the definition to state that chattel is non-real estate property. The agency obtains a security interest using mortgages, deeds of trust, financing statements and security agreements. The agency believes the comment is proposing to delineate between chattels and real estate which cannot be done uniformly in all cases, especially for loans for which security is growing crops and fixtures. Further, the agency believes the definition as written is reasonably clear. Therefore, the comment is not adopted.

One comment stated the term ''commercial classified account'' is not used in the rule, while the terms ''immediate family'' and ''immediate family member'' even though they are used, are not defined. The agency agrees and, in the final rule, the agency has removed the term ''commercial classified account'' and replaced the terms ''immediate family'' and ''immediate family member'' with the defined ''family member'' term.

Two comments were received on the ''conservation contract review team'' definition. Both comments stated the agency should remove the adjacent public landowners from the definition. The comments did not provide any reason for removing public landowners from the conservation contract review team. The agency has utilized the definition, as published in the proposed rule, since September 14, 1988, and has not encountered any difficulties or concerns. Further, the agency believes public landowners may have concerns or relevant information regarding the potential easement that may affect the agency's decision. Therefore, the comments are not adopted.

One comment was received on the ''cosigner'' definition. The comment stated the agency should revise the definition to state that cosigners are not eligible to receive loan servicing. The agency agrees that cosigners do not have independent rights to receive loan servicing, but may submit a joint application for servicing with all other liable parties. Therefore, the definition is revised accordingly.

One comment was received on the ''current market value buyout'' definition. The comment stated the agency should revise the definition to remove liquidation costs as the definition conflicts with the explanation of current market value buyout included in Appendix B of 7 CFR part 766. The agency agrees with the comment and has revised the definition as the provisions of Appendix B are identical to existing regulations published in subpart S of 7 CFR part 1951. Furthermore, the Agency did not address a revision to the existing regulations in the preamble of the proposed rule.

One comment was received on the ''debt forgiveness'' definition. The comment stated the agency should include in the definition the Act's provision, found in Section 343(a)(12)(B)(ii), which provides that ''any write-down provided as part of a resolution of a discrimination complaint against the Secretary'' is not considered debt forgiveness. The agency agrees with the comment and has revised the definition. The agency also has clarified the definition to state that the term does not include prior debt forgiveness that is repaid in full and debt reduction in exchange for a conservation contract.

One comment was received on the ''debt service margin'' definition. The comment stated the proposed calculation would take a borrower off of limited resource rates if the borrower has atypical or one-time high inventories or cash. Therefore, the comment stated the agency should use the term debt and capital lease coverage ratio, which is the industry standard to calculate the debt service margin. The agency uses a typical plan to calculate the debt service margin and does not consider atypical high inventories or cash when running the Debt and Loan Restructuring System (DALR$) for primary loan servicing. Further, the definition of ''feasible plan'' provides that the farm operating plan will not be based on atypical or one-time high inventories, or cash on hand. Therefore, the comment is not adopted.

Six comments were received on the ''delinquent borrower'' definition. All comments stated the definition contained in the proposed rule did not match the definition in the agency's final rule published on February 4, 2004 (69 FR 5264–5267). The agency agrees with the comments, and has revised the definition accordingly.

Three comments were received on the ''entity'' definition. One comment stated that the term ''trust,'' as used in the definition, must be more clearly defined ''so that it includes trusts established in treaties'' making tribal farms eligible for assistance. Two comments stated that it was not clear in the proposed rule how less than traditional entity structures would be handled. Act section 302(a) (7 U.S.C. 1922(a)) for farm ownership loans, section 311(a) (7 U.S.C. 1941(a)) for operating loans, and section 321(a) (7 U.S.C. 1961(a)) for emergency loans specifically provide the types of entities eligible to receive loans; entity applicants must fit within at least one of the types listed. The agency does not believe the definition, as written, limits the type of trust, or other organization listed, that are considered an entity under the Act's provisions. However, entity applicants must meet the statutory eligibility requirement of being the owner-operator or tenant-operator of a family farm, as well as all other applicable eligibility and loan making requirements. The agency believes the definition, as written, will not result in the adverse impacts suggested in the comments; therefore, the comments are not adopted.

Two comments were received on the ''essential family household expenses'' definition. One comment stated that the definition, along with the definition of ''essential family living and farm operating expenses,'' makes the rule unclear. The agency believes the ''essential family household expenses'' and the ''essential family living and farm operating expenses'' definitions are similar, and has therefore, removed the definition of ''essential family household expenses'' in the final rule as unnecessary and replaced the term throughout the CFR. The other comment stated the agency should revise the text ''the borrower and the immediate family of the borrower'' to read ''the borrower, spouse, and immediate family members'' since the agency defined the term ''family member.'' Since the agency removed the definition of ''essential family household expenses,'' the agency revised the definition of ''family living expenses'' to include expenses for the borrower's spouse and immediate family members.

Two comments were received on the ''essential family living and farm operating expenses'' definition. One comment stated that the agency should

revise the definition to provide that the agency will consider the expenses typical for the local community, instead of expenses typical for that type of operation in the area. Further, the comment stated the agency should remove the provision that the agency will consider what constitutes an efficient method of production for the borrower's resources because it is ambiguous. The agency believes using the term ''local community'' will make the definition unclear when applied to a rural area. Further, the agency believes the provision, as written, furthers the agency's mission of providing supervised credit and allowing the agency and the applicant to adjust to the needs of the operation. Therefore, this part of the comment is not adopted. The comment also stated the agency should include in the definition nursing care of immediate family members not living in the same household. The agency has revised the definition of ''family living expenses'' to include the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, or nursing care of an elderly parent. The agency agrees that nursing care of immediate family members is a family living expense, but the agency believes it is not always an essential family living expense. Therefore, this part of the comment is not adopted. Lastly, the comment stated the agency should remove the reference to church expenses from the definition and replace it with religious expenses. The other comment stated the agency should revise the definition to remove the reference to ''church.'' The agency agrees with the comments and has revised the definition accordingly.

Eight comments were received on the ''established farmer'' definition. Two comments stated the agency should remove the subparagraph describing entity eligibility from the definition because it limits the use of different legal structures for families attempting to transfer the farm to a new generation. The term ''established farmer'' is used only in subpart H of 7 CFR part 764 which addresses requirements specific to emergency loans in accordance with section 321 of the Act (7 U.S.C. 1961). The authorized uses for emergency loan funds include the repair or replacement of essential property damaged or destroyed as a result of a disaster; however, emergency loan funds would not be used to finance the transfer of a farm to a new generation. The agency does not agree that the provision of the definition adversely impacts inter-generational transfers and therefore, the comments are not adopted.

Similar concerns regarding the impact of entity eligibility requirements were received in response to regulations at § 764.101. As described in the agency's response to those comments, the agency revised the entity eligibility requirements contained in that section, and as a result made conforming changes to the definition of ''established farmer'' by revising the provision that an established farmer is not ''an entity with an ownership interest of 50 percent or more held by one or more entities'' to require that an entity cannot be ''an entity whose members are themselves entities.''

One comment stated that the ''established farmer'' definition should be revised to recognize that Tribal farms have sovereign rights that allow for complex land issues, which often require the use of a full time farm manager. As discussed in the response to comments for the definition of entity, the agency does not believe the regulations, as written, impose any additional limitations on a particular type of entity. However, agency assistance is only available to entity operations that are family farms and, therefore, must have a majority of the day-to-day operational and strategic management decisions made by the members operating the farm, as well as meet all other requirements established within the definition of family farm. Therefore, this portion of the comment is not adopted. Further, the comment stated that the ''established farmer'' definition requirement that 50 percent or more of the ownership in the entity cannot be held by another entity will exclude Tribal farms. As discussed in the response to comments received on the general eligibility requirements for loan making (§ 764.101), the agency has revised the eligibility requirements regarding entities to provide that an entity applicant cannot be composed of members that are themselves entities. Therefore, appropriate conforming changes have been made in the CFR, and this portion of the comment is not adopted.

Two comments stated the requirement in the ''established farmer'' definition that the entity is primarily engaged in farming and has over 50 percent of its gross income from all sources from farming, is detrimental to small or beginning farmers who rely on non-farm income to meet operating and family living expenses. This requirement is supported by the ''family farm'' requirement that the farm produce ''agricultural commodities for sale in sufficient quantities to be recognized as a farm rather than a rural residence.'' Furthermore, the 50 percent gross income requirement is included in existing regulations published in 7 CFR 764.2 and the agency is not aware of any adverse impacts on the public; therefore, the comments are not adopted. One comment stated it is not clear what the term ''such loans'' refers to in subparagraph (5)(ii) of the definition. The agency agrees with the comment and has revised the definition to refer to ''Agency loans.'' Two comments suggested that the word ''employees'' in the last sentence of the definition be replaced with the word ''employs.'' The agency agrees with the comments and has revised the definition accordingly.

Two comments were received on the ''false information'' definition. One comment stated the agency should revise the definition to include information the applicant or borrower should have known to be false, because it is difficult for the agency to prove the information the applicant or borrower submitted to the agency was false. While the agency agrees with the comment, the agency believes it is even more difficult to prove the applicant or borrower should have known information submitted to the agency was false. Therefore, the comment is not adopted. The other comment stated the agency should revise the definition to include information the applicant or borrower chose to withhold from the agency. The term is used only in subpart F of 7 CFR part 766 for the submission of false information. Since the proposal concerns information not submitted to the agency, and therefore not relied on, the comment is not adopted. Practically, however, in such cases the information submitted to the agency may be false in light of conflicting information not submitted and would, therefore, be covered by the definition.

Five hundred sixty-four comments were received on the ''family farm'' definition. Of the comments received, 12 supported the definition as proposed while 552 comments opposed it. The proposed definition would establish that the typical year gross income of the operation could not exceed the greater of $750,000 in annual sales, or the 95th percentile 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 published by the National Agricultural Statistics Service. The opposing comments stated the proposed definition would make a large number of family farms ineligible for direct and guaranteed agency loans. One hundred seventy comments

recommended the gross income limit be increased from $750,000 to $1,000,000, $1,500,000, or $2,500,000. Seventy-four comments opposed the use of any gross income limit. Fifty-two comments stated that the use of annual sales to determine eligibility was arbitrary. Thirty-one comments stated the proposed definition would exclude high value crop producing farms. Seventy comments stated the agency provided little justification in the proposed rule for using a gross farm income cap. Fourteen comments stated the agency does not have a statutory basis for changing the family farm definition. Thirteen comments opposed using a gross income limit that was not indexed to inflation. Therefore, because of the overwhelming opposition to the proposed requirement, the agency will not include a gross annual income in its family farm definition. However, as noted in the discussion of the proposed rule published on February 9, 2004, the broad guidelines contained within the existing definition have resulted in inconsistencies in applying the definition on a nationwide basis. The agency believes that the ''family farm'' definition in this final rule will minimize inconsistencies regarding management and labor requirements. Based upon comments received, the Office of Management and Budget recommends the agency seek public input as part of a further analysis regarding the inclusion of an appropriate nation-wide income limitation, which may necessitate future action. It is important to note that the definition of a ''family farm'' as stated in this final rule only applies to farm loan program eligibility requirements.

Further, the proposed ''family farm'' definition included the provision that the majority of the day-to-day operational and management decisions are made by the applicant and persons related to the applicant by blood or marriage. One hundred sixteen comments were received on the ''related by blood or marriage'' definition. All comments stated the definition as written excludes certain relationships, including, but not limited to, cousins, uncles, aunts, and grandparents and that as a result, partnerships or entities comprised of these individuals would not be considered a family farm. The agency agrees with the comments and revised the definition to include the relationships except cousins. In addition, in response to the concerns expressed, the agency revised the definition of ''relative'' to include cousin in the covered relationships. Furthermore, the agency revised the ''family farm'' definition to provide that the day-to-day operational and management decisions be made by the applicant and persons related to the applicant by blood or marriage or a relative of the applicant.

One comment expressed concern regarding the provision in the ''family farm'' definition that the farm ''in a typical year generates net cash income that improves the family's standard of living'' as the term ''typical year'' is not defined in the rule. The agency agrees that the provision is subject to different interpretations and could adversely impact applicants that have been subject to recent disasters. Therefore, the agency removed the provision from the definition.

One comment was received on the ''family living expenses'' definition. The comment stated the agency should remove the definition because the CFR already includes the ''essential family living and farm operating expenses'' definition. The agency believes the terms are not synonymous as all family living expenses are not considered essential. Further, the terms are utilized under different circumstances in the loan making and servicing process when the distinction is necessary. Therefore, the comment is not adopted.

One comment was received on the ''family member'' definition. The comment stated the agency should revise the definition to provide family members include the immediate members of the family for whom the borrower has a financial obligation, e.g., child support payments, alimony, nursing care for an elderly parent. The agency revised the definition of ''family living expenses'' to include the expenses provided in the comment, for family members who are the borrower's responsibility, as revising that definition is more appropriate.

One comment was received on the ''farmer'' definition. The comment stated the agency should revise the definition to provide that farmer is an individual or entity who is a family farmer. The agency believes the definition as written is adequate as not every farmer in the United States is a family farmer. Therefore, the comment is not adopted.

Two comments were received on the ''feasible plan'' definition. One comment stated the agency should revise the definition to state ''feasible plan is when the cash flow budget shows total income equals or exceeds total cash outflow.'' The agency does not agree with the comment to limit the evaluation of feasibility to include only ''total income'' as there may be other non-income sources of cash inflows, such as cash on hand, that impact the borrower's repayment ability. Therefore, the comment is not adopted. The other comment stated the agency should clarify the definition to provide that the margin after debt service and ending cash, depending on the loan requested, determine if the operation projects a feasible plan. The agency agrees that the feasibility for an annual operating loan should be evaluated differently than for a term loan. However, ''margin after debt service'' and ''ending cash'' are terms that apply to the Farm Business Plan, a software application utilized by the agency to determine feasibility for direct loan making and servicing requests. ''Feasible plan'' is a term applicable to regulations for both the direct and guaranteed loan programs. While the term ''ending cash'' refers to the applicant or borrower having ''sufficient cash inflow to pay all cash outflow'' and the term ''margin after debt service'' applies to consideration of a typical plan when the ''loan approval or servicing action exceeds one production cycle,'' the agency believes the definition, as written, adequately describes the requirements for both the direct and guaranteed loan programs. Therefore, the comment is not adopted.

One comment was received on the ''financially distressed borrower'' definition. The comment stated the definition should include borrowers who do not have a 110 percent debt service margin to match the DALR$ software program. The agency disagrees. The agency notifies financially distressed borrowers of the availability of loan servicing programs as provided under § 766.101. The agency does not consider a borrower who can develop a feasible plan, which does not require a margin, with less than 10 percent margin to be financially distressed. However, a borrower who is not delinquent, but cannot develop a feasible plan for the current or next production cycle, is considered financially distressed and in need of loan servicing. Further, § 766.105(b)(1) provides the agency will attempt to achieve a 110 percent of debt service margin; however, under § 766.105(b)(3) the agency only requires the borrower ''be able to develop a feasible plan with at least 100 percent of debt service margin'' to be considered for loan servicing programs. If the agency revises the definition as provided in the comment, the agency would have to re-notify all borrowers restructured with a debt service margin of less than 110 percent immediately after the restructuring is complete. Therefore, the comment is not adopted. However, the

agency did revise the definition by removing the text, ''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'' as the term ''business accounting period'' is not defined. The removed text was replaced by the text, ''unable to develop a feasible plan for the current or next production cycle'' as the term ''production cycle'' is defined in the rule, and is more easily understood.

Six comments were received on the ''financially viable operation'' definition. One comment recommended the words ''basic family living expenses'' in the definition be revised to read ''essential family living expenses.'' One comment stated the agency should revise the definition to provide the operation must generate sufficient income to meet essential family living expenses to the extent they are not met by dependable non-farm income. The agency agrees with the comments and has revised the definition accordingly. In addition, the agency clarified the definition further to provide that it is applicable only under § 764.252, which provides the conditions applicants have to meet to request a waiver of the operating loan term limit. Four comments stated the definition requires the operation to generate sufficient income to provide for replacement of capital items and long-term financial growth, and that such an operation should qualify for commercial credit, with no agency assistance. Therefore, the comments stated the agency should either remove the definition or make it identical to the ''feasible plan'' definition. In addition, one of the comments stated the definition seems to provide that non-farm income can only be used to meet family living expenses, but that non-farm income is used to make debt payments, replace capital items and supplement working capital. Section 311(c)(4)(B) of the Act (7 U.S.C. 1941(c)(4)(B)) requires the applicant to have a financially viable operation for the agency to consider granting a one-time 2-year waiver of operating loan limits. The agency believes the definition as revised to refer to essential family living expenses should allow flexibility to small operations while meeting the statutory requirements; therefore, the comments are not adopted.

One comment was received on the ''foreclosed'' definition. The comment stated the agency should revise the definition to provide ''foreclosed'' is the completed act of selling real estate security under the power of sale in the security instrument or through judicial proceedings. The agency agrees with the comment and has revised the definition to refer to judicial proceedings.

One similar comment was received on the ''foreclosure sale'' definition. The comment stated the agency should revise the definition to provide ''foreclosure sale'' is the act of selling real estate security. The agency believes the definition as written is adequate since the agency can also foreclose on loans secured by chattels. Therefore, the comment is not adopted.

Two comments were received on the ''good faith'' definition. One comment supported the definition as written. Further, it stated it is not necessary for the agency to consult the Office of General Counsel to determine findings of fraud, waste or conversion. The other comment stated the agency should retain the requirement for a written Office of General Counsel opinion that has been a regulatory requirement since September of 1988, as such determinations have ''grave consequences for the rights and interest of FLP borrowers * * *'' The agency recognizes the seriousness of allegations of fraud, waste, and conversion and therefore has revised the definition to include the requirement that an opinion be obtained form the Office of the General Counsel. Further, the comment stated the ''good faith'' definition should allow for inadvertent departures from the agreements with the agency because good faith deals with the borrower's state of mind at the time the violation of the agreement occurs. The agency does not believe its staff can make determinations regarding a borrower's state of mind. The text, ''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'' adequately addresses this concern; therefore, the comment is not adopted. In addition, the comment stated the statutory requirement that a borrower who disposed of security and used proceeds for essential household and operating expenses prior to October 14, 1988, is not considered to lack good faith is not included in the definition. While the agency agrees with the comment, the agency does not believe a borrower will be determined to lack good faith based on events that occurred more than 15 years prior to a current loan or servicing application. However, as an added precaution, the agency handbook will provide guidance on dealing with applicants and borrowers who disposed of security and used proceeds for essential family living and farm operating expenses prior to October 14, 1988. Therefore, the comment is not adopted.

Lastly, the agency made an administrative revision to the ''good faith'' definition by clarifying that good faith requires an applicant or borrower to provide ''current, complete, and truthful information when applying for assistance and in all past dealings with the Agency.'' This text supports the acknowledgment currently included on each loan or servicing application.

One comment was received on the ''graduation'' definition. The comment stated the agency should revise the definition as the payment in full of one or more direct FLP loans. The agency believes the payment in full of one or more loans of the same type, when the borrower has several outstanding loans, cannot be considered as graduation because the borrower is still depending on the agency to obtain necessary credit for the operation. As agency loans are a temporary source of credit for borrowers, for the agency to measure its borrowers' success, borrowers have to obtain their credit needs from another source with or without an agency guarantee. Therefore, the comment is not adopted.

One comment was received on the ''homestead protection'' definition. The comment stated the agency should clarify that homestead protection applies to direct loan borrowers only. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''homestead protection property'' definition. The comment stated the agency should revise the definition to clarify that homestead protection property secured direct loans only. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''household contents'' definition. The comment stated the agency should remove the second sentence of the proposed definition with exclusions for luxury items. The agency believes the definition as written is reasonable. The term is used in Parts 764 and 766 in relation to disaster-related damages and taking additional security refers to needed, not luxury household items. Therefore, the comment is not adopted.

One comment was received on the ''inaccurate information'' definition. The comment stated the agency should revise the definition to include information provided by an applicant without the intent of fraudulently obtaining benefits. The agency agrees with the comment and has revised the definition to refer to applicants, borrowers, lenders, and other sources.

Two comments were received on the ''inventory property'' definition. One comment stated the definition as written includes all Federal property, such as Federal buildings and public land. Further, the comment stated the agency should clarify the definition to include real estate property held by guaranteed lenders after liquidation of guaranteed loans. The other comment stated the agency should revise the definition as real estate and chattel property to which the United States has acquired ownership rights. In response to the comments, the agency has clarified that the term covers such property that formerly secured an FLP loan and to which the Government has acquired title. The definition would not cover former security property held by the guaranteed lender.

One comment was received on the ''joint operation'' definition. The comment stated the agency should remove the definition. Section 343(a)(7) of the Act (7 U.S.C. 1991(a)(7)) defines the term ''joint operation'' and this type of entity is specifically listed as an eligible entity for farm loans. The proposed rule was based on the Act's provision; therefore, the comment cannot be adopted.

One comment was received on the ''lien'' definition. The comment stated the agency should revise the definition as a legally enforceable claim against real or chattel property. The agency agrees with the comment and has revised the definition to refer to real or chattel property.

One comment was received on the ''line of credit agreement'' definition. The comment stated the agency should revise the definition as a contract between the lender and the borrower that contains certain lender and borrower conditions, limitations, and responsibilities for revolving or non-revolving credit. The agency's current guaranteed regulations and handbook have contained the definition as published in the proposed rule since February 12, 1999, without causing adverse impacts on the program. The agency believes the less technical definition is reasonable and easily understood. Therefore, the comment is not adopted.

One comment was received on the ''loss rate'' definition. The comment stated the agency should revise the definition as the net amount of loan loss claims paid on loans made in the previous 7 years divided by the total loan amount guaranteed during the same period. The agency's current guaranteed regulations and handbook have contained the definition as published in the proposed rule since February 12, 1999, without causing adverse impacts on the program. Therefore, the comment is not adopted. The agency did however make an administrative revision to the definition to replace the text ''guaranteed OL, Farm Ownership (FO), and Soil and Water (SW) loans'' with the text ''FSA guaranteed loans'' as the agency has not made guaranteed SW loans in the last 7 years.

One comment was received on the ''mortgage'' definition. The comment stated the agency should revise the definition as a security instrument. The agency defines the term ''mortgage'' to clarify that it is synonymous with the term ''deed of trust'' in those States that use a deed of trust to obtain a lien on real estate. Further, the agency has added the definition for the term ''security instrument'' to describe any document that provides the agency with a security interest in real or personal property. Therefore, the comment is not adopted.

One comment was received on the ''net recovery value of security property'' definition. The comment stated the agency should include a separate definition for the term ''net recovery value of non-essential assets'' instead of including it in the definition of ''net recovery value of security property.'' The agency agrees with the comment. Therefore, the agency defined the term ''net recovery value of non-essential assets'' and revised the ''net recovery value of security property'' definition accordingly.

Seventeen comments were received on the ''non-eligible enterprise'' definition. Four comments supported the agency's proposed definition as written. One comment stated the agency should remove the definition and provide the eligible enterprises under the applicable loan purpose sections. The agency believes enumerating all the eligible enterprises will make the applicable loan purpose sections voluminous. Further, by not enumerating the eligible enterprises in the rule the agency eliminates the possibility of inadvertently omitting an eligible enterprise. Therefore, the comment is not adopted.

Another comment stated the ''non-eligible enterprise'' definition as written could be confusing to the public. The agency believes that by defining the term and providing in the CFR text that loan funds may not be used to finance a non-eligible enterprise, it eliminates confusion. Therefore, the comment is not adopted. One comment, while it supported the definition, stated the agency should provide that an economically viable transportation situation does not exist for the non-eligible enterprise's products. The agency believes that it is not the expenses associated with the enterprise that makes the enterprise ineligible for agency loans, it is the products the enterprise produces. Further, when considering any enterprise, the agency includes transportation expenses when it determines the operation's feasibility, since transportation costs can vary greatly from locality to locality. It is not the agency's intent to allow financing of non-eligible enterprises in one area and not in other areas based on transportation costs. Therefore, the comment is not adopted.

Five comments opposed the ''non-eligible enterprise'' definition as proposed because it eliminates tropical fish farming, the equine industry, llamas, alpacas, and ratites from being eligible for agency loans. The agency has a long-standing policy not to finance the production of animals kept solely for pleasure or companionship. This policy will continue. Therefore, the comments are not adopted. Two comments stated it is not clear if the definition includes products bought and further grown, and then resold, or otherwise having value added to the products. ''Non-eligible enterprise'' would not include common farming operations that buy chickens, piglets, seedling, etc., and resell them when fully grown; it would include operations that purchase ripened fruit and resell it as jam, for example. No change is being made in relation to the comments. Further, the comments stated it is not clear if the requirement that the ''majority of the commodities processed or marketed'' by the enterprise is based on dollar sales or the number of items. The agency believes the requirement as written is applicable only to the number of items processed or sold. Therefore, the comments are not adopted.

Another comment stated the ''non-eligible enterprise'' definition adds another tier of inquiry in determining if a particular enterprise is eligible for agency loans. Further, the comment stated the definition provides enterprises that produce exotic or non-farm animals are not eligible for loans, however, the terms ''exotic'' and ''non-farm animals'' are not defined. In response to the comment, the agency revised the definition to clarify what the agency considers exotic or non-farm animal; however, the term is still needed. The Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127), removed financing of non-farm enterprises as an authorized use of loan funds. The agency needs to specify the type of

enterprises that will not be financed to avoid confusion and inconsistent application of this restriction. Further, financing enterprises producing animals or products for which there is not an established market is inconsistent with prudent lending objectives.

Another comment stated the agency must allow Tribal input to determine what tribal agricultural enterprises consist of, and set guidelines to recognize traditional tribal markets. Further, the comment stated the production of leeches, vermiculture and aquaculture must not be included in the non-eligible enterprise definition. The agency believes the definition as revised, along with the definitions of agricultural commodity and aquaculture, adequately identify the enterprises eligible for receiving loans. Further, the agency evaluates each individual operation requesting assistance on its own merits. Therefore, the comment is not adopted.

One comment was received on the ''non-essential assets'' definition. The comment stated the agency should revise the definition to include assets that may contribute a small amount of income to the farming operation but are clearly non-essential for the operation to function. The agency believes the definition as written is adequate, especially when read in the context of the CFR text. Therefore, the comment is not adopted.

One comment was received on the ''non-program loan'' definition. The comment stated the definition as written is too narrow and the agency should continue to use the definition found in current § 1951.451. The agency agrees with the comment and has revised CFR accordingly.

One comment was received on the ''normal production yield'' definition. The comment stated the definition as written is confusing and that the current definition, found in § 764.2, provides the priority for the types of records the agency will use. The proposed definition made no substantive changes from current § 764.2. Some clarifying language has been added in response to the comment.

One comment was received on the ''note'' definition. The comment stated the agency should remove the definition, as the term ''note'' is included in the ''debt instrument'' definition. The agency believes the term ''debt instrument'' does not adequately describe the instruments the agency uses to evidence debt and therefore, the agency removed it in the final rule. However, the agency added the term ''promissory note'' which is used in several sections of the CFR to replace the term ''note,'' and further added the term ''assumption agreement'' for clarity since it is distinguished from the term ''promissory note'' in the text.

The agency revised the definition of ''Operating loan'' to include a youth loan as provided in § 764.1(b).

One comment was received on the ''owner-operator'' definition. The comment stated the definition should be revised to read ''* * *is the individual or entity that owns the farm and provides the labor, management, and capital to operate the farm. An entity must have one or more members operating the farm.'' The terms ''owner-operator'' and ''tenant-operator'' are used in the general eligibility requirements established in 7 CFR 764.101, as well as the additional eligibility requirements established for specific loan types in the applicable subparts. While the proposed rule included a definition of the term ''owner-operator,'' the terms ''tenant-operator'' and ''operator'' were not defined. The agency believes the key term that should be defined is ''operator,'' and has, therefore, removed the definition of ''owner-operator'' in the final rule and has added ''operator.'' The agency defined the term ''operator'' to include both an ''owner-operator'' or ''tenant-operator'' as applicable under each loan program. The agency does not believe that a definition of either of these terms is necessary as they are self explanatory. Further, the agency believes that the new definition of ''operator'' uses the abbreviated text suggested by the comment; therefore, this portion of the comment is adopted. However, the agency did not adopt the portion of the comment suggesting the inclusion of the text ''An entity must have one or more members operating the farm'' as this requirement is adequately addressed in the revisions made to the eligibility requirement established in 7 CFR 764.101(k) requiring the applicant be the operator of a family farm.

One comment was received on the ''partnership'' definition. The comment stated the agency's requirement that partnerships must be formally organized is out of date and unnecessary. The agency believes the definition as written does not require a formal partnership agreement, but instead it provides the agency will comply with State requirements pertaining to partnerships. Therefore, the agency does not believe a change to the definition is necessary.

One comment was received on the ''protective advance'' definition. The comment stated since the definition will be applicable to the guaranteed loan program also, the agency should continue to use the definition found in current § 762.102(b). The agency believes the definition as written in the proposed rule is adequate to cover both the direct and guaranteed loan programs. Further, under §§ 765.203 and 762.149, respectively, the agency specifies the conditions for making protective advances for the direct and guaranteed loan programs. Therefore, the comment is not adopted.

One hundred sixteen comments were received on the ''related by blood or marriage'' definition. As noted in the agency's response to comments received on the definition of ''family farm,'' all comments stated the definition as written excludes certain relationships, including, but not limited to, cousins, uncles, aunts, and grandparents. The agency agreed and revised the definition accordingly.

One comment was received on the ''relative'' definition. The comment recommended the word ''of'' be inserted between the words ''one'' and ''the.'' The agency agrees and has revised the definition accordingly. In addition, as discussed in the agency's response to comments received on the definition of ''family farm,'' the definition of ''relative'' was revised to include the term ''cousin.''

Two comments were received on the ''restructuring'' definition. Both comments stated the definition as written does not cover the guaranteed loan programs. The agency agrees with the comments and has revised the CFR accordingly to adopt the definition from current § 762.102.

Three comments were received on the ''rural youth'' definition. Two comments supported the definition as written and opposed lowering the age limit for youth loans from the proposed 10 years to 8 years of age. One comment, while it supported the definition, stated the population limit should not exceed 20,000 inhabitants. The agency disagrees. The agency believes rural youth residing in areas of up to 50,000 inhabitants can benefit from the youth loan program and that the age minimum should remain at 10 years of age.

Seven comments were received on the ''socially disadvantaged applicant'' definition. Six comments stated that applicants who are spouses are penalized under the definition when the wife is the operator and owns 50 percent of the farming operation, because they do not meet the majority ownership interest test. The agency agrees there are circumstances where a spouse's ability to own the majority interest in property is prohibited by State laws governing spousal rights. Therefore, the agency revised the

definition to allow married couples to be considered socially disadvantaged when the socially disadvantaged spouse owns 50 percent of the farming operation and makes most of the management decisions, contributes a significant amount of labor and is generally recognized as the operator of the farm. Such construction of the term as used in section 355 of the Act is reasonable under these circumstances.

Another comment stated the requirement for entities that the socially disadvantaged member must have a majority ownership interest in the operation to receive targeted funds reduces access to targeted funds by eligible socially disadvantaged applicants. The Act's section 302(a) for farm ownership loans, section 311(a) for operating loans, and 321(a) for emergency loans provide the eligibility requirements for loans to entities. The statutory eligibility requirements apply to members holding a majority interest in the entity. The proposed rule is consistent with the Act's provisions in focusing on the majority interest holder. The agency is taking a more lenient approach only in the case of spouses as discussed above. Therefore, the comment is not adopted.

One comment was received on the ''socially disadvantaged group'' definition. The comment stated the socially disadvantaged groups are not specified in the proposed rule. The agency agrees with the comment and has revised the definition to include the groups currently listed in § 1943.4.

One comment was received on the ''trust'' definition. The comment stated the agency should revise the definition to reflect that Tribes, as sovereign nations, have the ability to create and enforce laws to regulate businesses conducted within their boundaries. The requirement that a trust is recognized by the state in which it conducts business is the same as the requirement applicable to all other entities. Agency regulations cannot address every Tribe's unique situation; therefore, state offices may develop guidance according to applicable state and tribal laws in consultation with the Regional Office of General Counsel. The agency believes the definition as written is adequate; therefore, the comment is not adopted.

One comment was received on the ''United States'' definition. The comment stated the definition as written excludes the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. Further, the comment stated the Free Association Treaty provides that the agency may enter into loan agreements with citizens of the countries mentioned above. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''working capital'' definition. The comment stated the agency should revise the definition for clarity to provide ''* * * including, but not limited to, paying for feed, seed * * *'' The agency agrees and has revised the definition accordingly.

Four comments were received on the ''youth loan'' definition. Three comments stated youth loans should not be restricted to agricultural projects only. One comment stated that changing the youth loan purposes to include financing agriculturally-related projects only will have a devastating effect on Tribal youth. As stated in the discussion of comments received under § 764.301, the agency believes that youth loan funds should be used for modest, income producing, agriculture-related projects. Therefore, the comments are not adopted.

Section 761.6 Appeals

Five comments were received on the appeals provisions. Three comments stated the agency should clarify the provision that an adverse decision involving a guaranteed loan may be appealed by either the lender or the applicant or borrower. One comment stated the agency should revise § 761.6 as well as § 762.104 to provide a guaranteed applicant or borrower may appeal an adverse agency decision without the lender appealing. Requests for appeal are handled in accordance with 7 CFR parts 11 and 780; therefore, the agency removed the provisions regarding who may request an appeal from § 761.6 and revised § 762.104 to remove the joint appeal requirement. One comment stated that while § 761.6 provides appeals will be handled according to 7 CFR parts 11 and 780, § 766.110 provides appeals of NRCS' technical determinations on conservation contracts will be handled according to 7 CFR part 614. The comment stated the rule as written is not clear. The agency agrees with the comment and has revised § 766.110 to refer to 7 CFR parts 11 and 780.

Section 761.8 Loan Limitations

Thirty-two comments were received on the direct loan limits. One comment stated that the agency should work with Congress to increase the direct loan limit and include an inflation percentage increase as provided for guaranteed loans under section 313(b) of the Act (7 U.S.C. 1943(b)). The agency believes that the impact of any legislative change to increase the direct loan limits must be carefully analyzed as funds provided for direct farm ownership and operating loans are usually exhausted early in the fiscal year, and the Office of Management and Budget (OMB), along with the President play a role in the appropriations process. Therefore, the agency is limiting this rule to revising its regulations within its current statutory authority. However, the Administration's 2007 Farm Bill proposal recommends that the loan limit for the direct loans be increased. The Agency will make the appropriate regulatory changes in the future, in the event the Administration's proposal is adopted.

All other comments on this section stated that the direct loan limit of $200,000 is not adequate to cover the credit needs of socially disadvantaged and limited resource applicants because they are denied commercial loans more often. The proposed rule was based on Section 313(a)(1), limits for direct loans, therefore, the comments cannot be adopted.

Section 761.9 Interest Rates for Direct Loans

One comment was received on the interest rate charged limited resource borrowers. The comment stated the agency should reduce the limited resource interest rate to three percent from five percent. Section 316(a)(2) of the Act (7 U.S.C. 1946(a)(2)) sets the limited resource interest rate minimum at five percent; therefore, the comment cannot be adopted.

Section 761.10 Planning and Performing Construction and Other Development

Five comments were received on the planning and performing construction and other development provisions. Two comments supported the agency's proposal to make the applicant or borrower responsible for ensuring compliance with local construction standards. One comment stated the agency should require the applicant to provide the plans and specifications prior to the agency's loan approval and inspect the planned development at least once. The agency believes the rule as written is adequate as it requires the applicant to provide the plans and specifications to the agency. The applicant or borrower must inspect development work, as needed, to protect their financial interest and provide written certification to the agency that the development conforms to the plans and good construction practices, applicable laws, ordinances, codes and regulations. Under § 761.10(e)(4), the

agency inspections of the planned construction and development do not create or imply any duty or obligation of the agency to the applicant or borrower. The agency inspects the planned construction and development solely to protect its financial interest. The agency's inspection process is internal policy and will be addressed in the appropriate agency handbook. Therefore, the comment is not adopted.

Another comment stated the agency should not require the same process for insurance proceeds less than $5,000 as it requires for direct loan funds, because the process is not cost-effective. In accordance with 7 CFR 764.108, all security except growing crops must be covered by hazard insurance, and the agency must be listed as the beneficiary of a mortgage loss payable clause. Further, 7 CFR 765.152 provides that ''cash proceeds of insurance claims received on Agency collateral, if not being used to repair or replace security items'' will be considered an ''extra payment.'' Therefore, the agency believes it is essential that the provisions of 7 CFR 761.10 be adhered to, regardless of the amount of insurance proceeds. To do otherwise would expose the agency to potential losses as its security may deteriorate in value. Therefore, the comment is not adopted.

One comment stated the provision that requires applicants not to incur any debts for material, labor or other expenditures prior to loan closing is unduly burdensome to applicants who may be able to begin the project while waiting on loan funds. The comment further stated applicants are informed at the beginning of the loan process that agency funds may not be available to close the loan, and as such, applicants are aware that they are responsible for any pre-loan development work. It is important to highlight that the applicant shall not be reimbursed for expenditures incurred prior to loan closing. Further, agency assistance is only available to applicants unable to obtain the needed credit from another source. Therefore, it is unlikely that an applicant would have personal funds available or be able to incur debts to initiate development prior to agency funds becoming available. Therefore, the comment is not adopted.

Section 761.51 Establishing a Supervised Bank Account

Six comments were received on establishing a supervised bank account. One comment stated the agency should clarify whether or not an applicant has to consent to the establishment of a supervised bank account. The agency agrees with the comment and has revised the section to state that the account will be used to assist borrowers with limited financial skills only when the borrower agrees. Three comments stated it is not clear when the agency will use the supervised bank accounts. The agency agrees with the comments and has revised the section to list the conditions under which the agency will use supervised bank accounts. In addition, one of these comments stated the requirement the agency provide applicants $5,000 or 10 percent of the loan funds for family living and operating expenses in a non-supervised bank account was not included in the CFR. One comment supported the agency's decision not to include the provision of providing $5,000 or 10 percent of loan funds in a non-supervised bank account. As stated in the proposed rule, Section 312 of the Act provides that the agency ''may reserve a portion of the loan * * *'' but it is not required. The payment of family living and operating expenses is an authorized use of loan funds, and the agency provides loan funds directly to the applicant to use as specified in the farm operating plan. Therefore, supervised bank accounts for such use are not needed and no change has been made based on these comments. One comment stated the agency should add a section to explain the agency's policies regarding disbursement of funds from a supervised bank account, use of electronic funds transfer instead of supervised bank accounts, and the necessity of supervised bank accounts. The agency believes the disbursement of funds from a supervised bank account is already adequately addressed in § 761.54. Section 764.402 requires the agency to use electronic funds transfer when feasible, so supervised bank accounts are not expected to be routinely used. Therefore, these parts of the comment are not adopted. Lastly, as stated above, the agency has added language in § 761.51 on when supervised bank accounts are necessary.

Section 761.52 Deposits Into a Supervised Bank Account

One comment was received on the deposits into a supervised bank account provisions. The comment stated it is not clear if a check made jointly payable to the agency and the borrower can be deposited in a supervised bank account. The agency believes the CFR as written is clear as it only excludes checks made solely to the agency or the Federal Government, or if it lists the Treasury of the United States as joint payee. The jointly payable check to the agency and borrower could be deposited in the supervised bank account. Therefore, the comment is not adopted.

Section 761.54 Withdrawals From a Supervised Bank Account

Two comments were received on the withdrawals from a supervised bank account provisions. Both comments stated the agency should clarify the CFR to provide the borrower's account must be accelerated before the agency can withdraw funds from a supervised bank account without the borrower's signature. The proposed, as well as the final rule provide the conditions under which the agency will withdraw funds from the supervised bank account without the borrower's signature. It has been the agency's policy to withdraw funds from the supervised bank account when it is in the agency and the borrower's financial interests. The borrower's account need not be accelerated; the agency may withdraw such funds at any time to apply to the account or protect its lien as necessary. The agency believes the limited withdrawals by the agency are reasonable. Therefore, the comments are not adopted.

Section 761.55 Closing a Supervised Bank Account

One comment was received on closing supervised bank accounts. The comment stated the agency should clarify the CFR to provide the borrower's account must be accelerated before the agency can close the supervised bank account. The proposed, as well as the final rule, provide the conditions under which the agency will close the supervised bank account. The supervised bank account can be closed when it is no longer needed; the borrower's account need not be accelerated. The agency believes the CFR as written is reasonable. Therefore, the comment is not adopted.

Even though no comments were received on the provision, the agency increased, from $100 to $1,000, the amount of loan funds remaining in the supervised bank account that can be released to the borrower to use for authorized loan purposes, at the time the account is closed. This action is in the best interest of both the borrower and the agency, as accounts with small loan balances remaining will not be maintained. The agency, however, did not extend this provision to youth loans.

Section 761.104 Developing the Farm Operating Plan (As Numbered in Final Rule)

One comment stated the agency must include in the final rule the provisions of current § 1924.56 that address the

development of farm and home plans used for loan making and servicing actions. Further, the comment stated the agency did not address the farm and home plan utilized by the agency. The agency inadvertently omitted the provisions addressing the development of farm operating plans, and has incorporated them in the final rule. The farm and home plan has not been incorporated, however. As provided in the proposed rule, the agency is removing all internal and administrative provisions, which include identification of specific forms, from its regulations. While specific form numbers are not included in the CFR, both the proposed and final rules address the information collection requirements. The agency no longer uses FSA 431–2 and therefore, it did not include any references to, nor did it discuss the use of, the farm and home plan form in the proposed rule. The agency has developed new forms to replace the farm and home plan, however, the agency accepts any format that provides the information required.

Section 761.105 Year-End Analysis (§ 761.104 in the Proposed Rule)

One comment was received on the year-end analysis provisions. The comment stated the agency should require a year-end analysis for borrowers who have received disaster set-aside. The agency utilizes disaster set-aside to resolve borrowers' temporary financial set-backs due to a natural disaster. Further, the agency requires that borrowers who receive disaster set-aside be able to develop a feasible plan for the next production cycle and provide the appropriate documentation to support it. Since the agency will obtain the documentation needed during the disaster set-aside determination, it does not believe an annual year-end analysis is required. Therefore, the comment is not adopted.

Section 761.208 Target Participation Rates for Socially Disadvantaged Groups

Two comments were received on the target participation rates for socially disadvantaged groups. Both comments questioned why the agency sets the target participation rates for Farm Ownership (FO) loans based on the total rural population in the State that are members of socially disadvantaged groups but the target participation rates for farm Operating loans (OL) are based on the total number of farmers in the State that are members of socially disadvantaged groups. In addition, one comment suggested that to achieve equality, all participation rates should be based on the number of farmers in a State that are members of a socially disadvantaged group. Section 355 of the Act (7 U.S.C. 2003) establishes these different calculations for FO (subtitle A) and OL (subtitle B) target participation rates. Therefore, the comments cannot be adopted.

Section 761.210 Transfer of Funds

Section 346(b)(4) of the Act (7 U.S.C. 1994) provides that beginning on September 1 of each FY, Emergency loan (EM) funds, not resulting from supplemental appropriations, may be used to fund the credit sale of real estate security in the agency's inventory. In the last several FY's, the agency has received insufficient initial appropriations to fund EM loan requests and has relied on supplemental appropriations to meet the demand. Further, the agency does not anticipate future appropriations actions to reverse this trend. Moreover, the agency has not taken a large number of real estate properties in inventory in the last several years. Lastly, other sections of the Act mandate that real estate in the agency's inventory be sold to beginning farmers. Therefore, the agency has not utilized this authority and is removing § 761.210(b) in the final rule.

Part 764—Direct Loan Making

The following discussion addresses the comments received on part 764.

One comment stated the provision from current § 1910.3 that provides persons wishing to apply for loans will be encouraged to do so and that agency staff will explain available programs to applicants and assist applicants as needed in completing farm operating plans, should be included in the final rule. Further, the comment stated the agency should include the provision from current § 1943.11 that states the agency will provide socially disadvantaged applicants with technical assistance necessary when applying for farm ownership loans or other assistance to acquire inventory farmland. The agency believes, through outreach efforts, it provides explanation of available programs and invites persons wishing to apply for loans to do so. Further, agency personnel, as well as Extension agents, assist all applicants who request it, in completing agency forms and farm operating plans. It is the agency's mission to provide any necessary assistance, including technical assistance, to all applicants and borrowers. It is not necessary to publish the agency's mission or internal practices in the CFR. Therefore, the first part of the comment is not adopted. Section 623 of the Agricultural Credit Act of 1987 (7 U.S.C. 1985 note), stated the agency should inform socially disadvantaged applicants of the possibility of acquiring inventory farmland and provide technical assistance to such applicants, while section 335(c) of the Act (7 U.S.C. 1985 (c)) mandates the agency to offer to sell its inventory property to beginning farmers. The agency advertises available inventory property, provides priority to all beginning farmers to buy the property, and assists applicants in completing forms and information necessary to acquire real estate in the agency's inventory, as required by the Act.

Section 764.51 Loan Application

One comment stated that it is not clear if the agency is maintaining the requirement currently contained in 7 CFR 1910.3(c) that provides ''For farmer program loans, there will only be one applicant. If a husband and wife insist on applying as co-applicants for a farmer program loan and the farming operation is a sole proprietorship, they will be considered a joint operation and they both will have to meet the eligibility requirements applicable to the joint operation.'' This comment, as well as one other comment, stated the Internal Revenue Service allows married couples operating a farm to file a joint tax return and does not mandate they be considered a joint operation; therefore, the agency should not treat them as joint operations either. The agency's longstanding policy of considering spouses applying jointly as a joint operation when a formal type of entity does not exist is based on amendments to sections 302 and 311 of the Act. Many of the general loan making requirements established at 7 CFR 764.101 are based on the provisions of sections 302 and 311 of the Act, which specifically provide ''To be eligible for such loans, applicants who are individuals, or in the case of cooperatives, corporations partnerships, joint operations, trusts, and limited liability companies, individuals holding a majority interest in such entity, must * * *.'' Based on this text, each member of an entity applying for assistance may not be required to meet all eligibility requirements, whereas applicants applying as an individual must meet all the eligibility requirements. Changing the agency's current policy to allow spouses applying jointly to be considered an individual applicant, rather than as an entity applicant in the form of a joint operation, would require that each spouse meet all eligibility requirements. The agency believes such a change would result in a more restrictive application of eligibility requirements for spouses applying

jointly and could result in an increased number of these applicants being determined ineligible. Therefore, while the comments are not adopted, the agency did revise § 764.51 to clarify its policy that ''Two or more applicants applying jointly will be considered an entity applicant.'' In addition, the agency revised its application form to clarify its policy, and for applicants applying as a joint operation, the application form will serve as the entity agreement required as part of a complete application under 7 CFR 764.51(a)(2)(iv), unless State law requires otherwise.

One comment stated the agency should not require that a husband and wife who apply for a loan together be treated as a joint operation. The comment pointed out that almost all married individuals file taxes as a married couple, not a joint operation. The agency agrees that applicants should apply in the form of business organization that is most consistent with the actual operating and financial structure of the farm business. However, the Act does not permit the agency to make loans to multiple individuals as one applicant. In situations where more than one individual is applying for the same loan, the applicant will be treated as an entity. The agency acknowledges that this requirement may be confusing and burdensome for married couples in particular, since many of them will file income tax returns and conduct other business affairs as a married couple. To ease this burden, the agency revised this section to recognize the existence of a marriage as sufficient documentation of a joint operation and its structure. Information beyond that required of an individual applicant will be required only when necessary to evaluate specific financial situations or contracts such as prenuptial agreements, which are unique to the marriage, and pertinent to the evaluation of the loan request.

Twenty-two comments were received on the requirement for applicants to provide 3 years of production and financial records (§ 764.51(a)(4) and (5), renumbered to § 764.51(b)(4) and (5)). Eight comments supported the agency's proposal as written. Seven comments, while they supported the agency's proposal, suggested the agency retain the ability to request additional years of records, if needed, to evaluate properly the applicant's operation. The comments stated there are circumstances beyond the applicant's control, such as adverse weather, prolonged drought, and disease, which would require the agency to have additional records at its disposal to accurately evaluate the applicant's operation. Three comments, while they agreed with the proposal, stated using only 3 years of records may not reflect the farming operation's true capabilities. One comment opposed the agency's proposal and further stated the CFR does not provide that for years an applicant suffered a disaster, State or County records may be substituted for the applicant's records. The agency believes the provision as written is adequate. The agency requirements match those of commercial lenders and at the same time reduce the burden imposed on the public. In developing an accurate farm operating plan, § 761.104 excludes the production year with the lowest actual or county average yield if the applicant's yields were affected by disasters during at least 2 of the 3 years. Therefore, no changes need to be made to the records requirement, and the comments are not adopted.

Two other comments stated the agency should require applicants submit 3 years of Federal tax returns to match commercial lenders' requirements as well as the agency's loan servicing requirements. In addition, one of the comments stated that by providing copies of Federal tax returns, the agency will be able to verify other information submitted by the applicant and will reduce the paperwork burden the agency imposes. Further, the comment stated errors on the applicants' part will be eliminated since applicants will no longer have to copy information from their tax returns to the agency forms. The agency agrees with the comments and has revised the section to require 3 years of farm financial records, including Federal tax returns, unless the applicant has been farming for less than 3 years.

One comment stated the records requirements under § 764.355(c)(3) should be revised to match the requirements under § 764.51(b) (renumbered from § 764.51(a)). The agency believes that the requirements should remain as proposed. Section 764.355(c) is applicable only to emergency loan applicants, who lack security because of a disaster. Section 324(d)(2) of the Act (7 U.S.C. 1964(d)(2)) provides that the agency may not deny an emergency loan because the applicant lacks a particular amount of security; however, the agency is authorized to make the loan provided the applicant has the ability to repay the loan. For the agency to determine if an applicant who lacks security has the ability to repay the loan, the agency needs access to additional records, beyond what is required in § 764.51(b) (renumbered from § 764.51(a)), to assess the applicant's income generated by the farming operation. Therefore, the comment is not adopted.

One comment supported the agency's clarification that the payment of the credit report fee is the applicant's responsibility as part of a complete application (§ 764.51(b)(11), renumbered from § 764.51(a)(11)). No comments were received opposing this clarification; therefore, no change was made to this paragraph.

Three comments were received on the verification of an applicant's debts requirement (§ 764.51(b)(12), renumbered from § 764.51(a)(12)). All comments stated it is not cost-effective for the agency to verify debts under $1,000 (two comments), or $500 (one comment). The agency handbook implementing the CFR will provide additional guidance regarding alternatives available to verify an applicant's debts. Therefore, the comments are not adopted.

Two comments were received on the ''additional information deemed necessary by the agency'' provision (§ 764.51(b)(13), renumbered from § 764.51(a)(13)). One comment stated the CFR should provide that the agency requires the additional information to better evaluate the feasibility of the operation and identify any possible security issues. The other comment stated the agency should identify general categories of information that may be required to evaluate an applicant's operation instead of including a general statement that the agency may request additional information deemed necessary. The agency believes the provision as written is adequate, as adoption of the comments may limit the reasons additional information could be requested. As stated in the preamble of the proposed rule, because every farming operation is unique, different information is required from each applicant for the agency to assess properly its risk. The agency handbook implementing the CFR will provide examples of additional information that may be requested. Therefore, the comments were not adopted.

Three comments were received on the Low-Documentation Operating loan (Lo-Doc) requirements § 764.51(c), renumbered from § 764.51(b)). All comments stated that certain information under § 764.51(a) (§ 764.51(b) in final rule) should be required for Lo-Doc applicants. Two of the comments stated the applicant should provide documentation that other credit is not available; the other comment stated the applicant should provide the legal description of the farm

property owned or to be acquired, when applicable. Section 764.51(b)(4) (§ 764.51(c)(4) in final rule) states the agency may require a Lo-Doc applicant to provide any other information listed in § 764.51(a) (§ 764.51(b) in final rule), as needed to make a loan determination in a particular case. In addition, the agency handbook implementing the CFR will provide further guidance on when additional information may be needed. Therefore, the comments are not adopted.

Nine comments were received on the youth loan application requirements (§ 764.51(d) renumbered from § 764.51(c)). One comment supported the agency's decision to implement an abbreviated application process for youth loans. Five comments stated that since verification of non-farm income is not a requirement for Lo-Doc applicants, it should not be required from youth loan applicants either. In addition, one of the comments stated that since the youth loan project is expected to generate sufficient income to repay the loan, the agency does not need to obtain non-farm income information. Further, two of the comments stated the agency official should have discretion to determine if verification of non-farm income is needed for youth loan applicants. The agency agrees with the comments and has revised the CFR to remove the requirement for verification of non-farm income for youth loan applicants. The flexibility to require additional information as needed remains.

Two comments stated the requirement found in § 764.51(a)(13) (§ 764.51(b)(13) in final rule) pertaining to the agency's ability to request additional information, as needed, to evaluate an applicant's eligibility and plan of operation should also be applicable to youth applicants. In addition, the comments stated that, for applicants less than 18 years old, the agency should require written permission from a parent or guardian, and require documentation from the project advisor for all youth loan applicants. Under § 764.51(c)(3) (§ 764.51(d)(3) in final rule), the agency can request any information deemed necessary to evaluate a youth loan applicant's operation. Further, under § 764.302(f), the agency requires the parent or guardian's written permission, so it is not necessary to specifically list it under the general requirements for all youth loans. Therefore, the comments are not adopted.

One comment stated that Indian youths have not purchased on credit by the time they are 18 years old. Therefore, the comment stated if the agency determines that additional information is needed, or the youth may be able to obtain other credit, then the agency should process the application as a guaranteed loan, as well as inquire with other sources of credit before involving a youth already intimidated by the process. The agency believes the youth loan requirements, as written, are adequate. In most states, individuals reach the age of majority at 18, therefore, youth loan applicants who have reached the age of 18, are required to submit the credit report fee and verification of debts, if any. Additionally, § 764.302(a) provides the eligibility requirements youth loan applicants must meet as mandated by Section 311(b)(1) of the Act (7 U.S.C. 1941 (b)(1)) and includes the ''no credit elsewhere'' requirement. There is no guaranteed loan program specifically for youths. Therefore, the comment is not adopted.

Lastly, the agency added the provision requiring applicants to provide a current financial statement as part of a complete application. This is a longstanding requirement that existed under the loan making and loan servicing regulations. The agency's application form contained the financial statement; however, due to agency's paperwork reduction efforts, the financial statement part was removed from the application form.

Section 764.52 Processing an Incomplete Application

Two comments were received on the provisions for processing an incomplete application. Both comments stated the CFR provides that the information requested by the agency must be received within 10 calendar days from the day the agency sent the second incomplete application notification to the applicant. However, the notice the agency uses provides applicants must submit the information requested or contact the agency within 10 days. The comments stated the CFR and the agency notice should be consistent. The agency agrees with the comments and has revised its notice accordingly.

Section 764.53 Processing the Complete Application

One comment was received on the processing the complete application provisions. The comment stated the agency must include in the CFR the requirement found in Section 333A(a)(1) of the Act which states the agency shall approve or disapprove an application and notify the applicant no later than 60 days after a complete application has been received. In addition, the comment stated the reasons for the disapproval must be included in the notification, as provided in Section 333A(a)(3) of the Act. The agency agrees with the comment and has revised the section to add that the agency will notify the applicant of the decision reached and the reasons for any disapproval.

Section 764.54 Preferences When There Is Limited Funding (Renumbered in the Final Rule)

One comment was received on the preferences when there is limited funding. The comment stated the agency should consider funding applications based on the date the application was determined to be complete, regardless of whether there is a shortage of funds. Section 764.53 provides the order in which the agency processes loan applications and states the agency considers applications in the order received, based on the date the application is determined to be complete. The agency cannot consider a loan application until all the information required is received. Section 764.54 provides the preference order in funding complete and approved loan applications. The agency funds applications based on the date the application was received, whether complete or incomplete, because that date provides an easily identifiable benchmark that can be consistently applied. Therefore, the comment is not adopted.

Section 764.101 General Eligibility Requirements

One comment on the general eligibility requirements suggested that the requirements of sections 302 and 311 of the Act (7 U.S.C. 1922 and 1941) for Farm Ownership and Operating loans, which allow the agency to make loans to entities engaged primarily and directly in farming in the United States, be added. The agency agrees and has revised §§ 764.152(c) and 764.252(d) to incorporate the requirement. In addition, a similar provision is contained in section 321 of the Act for emergency loans. Therefore, the agency revised § 764.352(c) (§ 764.352(a)(4) in the proposed rule) accordingly.

Two comments were received on the no prior drug convictions provisions under § 764.101(a). One comment stated that, unless the agency commences background checks on applicants, the requirement should be removed from the CFR. Section 1764 of the Food Security Act of 1985 (21 U.S.C. 889) provides, in part, that an applicant for certain Federal loans or benefits cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or

storing a controlled substance within the previous 5 crop years. The agency has complied with this provision since it was incorporated into the law. Applicants are required to self-certify, on the agency's application form, that they have not been convicted of controlled substance violations. If it is later determined the applicant provided false or inaccurate information on the application form, the agency can deny further benefits and take other appropriate action. Lastly, the proposed rule was based on the Food Security Act's requirements; therefore, the comment cannot be adopted.

The other comment stated the agency should add in the CFR the requirement that applicants have not been convicted of possession or distribution of a controlled substance. Section 862 of 21 U.S.C. provides, in part, that applicants may be made ineligible for Federal benefits by court order as a result of a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance. Ineligibility is not automatic. As stated above, applicants self-certify that they have not been convicted of controlled substance violations. Further, both provisions are applicable to multiple agency programs and are already addressed, in part, in 7 CFR 718.6. The agency has modified 7 CFR part 718 to clarify the impact of the statutory provisions on FLP. The comment, therefore, is not adopted.

Five comments were received on the credit history provisions of the general eligibility requirements (§ 764.101(d)). One comment, while it agreed with the clause that unacceptable credit history is history of failures to repay past debts when the ability to repay was within the applicant's control, stated the agency should incorporate an objective measurement of the criteria to protect the agency and avoid the appearance of disparate treatment. The proposed rule reiterated the agency's established policy. In addition, the agency finds it impossible to anticipate every credit history scenario that may be encountered. An inflexible and absolute standard, such as a minimum credit score, would remove the agency's ability to consider the reasons for an applicant's prior credit problems. Therefore, the comment is not adopted.

Another comment stated the agency should include in the final rule the circumstances currently found in § 1910.5(c) that the agency does not automatically consider unacceptable credit history. The agency agrees with the comment and has revised the CFR for clarity. One comment supported the removal of the requirement that the Office of the General Counsel be involved when the agency believes applicants have not dealt with the agency in good faith. The agency addressed this issue under the ''good faith'' definition discussion.

Two comments stated the agency should remove the requirement that an applicant will make a sincere effort to repay the loan and will devote the effort required to carry out the terms and conditions of the loan. The agency agrees, as it will be difficult to assess the efforts the applicant will make. However, the agency believes the objective requirement that the applicant will carry out the terms and conditions of the loan should remain in the CFR. Therefore, that part of the comment is not adopted.

Six comments were received on the not delinquent on Federal debt provisions of the general eligibility requirements (§ 764.101(f)). Two comments stated the agency should include a definition of Federal debt in the CFR for clarification purposes. The agency agrees that a clarification is needed to determine if an applicant or borrower is in delinquent status of a Federal debt for purposes of automatic ineligibility under 31 U.S.C. 3720B. However, the Department of Treasury has responsibility to publishing standards determining delinquent status on a Federal debt, under this Debt Collection Improvement Act provision. Therefore, the agency simply has incorporated a reference to the applicable Department of Treasury regulation (31 CFR 285.13) in its CFR. Further, the agency handbook will clarify application of this provision in the consideration of loan applications.

Three comments stated the Federal debt rule as written is more restrictive than it needs to be because the term ''delinquent borrower'' is defined under § 761.2(b) as a borrower with any portion of a payment to the agency that is at least 30 days past due. As addressed above on § 761.2(b), the agency revised the ''delinquent borrower'' definition to match the definition included in the final rule published on February 4, 2004. Further, as stated above, the Department of Treasury's regulations provide when the borrower's Federal debt is in ''delinquent status'' for purposes of loan eligibility only. This rule incorporates the Department of Treasury's statutory and regulatory requirements applicable to Federal agencies. Therefore, the comments are not adopted.

One comment stated the agency should extend the prohibition to emergency loans as well to ensure consistency between loan programs. Section 3720B of the Debt Collection Improvement Act of 1996 (DCIA) generally provides that, except for emergency loans, borrowers who are in delinquent status on any non-tax Federal debt are not eligible to obtain any Federal financial assistance. The proposed rule was based on the DCIA; therefore, the comment cannot be adopted.

Three comments were received on the managerial ability provisions of proposed § 764.101(h) (§ 764.101(i) in final rule). One comment stated the applicant's managerial experience should be in an operation similar to the one the applicant proposes, as there are vast differences between types of operations. The agency believes it is not possible to differentiate between skills required by various enterprises to draw the distinction the comment suggested. In addition, the agency can require an applicant to take borrower training in areas the agency considers the applicant to lack adequate experience. Therefore, the comment is not adopted.

One comment disagreed with the provision that the applicant's managerial experience must have been obtained within the last 5 years. The agency believes recent training or experience is important for an applicant to have a reasonable prospect for success, as farming is a rapidly changing business and experience acquired more than 5 years ago may no longer be relevant. Therefore, the comment is not adopted.

One comment stated the agency should add examples of documentation necessary to demonstrate the applicant's managerial ability and clarify whether managerial ability covers production only or all aspects of the operation. The agency has provided extensive internal administrative guidance on acceptable documentation to demonstrate managerial ability, and believes examples of acceptable documentation are more appropriate for inclusion in the agency handbook, available on the agency's website. Further, the agency does not want to limit applicants to a specific form of acceptable documentation and cannot provide an exhaustive list of acceptable documentation to demonstrate managerial ability in the CFR. The agency considers managerial ability to cover both production and financial management because both are required to ensure the applicant has reasonable prospects for loan repayment. Therefore, the comment is not adopted.

Twenty-three comments were received on the general eligibility requirements for loans to entity applicants (§ 764.101(k), renamed and

renumbered to § 764.101(l)). Fifteen comments stated that the general eligibility requirements for entity applicants are unduly restrictive, complicated, and may prevent the transfer of farms to beginning farmers. Two comments stated that the requirement that all entity members must be involved in the operation is restrictive and does not take into consideration age and health issues. The comments stated the agency should require that only the members of the entity holding the majority interest be involved in the farming operation. One comment stated the requirement is too restrictive especially in cases where one family member becomes physically unable to assist in the farming operation but the other members are not able to buy out the physically unable member's share and suggested the agency only require members holding a majority interest be involved in the operation of the farm. The agency agrees and has revised the CFR accordingly.

Two comments stated that the requirement for entity members involved in other farming operations, that the other operations must not be larger than a family farm, is too restrictive because it does not take into consideration that entity members may have an interest in cooperatives to ensure a market for the farming operation's crop. Further, the comments stated it would be difficult for the agency to obtain income information on the other entities in which the member is a participant, unless the agency revises the requirements applicable to individuals to require all entity members provide income information for any other farming operation in which they are participating. The agency agrees with the comments and has revised the CFR accordingly to clarify requirements for majority interest holders, members' collective interests, and entity interests.

One comment stated it is not clear if each farming operation must generate less than the maximum gross income threshold, as proposed in the family farm definition, or if the member's combined share in all entities they are participating in must be under the threshold, or the combined gross income of all the farms must be under the threshold. Further, the comment stated the CFR appears to prohibit financing an applicant entity that has an ownership interest in another entity such as a finishing cooperative. As stated above, the agency is not adopting the proposed gross income requirement of the family farm definition. Further, the agency revised § 764.101(j) (§ 764.101(k) in final rule) in response to comments received on proposed § 764.101(j) and (k) (§ 764.101(k) in final rule). Therefore, the agency believes the comments are no longer applicable.

Two comments stated the family farm requirements for entities as stated in § 764.101(j) (renamed and renumbered to § 764.101(k) in final rule) do not match the eligibility requirements for EM loans at § 764.352. Both comments stated the agency should make § 764.101(j) and § 764.352 consistent. As stated above, the agency revised § 764.101(j) and (k) extensively. In the final rule, § 764.101(k) provides the operator requirements for entities applicable to all loan types, except that paragraph (k)(3) on collective interests does not apply to EM loans. The statutory basis for this paragraph is found in sections 302 and 311 of the Act, but not in section 321 for EM loans. Section 764.352(j) provides EM loan eligibility requirements if the entity composition changes between the time the disaster occurred and the time the loan is closed. One EM loan eligibility requirement applicable to entities is that the entity members operated the farm at the time of the disaster. This requirement and other § 764.352 requirements are based on section 321 of the Act (7 U.S.C. 1961) and do not apply to any other loan type; therefore, the comments are not adopted.

Twenty-nine comments were received on the entity eligibility requirements under the general requirements provisions (§ 764.101(j) and (k)). Five comments supported the provisions as written. Twenty-two comments opposed the provisions and stated the provisions as written are difficult to understand and follow. The agency agrees with the comments and has clarified the paragraph and further revised § 764.352 for consistency. Two comments recommended that the family farm and entity composition requirements under the general requirements provisions be eliminated, as the requirements would have a negative impact on the transition plans for some farm families. The agency believes the revisions discussed above will address these comments and that elimination of the requirements is not necessary. Furthermore, the regulations as revised mirror existing regulatory requirements for guaranteed loans, as well as direct farm ownership and operating loans. The final rule, as written, eliminates inconsistencies in existing regulations governing emergency loans.

Section 764.102 General Limitations

One comment was received on the general limitations requirement that loan funds must be used by farms located in the United States (§ 764.102(b)(2) renumbered to § 764.102(c) in final rule). The comment agrees that funds should not be used to obtain or improve land not in the United States, but does not agree with making applicants with farms split by the United States and Canadian border that have been in operation or existence for years ineligible for loans. Sections 302(a) and 311(a) of the Act (7 U.S.C. 1922 and 1941) for farm ownership and operating loans, respectively, provide that loans may be made to applicants in the United States. The proposed rule was based on the Act's provisions; therefore, the comment cannot be adopted.

Three comments were received on the highly erodible land and wetlands conversion provision (§ 764.102(b)(3) renumbered to § 764.102(d) in final rule). All comments stated the agency should include the prohibition found in section 363 of the Act (7 U.S.C. 2006e), which provides loan funds may not be used to drain, dredge, fill, level or otherwise manipulate a wetland, or in any activity that will impair or reduce the flow, circulation, or reach of water, except for an activity related to the maintenance of a previously converted wetland. In addition, one of the comments stated the words ''to produce an agricultural commodity'' should be removed. The agency agrees with the comments, and has revised this section and § 765.205(b)(10) accordingly. Further, a definition of ''highly erodible land'' has been added to § 761.2.

Eleven comments were received on the noncontiguous tracts provision (§ 764.102(b)(5)). Three of the comments supported the provision while eight comments either opposed it in its entirety or stated reasons the agency cannot realistically apply this specific provision nation-wide. The agency considered the comments opposing the provision and concluded that it is not possible to clarify the proposed limitation in the CFR sufficiently, without making it overly burdensome on the agency and applicants. Furthermore, the agency concluded that there is not a policy concern associated with operating non-contiguous tracts. The changing structure of agriculture and increased urban uses of farmland in many localities require some operators to farm widely-dispersed tracts in order to assemble an economically viable operation. The concern addressed by the proposed requirement is actually that of financial impact. Any increased costs and financial inefficiencies resulting from operating non-contiguous tracts are most appropriately addressed through the business planning process and the

loan feasibility analysis, however, rather than being a separate limitation. Therefore, the agency agrees with the comments and has removed the paragraph.

Section 764.103 General Security Requirements

Twenty comments were received on the general security requirements provisions. One comment was in favor of requiring a lien on non-essential assets for all loans except beginning farmer downpayment and youth loans. The comment stated that by adopting this provision, the agency will eliminate confusion on what liens have to be obtained for what type loans. One comment stated the agency should apply the lien on non-essential assets requirement to beginning farmer downpayment loans, as these loans should not be made to borrowers with a significant accumulation of non-essential assets. One comment stated all agency direct loans, including beginning farmer downpayment and youth loans should have the same security requirements and that such loans are often the most poorly collateralized. The agency believes the downpayment requirement and the short repayment term for beginning farmer downpayment loans result in a better collateral position than most agency loans. Due to the statutorily-mandated 10 percent downpayment requirement, beginning farmers do not normally have significant non-essential assets. The time spent in monitoring non-essential assets is better spent in providing guidance and oversight to beginning farmer borrowers. Therefore, the suggested changes are not adopted.

One comment stated the agency should clarify that it is the agency's choice of what constitutes ''best security available'' when there are several options and that this determination is appealable. The comment suggested the agency make the loan and obtain the best security available to protect the taxpayer and the agency's financial interests. The agency disagrees. The security requirements in part 764 adequately describe the required and preferred items of security. In the rare cases where there are security options and the agency provides financing based on the best security available, no appealable adverse decision results. Applicants, however, can request National Appeals Division (NAD) review of the agency's determination of appealability of any issue. Therefore, the comment is not adopted.

One comment stated the agency should consider, in addition to value, the lien position when choosing between available security. The agency's handbook will provide guidance to agency officials in considering lien position when choosing between available security. Therefore, the comment is not adopted.

One comment suggested the agency obtain a lien on all titled assets the applicant owns, and provided examples of non-titled assets on which the agency should obtain a security interest. Two comments stated the agency should replace the 150 percent additional security requirement with a lien on all farm real estate for farm ownership loans and a lien on all chattel property for operating loans. In addition, one of the comments stated the agency should take a blanket lien appropriate for the type of loan. The agency believes these proposals are overly restrictive and do not provide the agency or applicants sufficient flexibility. Further, a blanket requirement for liens on all titled property would be overly burdensome on the agency to administer and could prevent qualified applicants from receiving credit or from obtaining part of their credit needs from other sources. Therefore, the comments are not adopted.

One comment stated the agency should have discretion in obtaining more than 150 percent of security, if available, and if the agency's lien will not prevent the applicant from obtaining other credit. The agency has determined that the existing 150 percent loan to value ratio is adequate. Most agency applicants rely on other creditors for part of their credit needs. A greater security requirement could weaken the applicant's ability to obtain credit from other sources and would increase administrative burden on agency staff unnecessarily. Therefore, the comment is not adopted.

One comment stated the non-essential asset value should be increased from $5,000 to $15,000 because taking a lien on an asset valued at $5,000 is a burden for the agency to track and adds no value to the agency loans. The agency believes that taking a lien on non-essential assets of $5,000 is worthwhile. The average direct operating loan is between $45,000 and $50,000. Assets that may provide a secondary source of loan repayment of 10 percent or more of the loan amount are considered significant, and the agency will continue to require liens on such assets to reduce potential losses. Therefore, the comment is not adopted.

One comment stated the agency should make liquidation of non-essential assets a loan approval condition as an applicant unable to obtain other credit may realize a greater financial benefit from the liquidation of an asset than from retaining it. The agency believes making liquidation of non-essential assets a mandatory loan condition would potentially create additional financial obligations for applicants due to tax consequences. In addition, the applicant may not be able to sell the non-essential assets timely, and therefore, the applicant's access to loan funds may be delayed for a considerable amount of time and have a negative impact on the farming operation. Therefore, the comment is not adopted.

One comment stated adequate security should have a ''market value of at least 100 percent of the loan amount'' instead of ''security value equal to 100 percent of the loan amount''. The agency defines both ''market value'' and ''security value''. The difference between the two is that the definition of ''market value'' does not include reduction for any prior liens. Therefore, the agency believes the provision as written is correct, and the comment is not adopted.

One comment stated the agency should add in the adequate security provision that a guarantee from a Government or quasi-governmental organization in the case of the Pacific Basin where lands are held in communal, rather than fee simple, and where the U.S. Department of Justice lacks jurisdiction will be acceptable. The agency believes the provision as written, which allows the pledge of security from a third party, permits the agency to accept the quasi-governmental guarantees. Therefore, the agency believes no change is necessary.

One comment stated the agency should replace the 150 percent security requirement with a lien on all assets used in or essential to the farming operation. The comment stated if the comment is not adopted, the agency should allow its officials discretionary authority to waive the agency's lien on crops if the 150 percent requirement is met and the agency is not providing annual operating credit to produce the crops. Another comment stated agency officials should have discretionary authority to waive a lien on crops if the 150 percent security requirement is met and the agency is not providing annual operating credit to produce the crops. As stated above, the agency believes that obtaining a lien on all the applicant's assets may prevent the applicant from obtaining needed credit from other sources. Further, if the 150 percent requirement is met by other security and the agency does not provide funds for crop production, the agency does not obtain a lien on the crops under the

final rule. Therefore, the comments are not adopted.

One comment stated the agency, with applicant input, should make the final decision on taking a lien on the applicant's non-essential assets. The agency retains the discretion to administratively allow for applicant input; however, the agency needs to make the final decision as to the acceptability of loan collateral to protect its financial interest. Therefore, the comment is not adopted.

Two comments stated it is not clear when the agency will take a lien on each non-essential asset that has a value in excess of $5,000. Both comments stated there are circumstances under which the agency may not be able to obtain a lien if the CFR text is interpreted literally. The agency agrees with the comments and has revised the CFR to require a lien on such assets when each or the aggregate value of like assets (such as stocks) has a value in excess of $5,000.

Section 764.104 General Real Estate Security Requirements

Three comments were received on the general real estate security requirements provisions. One comment stated the provision that the applicant must agree not to increase an existing prior lien without the written consent of the agency should be removed because the agency increases its debt by capitalizing interest, so other lenders should not be held to a higher standard. It is agency policy to accept junior lien positions as adequate collateral while other lenders, generally, do not. The prohibition on increasing a prior lien holder's debt without agency consent is critical to limiting the agency's loss and assuring that loan objectives are met. Therefore, the comment is not adopted.

One comment stated the agency should not take leaseholds as security, because when the agency has taken leaseholds as security it has suffered inordinate losses and that very few other lenders engage in the practice. While the agency agrees that leaseholds may decline in value during the term of the loan, it has determined leaseholds serve as security for only a small percentage of its portfolio. Therefore, the comment is not adopted.

One comment objected to the provision on Tribal lands held in trust. The comment stated the agency should use the current provision in § 764.8(j) that provides the agency will take Indian trust lands as security. Further, the comment stated if the applicant is required to request title reports from the Bureau of Indian Affairs (BIA), it should be stated in the CFR. Current § 764.8(j) incorporates BIA title status reports and approval requirements from § 1943.19(a)(7). The agency agrees with the latter part of the comment and has revised the CFR to require the applicant to request BIA to furnish title status reports and BIA provides them and approves the lien.

Section 764.105 General Chattel Security Requirements

Three comments were received on the general chattel security requirements provisions. All comments stated the provision is too broad and requested the agency clarify if the same chattel security can be pledged for a direct and a guaranteed loan at the same time. The agency believes the provision is adequate as written, and it allows the agency flexibility needed to best meet the needs of applicants. The same chattel security could be pledged for a direct and a guaranteed loan. Therefore, the comments are not adopted.

Section 764.106 Exceptions to Security Requirements

Nine comments were received on the exceptions to security requirements provisions. Three comments stated the agency should take a lien on a non-farm residence only when other security property does not provide a security value equal to 100 percent of the loan amount. The comments stated that a lien on the non-farm residence may leave a family homeless if the farming operation is not successful. In addition, the comments stated the lien on the non-farm residence would make it difficult for applicants to take advantage of low housing interest rates and further impede their financial progress. One comment stated the agency is inconsistent in its security requirements because the agency will not obtain a lien on the non-farm residence but will obtain a lien on crops and chattels to meet the 150 percent security requirement for long-term loans. The comment stated crops and chattels are typically considered short or intermediate term assets for loan underwriting purposes. In addition, the comment stated the agency's regulatory limits on security do not seem to be consistent with the Debt Collection Improvement Act (DCIA). Therefore, the comment stated the agency should remove § 764.106(d). The agency disagrees. The DCIA does not dictate appropriate types of loan security but provides collection remedies upon delinquency. The proposed rule continued the agency's existing policy in protecting its financial interest as well as not imposing overly burdensome conditions on applicants. The requirement, as published, provides for some collateral margin, when available, to mitigate the agency's risk. The agency does not want to encumber the applicant's home unnecessarily for the reasons raised, but if the applicant becomes delinquent and loan servicing under 7 CFR part 766 is required to bring the account current, the agency will take a lien on the non-farm residence at that time if it has not already. Therefore, the comments are not adopted.

One comment stated the agency should use, in place of § 764.106(d)(2), the language from existing 7 CFR 1941.19(c) because it provides safeguards for applicants' non-farm residence. The agency believes proposed § 764.106(d)(2) provides the same safeguards as 7 CFR 1941.19(c); therefore, the comment is not adopted.

Three comments stated the agency should clarify the exception applicable to special collateral accounts the applicant uses for the farming operation. Two of the comments stated the provision as proposed, can include almost any asset of the applicant. The agency agrees with the comments and has revised § 764.106(e) to refer to working capital accounts the applicant uses for the farming operation.

One comment stated the agency should add the following to the security exception provision: ''when the U.S. Department of Justice has no jurisdiction or has advised the agency that they will not litigate civil cases in areas lacking a Federal District Court.'' The agency believes the existing provision under § 764.106(c), which states the agency will not take as security property on which it cannot obtain a valid lien adequately addresses this concern. Therefore, the comment is not adopted.

Section 764.107 General Appraisal Requirements for Real Estate and Chattel

Four comments were received on the general appraisal requirements for real estate and chattel provisions. All comments stated the security value of livestock and crop production should remain 100 percent of the amount loaned for annual operating and family living expenses instead of 100 percent of the projected annual income generated from livestock and crop production. The agency agrees that the loan amount is a known value, while the projected annual income from livestock and crops is an estimate, which may be overstated. Use of the projected annual income may significantly overstate the security value of the anticipated production and result

in additional risk and higher loan losses to the agency in the event the operation fails. The agency agrees with the comments and has revised the CFR accordingly.

Section 764.108 General Insurance Requirements

Six comments were received on the general insurance requirements provisions. One comment stated the term ''economically feasible'' under § 764.108(b) is not clear. In addition, the comment stated chattel security need only be covered by hazard insurance if it is available, and the cost of the insurance does not exceed its benefit. The agency agrees with the comment and has revised the CFR text accordingly.

Three comments stated § 764.108(d) and (e) seem to conflict since subparagraph (d) requires crop insurance unless the applicant signs a waiver for emergency crop loss assistance and subparagraph (e) requires crop insurance must be obtained for crops providing adequate security. The agency has revised the CFR to clarify that these are separate requirements. The catastrophic risk protection level of crop insurance is a minimum requirement under 7 U.S.C. 1508 (b)(7) and section 371 of the Act. Insurance for adequate security is an additional administrative requirement.

One comment stated the proposed rule did not provide guidance on the type of insurance required, amount of insurance or insurance waiver conditions. In addition, the comment stated it is not clear if including the crop insurance premium does not result in a feasible plan, would the decision to deny a loan be upheld if a feasible plan can be developed without crop insurance. As stated above, the agency has revised the insurance requirements for clarification and elimination of conflicts. Therefore, this part of the comment is not adopted. The agency considers crop insurance premiums to be essential farm operating expenses and the applicant can utilize operating loan funds to pay the premiums. Further, the agency requires the applicant to obtain crop insurance for growing crops used to provide adequate security for the agency loan. There is no economic feasibility condition. Therefore, no change has been made in response to the latter part of the comment.

One comment stated there is a conflict between the requirements for FLP loans and Farm Program disaster benefits regarding insurance. The comment stated that for FLP loans an applicant must either have crop insurance or sign a crop insurance waiver, but to receive Farm Program benefits after a disaster, an applicant must either have crop insurance or not have insurance. The agency believes the CFR as written provides clear guidance on the insurance requirements applicable to FLP loans under the applicable statutes noted above. Therefore, the comment is not adopted.

Section 764.151 Farm Ownership Loan Uses

One comment stated the agency should extend the provision of refinancing a temporary bridge loan, made by a commercial lender for the acquisition of a farm, to loans made under a private contract for deed. The comment stated contracts for deed are a major source of funds for beginning farmers and the restriction does not benefit the agency. Section 303(a)(1)(E) of the Act provides that farm ownership loan funds can be used to refinance temporary bridge loans made by commercial or cooperative lenders to farmers to acquire a farm in certain instances. In addition, section 310F of the Act authorizes the Secretary to establish a pilot program to provide guarantees of loans made by private sellers on a contract land-sale basis to qualified beginning farmers. The agency implemented Section 310F in a Notice of Funds Availability published in the **Federal Register** on September 4, 2003 (68 FR 52557–52562). The proposed rule was based on the Act's provisions, which do not authorize refinancing contracts for deed on a permanent basis; therefore, the comment cannot be adopted.

Section 764.152 Eligibility Requirements (Farm Ownership Loans)

Three comments were received on the prior debt forgiveness provisions (§§ 764.152(b) and 764.252(b)). One comment stated the agency should revise § 764.152(b) to include all the debt forgiveness conditions found under § 764.252(b) to make the requirements for farm ownership and farm operating applicants the same. One comment stated that applicants that have caused losses to the agency through debt forgiveness should not be eligible for loans. The comment stated the agency receives limited funding each year and it should direct it to applicants who have not received debt forgiveness. In addition, the comment stated the agency's reputation and integrity is harmed from the policy of allowing any applicants who received previous debt forgiveness to be eligible for loans. The third comment objected to the provision that applicants that have received debt forgiveness due to a Presidentially-designated emergency are still eligible for operating loans. The comment stated that the determination if the debt forgiveness was due to a Presidentially-designated emergency would be very subjective and ripe for appeals. The agency disagrees. Section 373(b)(1)(A) of the Act provides that borrowers that have received debt forgiveness on a direct or guaranteed loan, generally are no longer eligible for farm ownership or operating loans. In addition, section 373 (b)(2) of the Act provides limited exceptions under which an annual operating loan may be made to borrowers that received debt forgiveness. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

Two comments stated changes to Federal and State laws on property ownership have made the agency's owner-operator requirement a barrier for some applicants. The comments stated if owners of the real estate are the same persons who own the entity operating the real estate, the agency should consider the owner-operator requirement to be met. The agency understands that the entity ownership requirement may be a barrier in some cases; however, the agency's application of the owner-operator requirement to entity applicants is consistent with section 302 of the Act. The agency does not choose to make a policy change at this time.

In the proposed rule, the agency inadvertently incorporated the definition of ''participated in the business operation of a farm'' under § 764.152(d). The agency received nine comments requesting the definition be moved to § 761.2(b) and § 764.152 should only provide FO loan eligibility requirements. The agency agrees with the comments and has revised the CFR accordingly.

Four comments were received on acceptable documentation of an applicant's participation in the business operations of a farm (§ 764.152(d)). One comment stated the agency should either publish guidelines in the CFR on what it considers acceptable documentation or develop a form for applicants to provide documentation. One comment stated the agency should publish in the CFR acceptable documentation required for applicants to establish participation in the business operation of a farm. The comment stated the agency requires applicants to provide tax returns, with no alternative form, to verify the applicant's participation in the business operation of a farm. In addition, the comment stated the agency should develop a

standard form for applicants to complete when applicants claim participation in the business operation of a farm by virtue of being raised on a farm. The agency believes the rule as written provides the flexibility needed for applicants to document their participation in the business operation of a farm. Typically, documents include tax returns, FSA records, or W–2's. In addition, because of the different skills acquired through participation in diverse agricultural enterprises by the applicant, it will be difficult for the agency to develop a standard form to cover all potential farming participations that may occur throughout the country. Applicants can address their participation in the business operations of a farm when documenting their farming experience. Moreover, in the agency's experience, applicants have not had difficulty in meeting the requirement as is included in current § 1943.12(a)(6). Therefore, the comments are not adopted.

One comment stated the example of participation by the applicant having been raised on a farm should be removed, as it may have occurred more than 50 years ago. The agency believes it is unlikely the situation the comment stated will occur, because as stated under the general eligibility requirement provisions, the applicant must possess managerial ability by farming experience obtained within the last 5 years. Therefore, the comment is not adopted.

One comment stated the eligibility requirements should require timely experience relevant to the proposed operation to insure a greater success rate for applicants as they will have recent experience in the ever-changing agricultural technology and practices. In addition, the comment stated the requirement the applicant must have participated in the business operation of a farm in 3 out of the last 10 years currently in effect is often misunderstood by applicants, who believe they are eligible for farm ownership loans if they farmed 8, 9, and 10 years ago. The agency believes the farm ownership requirements as written are clear and accurately reflect the statutory requirements in section 302 of the Act. As stated previously, the agency does not differentiate between the skills required to operate various types of farms. The agency cannot make the farming experience timeframe any different than specified in section 302(b)(1) of the Act and does not choose to make the requirements overly burdensome to beginning farmers. Therefore, the comment is not adopted.

One comment was received on the provision that an applicant for a farm ownership loan must not have received a farm ownership loan. The comment stated the provision as written implies that an applicant is only eligible for one farm ownership loan. The agency disagrees. The proposed language sets out alternatives. The agency, however, has clarified that an applicant must ''satisfy at least one of the following conditions'', and lists the alternative requirements from section 302 of the Act. Generally, the applicant may have received a prior farm ownership loan, but such loan may not have been outstanding for more than a total of 10 years prior to the new closing date.

Two comments were received on the requirement that an applicant for a farm ownership loan had been the operator of a farm. One comment stated that changing the requirement is contrary to wise supervised credit and will be a disservice to young individuals since, under the new rule they will be eligible for loans without the necessary ability to make wise financial decisions, as evidenced by filing Schedule F with their Federal tax returns. The other comment stated that the 3-year requirement for owning, managing or operating a farm should not just be stated as ''a year's complete production and marketing cycle.'' Section 302(b)(1) of the Act provides that eligible applicants for farm ownership loans are farmers who have participated in the business operations of a farm for not less than 3 years. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

The agency inadvertently omitted in the proposed rule the current requirement that the entity must be authorized to own and operate a farm in the state in which the farm is located. Therefore, the agency is adding the requirement in the final rule at § 764.152(c).

Lastly, the agency revised § 764.152(e) in the final rule because the transition rule established under section 302(b)(2) of the Act (7 U.S.C. 1922) is no longer applicable.

Section 764.154 Rates and Terms (Farm Ownership Loans)

Three comments were received on the rates and terms provision pertaining to the joint financing agreements. One comment supported the joint financing agreement provision stating that the lower interest rate offered through the joint financing agreements benefits beginning farmers. Two comments stated the agency should extend it to all loan types. Section 307(a)(3)(D) of the Act (7 U.S.C. 1927(a)(3)(D)) provides the minimum interest rate for a direct farm ownership loan made as part of a joint financing arrangement. The Act does not specifically authorize joint financing agreements with different interest rates for any other type loans. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

Section 764.203 Limitations (Beginning Farmer Downpayment Loan)

Three comments were received on the limitations provisions under the beginning farmer downpayment loan. One comment stated the Agency should work with Congress to raise the limit from $250,000 to $500,000. The agency believes the impact of any legislative change to increase the beginning farmer downpayment loan limit must be carefully analyzed as the Office of Management and Budget (OMB), along with the President play a role in the appropriations process. Therefore, the agency is limiting this rule to revising its regulations within its current statutory authority. However, the Administration's 2007 Farm Bill proposal recommends that the loan limit for the direct loans be increased. The Agency will make the appropriate regulatory changes in the future, in the event the Administration's proposal is adopted. Two comments stated that this limit is too low for their areas since buying adequate acreage to operate a farm efficiently far exceeds the limit. Section 310E(c)(2) of the Act (7 U.S.C. 1935(c)(2)) provides the maximum beginning farmer downpayment loan limit. The proposed rule was based on the Act's current provision; therefore, the comments cannot be adopted. However, as provided above, the agency will make the appropriate regulatory changes should the Administration's proposal to increase the direct loan limits be adopted.

Section 764.251 Operating Loan Uses

Fifteen comments were received on the operating loan uses. One comment stated the operating loan uses should be clarified to indicate whether income taxes can be paid for the current or prior year and personal residence or personal car payments can be made with operating loan funds. The operating loan uses as written provide for the payment of family living and farm operating expenses. The term ''family living expenses,'' as defined in § 761.2(b), includes ''the cost of providing for the needs of family members.'' The agency believes that income taxes, personal residence and personal car payments are considered a ''cost of providing for the needs of

family members'' and can, therefore, be paid using operating loan funds. The agency believes no additional revisions to the operating loan uses are necessary since it would be impossible to develop an all-inclusive list of family living expenses.

Three comments supported the provision that up to $15,000 of operating loan funds may be used for real estate repairs or improvements. Eleven comments either wanted to raise the limit of operating loan funds to $20,000 (1 comment), $25,000 (1 comment), $30,000 (2 comments), $50,000 (3 comments), or did not want to impose a limit as long as the farming operation's cash flow will sustain the amount used for a 7 year term without balloon payments (3 comments). Further, one of the comments stated the direct loan program should match the guaranteed loan program, as there is no limit on the amount of guaranteed operating loan funds that can be used for real estate repairs. In response, the agency revised the CFR to provide that direct operating loan funds can be used to pay costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years. The agency agrees that the direct loan provision should be consistent with the guaranteed loan provision.

Lastly, the agency inadvertently omitted the current provision that the applicant may not use Lo-Doc loan funds for refinancing debt. Therefore, the agency added the provision under § 764.251(j)(1).

Section 764.252 Eligibility Requirements (Operating Loans)

Nine comments were received on the eligibility requirements for operating loans. One comment stated the agency should change ''CONACT'' to ''Act'' and remove the definition of ''debt forgiveness'' found in § 764.252(b). In addition, the comment stated the applicant should be eligible for loans by paying the amount of the debt forgiveness the applicant received. The agency agrees. The agency changed the references from ''CONACT'' to ''Act'' throughout the final rule, wherever they occurred, and revised the definition of ''debt forgiveness'' in § 761.2 to provide that the term does not include prior debt forgiveness that is repaid in its entirety.

One comment stated the one-time debt forgiveness exception due to a Presidentially-declared disaster is also available to applicants farming in contiguous counties. The agency agrees with the comment and has revised the CFR accordingly. This change is allowed by section 373(b) of the Act (7 U.S.C. 2008h(b)) and is consistent with the agency's policy of providing EM loans in these contiguous counties.

Seven comments were received requesting the agency clarify that applicants who had reached the statutory limits were no longer eligible for OL. In the preamble of the proposed rule, the agency provided ''The OL loan eligibility requirement that the applicant and any persons signing the promissory note may not close an OL loan in more than 7 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, Public Law 106–224, enacted on June 20, 2002.'' However, the agency removed the appropriate regulatory text since the agency's authority to make operating loans to applicants that had reached the statutory term limits expired on December 31, 2002. As acknowledged in the preamble, the agency attempted to incorporate all the regulatory and statutory revisions required since calendar year 1999. It was due to agency oversight the above text was included in the proposed rule even though the regulatory text was removed. Therefore, the agency will take no further action on these comments.

One comment stated the agency should revise § 764.252(d) (§ 764.252(e) in the final rule) to provide that beginning farmers are eligible for direct operating loans for 10 years as provided under section 311 of the Act. The agency agrees that beginning farmers are not subject to the 7-year limitation under that statutory provision and has revised the CFR accordingly.

Five comments were received on the one time waiver for operating loan term limits under the eligibility requirements provisions. One comment disagreed with the continuous waivers of the operating loan term limits enacted by Congress. The comment stated the term limits either need to be removed completely or implemented fully as required by section 311(c) of the Act. Two comments supported the removal of the term limits and stated eligibility for loans should be based on the applicant's credit worthiness instead of on the number of years an applicant has obtained loans. Both comments, as well as an additional comment, stated that if the term limits remain in effect, the agency should use the term ''financially viable operation'' instead of ''feasible plan'' in § 764.252(f)(1) (§ 764.252(e)(4)(i) in final rule). Sections 311(c)(1) and (4) of the Act (7 U.S.C. 1941 (c)(1) and (4)) provide the term limits and waiver provisions for operating loans. Paragraph (c)(4)(B)(i) specifically allows a borrower to receive a one time waiver of 2 years, if ''the borrower has a viable farm...operation.'' The agency has interpreted the ''financially viable operation'' to mean an operation that will improve over time so that agency assistance is no longer needed. The term ''feasible plan'' indicates the operation will generate inflows to cover outflows but it is not necessarily reflective of a borrower's ability to graduate to commercial credit or to provide for replacement of capital items and long-term growth. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

One comment stated section 311(c)(4)(A) of the Act (7 U.S.C. 1941(c)(4)(A)) provides the Secretary shall waive the operating loan term limits for farmers whose farm and security instruments are subject to the jurisdiction of an Indian tribe if the Secretary determines that commercial credit is not generally available; therefore, the comment stated § 764.252(g) (renumbered to § 764.252(e)(2)) needs to reflect the statutory requirement. The agency agrees with the comment and has revised § 764.252(e) accordingly.

In the proposed rule, the agency inadvertently stated that applicants ''may request a one-time waiver of OL term limits * * *'' However, the agency's current policy is to automatically consider a waiver for applicants who have reached the OL term limits and does not require a formal waiver request. Therefore, the agency revised § 764.252(e)(4) to provide that ''On a case-by-casis basis, [the applicant] may be granted a one-time waiver of OL term limits * * *''

Lastly, the agency believes the Act's provisions regarding waiver of the operating term limit were not clearly stated in the proposed rule for entity applicants. Section 311 of the Act, which addresses eligibility requirements for operating loans, including both the term limit and the one-time waiver, specifically provides ''To be eligible for such loans, applicants who are individuals, or, in the case of cooperatives, corporations, partnerships, joint operations, trusts, and limited liability companies, individuals holding a majority interest in such entity, must * * *'' Proposed § 764.252(f)(2) provided that one condition for obtaining a waiver is the applicant ''Applied for commercial credit from at least two lenders.'' As proposed, the rule could be interpreted to imply that the applicant and all members of the entity must ''be unable to obtain commercial credit'' when the

Act clearly provides the requirement applies only to the entity applicant and entity members holding a majority interest. Therefore, the Agency clarified the waiver requirements in the final rule by revising § 764.252(e)(4)(ii) to read the applicant ''And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan.''

Section 764.254 Rates and Terms (Operating Loans)

Three comments were received on the rates and terms provisions for operating loans. One comment stated that balloon installments should be authorized specifically for direct operating loans as they are for guaranteed operating loans. One comment stated the rule establishes a 7-year maximum term for operating loans; however, the current agency regulations permit unequal and balloon installments. In addition, the comment stated it is not clear if unequal and balloon installments will be allowed under the new rule. The last comment stated the agency should incorporate the conditions currently in regulations under which the agency will allow longer annual operating loan repayment terms. The agency agrees with the comments and has added § 764.254(b)(2)(i) and (ii) to continue existing policies in these areas.

Section 764.255 Security Requirements (Operating Loans)

Two comments were received on the operating loan security provisions. Both comments stated the agency omitted the requirement to obtain a first lien on all property or products acquired or produced with loan funds and the requirement to keep the same lien position when refinancing secured debts. The comments are correct, in part, as the proposed rule simply required a lien, rather than a ''first lien'' as provided in existing regulations at 7 CFR 1941.19(a)(1). However, existing regulations require ''a first lien on all property or products acquired, produced, or refinanced with loan funds,'' not just ''property or products produced and acquired.'' The agency does believe, however, that the comments have merit, as it may not be possible for an applicant to ensure the agency can obtain a higher lien position than the creditor being refinanced. Therefore, the agency is adopting the comments as recommended and has revised the CFR accordingly.

Section 764.301 Youth Loan Uses

Twenty comments were received on the youth loan uses. Four comments supported the provisions as proposed. Four comments stated the agency should continue making youth loans under the same provisions currently utilized. Eleven comments opposed the agency's proposal and stated that since the project advisors are involved in agriculture, the youth loan project will be agriculture-related. In addition, some of the comments stated that even if the project advisor is not involved in agriculture, youth loans provide practical business skills and educational experience. Further, two of the comments stated youth loan funds should also be used for community projects and help children ''stay out of trouble'' after school. One comment stated it is not clear if the youth loan project should meet all of the following: be a modest, income-producing, agriculture-related, educational project. The agency disagrees. As stated in the preamble of the proposed rule, the Youth Loan Program's objective is to provide credit to rural youths to establish and operate modest, income-producing projects in connection with 4-H clubs, FFA, and similar organizations. However, through the years, the objectives of the Youth Loan Program have been interpreted inconsistently to allow loan funds to be used for projects not related to agriculture. The agency's proposal was intended to clarify that section 311(b)(1) of the Act (7 U.S.C. 1941(b)(1)) specifically waives only the managerial ability and borrower training requirements applicable to operating loans. The statute does not waive the loan purposes authorized in section 312 (a) of the Act; therefore, projects should be agriculture-related. Therefore, the comments are not adopted.

Section 764.302 Eligibility Requirements (Youth Loans)

Fifty comments were received on the eligibility requirements for youth loans. In the preamble of the proposed rule, the agency solicited comments on lowering the youth applicant's age limit to 8 years to coincide with the age limitation to participate in 4–H clubs (proposed § 764.302(b)). The agency received 35 comments. Twenty-three comments opposed lowering the youth applicant's age limit, while seven comments supported it. Three comments stated the agency should not change the youth applicant age limit. Two comments stated the agency should not lower the age limit but instead should increase it from 10 years of age to 12 or 14. In addition, one of the comments stated the loan limit for youth applicants younger than 14 years old should be $1,000 instead of $5,000. The agency considered all comments received and determined that lowering the age for youth loan applicants will not enhance applicants' chances of becoming successful farmers. Therefore, the agency is not lowering the youth loan applicants' age limit.

Twelve comments were received on the provision that youth loan applicants reside in a rural area, city, or town with a population of 50,000 or fewer people (proposed § 764.302(c)). Four comments supported the agency's proposal as written. Two comments stated the provision is unnecessarily restrictive and will prevent minority children living in urban areas, whose parents own or operate farms outside of the urban area, from participating in this valuable program. One comment stated youth loans should be available to youths residing in towns with populations of less than 10,000. One comment supported increasing the population's limit to 20,000 because cities with larger populations are not considered rural areas. In addition, the comment stated that by increasing the population limit, demand for youth loans will increase and fewer funds will be available to make operating loans to farmers. One comment opposed increasing the population to 50,000 inhabitants for youth loans. One comment stated the limitation should be removed. One comment stated there is no need to impose additional population restrictions since youth loan funds will be used for agriculturally related projects only. One comment stated that by increasing the population limit to 50,000 or fewer inhabitants and restricting the use of youth loan funds to agricultural projects only, the agency is not making the Youth Loan Program more accessible than it currently is. These opposing comments do not consistently support a specific alternative to the proposed Youth Loan Program provisions. The agency believes that the Youth Loan Program, as proposed, will provide valuable educational opportunities for youths to experience farming. Therefore, no changes have been made in response to these comments.

One comment stated the agency should remove the home economics teacher as an acceptable project advisor since the agency proposed to finance only agriculture-related projects through the youth loan program. The agency agrees with the comment and has revised the CFR accordingly.

One comment stated the agency should include a definition for a youth loan project. The comment stated that sometimes the project advisor provides a written statement that the project under consideration is educational, agriculture-related and beneficial to the applicant; however, the project advisor does not monitor the applicant's progress with the project. The comment stated, if the applicant has difficulties, the project advisor is not available to provide advice as required or needed. The project advisor mainly helps the youth loan applicant develop the project. The agency cannot predict in advance the advisor's willingness to provide assistance at a future date and has no available means to exercise any authority over the advisor. However, the agency provides assistance to youth loan borrowers experiencing difficulties. The agency believes a definition for a youth loan project is not needed since § 764.301 provides the types of projects for which a youth loan may be made; therefore, the comment is not adopted.

One comment stated the word ''supervised'' should be replaced by the word ''mentored'' in proposed § 764.302(d). The agency believes the term used in the CFR and the term provided in the comment are largely the same, so the change would not make a meaningful difference. Therefore, the comment is not adopted.

The agency inadvertently omitted in the proposed rule the eligibility requirement that a youth loan applicant not have caused the Agency a loss by receiving debt forgiveness currently established in 7 CFR 1941.12(a)(8). The agency, therefore, has incorporated the provision in the final rule by adding new § 764.302(b) and redesignating proposed § 764.302 paragraphs (b) through (e) as paragraphs (c) through (f).

Section 764.305 Security Requirements (Youth Loans)

Nine comments were received on the youth loan security requirements provisions. One comment supported the agency's proposal not to continue the 150 percent security requirement for youth loans. One comment stated the agency should require a cosigner for youth loans. One comment stated if the agency will not continue the 150 percent security requirement, the agency should require a cosigner for youth loans like the Department of Education for student loans. Six comments stated the security requirements for youth loans should remain the same as for operating loans. The agency believes youth loan applicants have minimal assets beyond those acquired with loan funds. In addition, the agency has a limited loss exposure for youth loans because of the $5,000 loan limit; therefore, the additional security requirements for operating loans would impose a disproportional administrative burden on the agency. Further, DCIA provisions provide more effective and less costly collection tools than disposition of collateral when the loan amount is small. Lastly, youth loans are made to finance income producing, agriculture-related projects unlike student loans for which repayment of principal is generally deferred until a date in the future. Therefore, the agency does not believe a cosigner is necessary when the cash flow projection reflects a feasible plan. However, the agency may still require a cosigner for youth loans when the agency determines there is not adequate cash flow for the proposed loan otherwise. Therefore, the comments are not adopted.

Section 764.351 Emergency Loan Uses

Two comments stated it is not clear if an agency direct loan can be refinanced with chattel physical loss loan funds or production loss loan funds. Proposed § 764.351 contains the conditions for refinancing debts, including agency debt. The agency did not propose to make policy changes to the existing emergency loan regulation. Therefore, the comments are not adopted.

Three comments stated the agency should clarify in the final rule that only essential property will be repaired or replaced with emergency loan funds. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated the agency should revise § 764.351(a)(2)(v) to provide for ''essential farm operating and family living expenses'' instead of ''essential household expenses.'' The agency agrees with the comment and has revised the CFR accordingly. Lastly, the agency added the words ''not from breeding stock'' from current § 764.3(a)(2)(v) that were inadvertently omitted in the proposed rule.

The agency inadvertently omitted the words ''except that such costs shall not include the payment of bankruptcy expenses'' from current § 764.3(b)(1). Therefore, the agency revised § 764.351(b)(1) accordingly.

Section 764.352 Eligibility Requirements (Emergency Loans)

Seven comments were received on the eligibility requirements for emergency loans. One comment suggested that only the primary operators should meet the eligibility requirements if the ownership structure of a family farm changes from the time a qualified loss occurred to the time the emergency loan is closed. The agency believes adoption of the comment will result in more permissive requirements for entities that underwent a change in their ownership structure than for entities that remained the same. Further, the agency believes that change in the ownership structure does not justify treating those entities any different from entities that did not change ownership structure. Therefore, the comment is not adopted.

Two comments stated the agency should make an eligibility requirement, instead of a limitation, that the physical property must have been covered by general hazard insurance at the time the disaster occurred. The agency disagrees. The property insurance requirement should not be made an eligibility requirement because applicants may have insured only the most valuable physical property, and, therefore, would be disqualified for assistance. Therefore, the comments are not adopted.

One comment stated the agency should require the applicant to obtain a formal denial on a loan application that specifies the commercial lender's reasons for denying credit to the applicant. The comment stated written declinations are not formal denials of credit nor do they represent true analysis of the applicant's credit worthiness. In addition, the comment stated commercial lenders provide written declinations to their clients as a customer service. Another comment stated the agency should remove the requirement that applicants, depending on the amount of the loan request, provide up to 3 written declinations of credit. The comment stated if applicants seem to be able to obtain credit elsewhere, they should apply for a loan from a commercial lender. The agency disagrees. Section 322(b) of the Act (7 U.S.C. 1962(b)) provides the specific number of written declinations, based on the loan amount requested, applicants for emergency loans have to provide the agency. Further, section 322(b) states the specific reasons that have to be included in the declination letter provided by the commercial lender. The agency has incorporated these statutory provisions in § 764.352(e). While there may be cases where commercial lenders provide declinations of credit letters to their customers, the agency has the flexibility under § 764.352(e)(4) to contact other commercial lenders within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere. Lastly, the agency based both the proposed as well as the final rule on the Act's provisions; therefore, no

policy changes have been made in response to the comments.

One comment stated the test for credit requirement will keep a wealthy partner from receiving disaster benefits. Therefore, the comment stated the requirement that owners holding a majority interest in the entity applicant, if not related by blood or marriage, must all operate the farm, should be removed. Section 321 of the Act (7 U.S.C. 1961) provides the entity eligibility requirements for emergency loans. The proposed rule was based on the Act's provisions; therefore, the comment cannot be adopted.

One comment stated the agency should correct § 764.352(b)(1) to state the application for an emergency loan must be received within 8 months after the date the disaster is declared or designated. In addition, the comment stated the agency should correct paragraph (a)(7) to state an emergency loan applicant may have had one occasion of debt forgiveness on or before April 4, 1996, but none after April 4, 1996. The agency agrees with the comment and has revised the CFR.

Another comment suggested that proposed § 764.352(b)(3) be revised to provide that the applicant ''must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops for physical loss loans.'' The agency agrees that this language from current § 764.4(b)(2)(iii) was inadvertently omitted and has included the provision in § 764.352(i).

Further, the agency added the provision that applicants that receive duplicative Federal assistance based on the same disaster must agree to repay it to the agency that provided such assistance. This provision is in current § 764.4(a)(15) and was omitted in the proposed rule. Lastly, the agency reorganized this section by removing the subparagraph headings and renumbering the paragraphs.

Section 764.353 Limitations (Emergency Loans)

Two comments were received on the limitations for emergency loans provisions. The comments stated section 321(b)(3) of the Act contains specific provisions for hazard insurance requirements applicable to poultry farmers requesting emergency loans that were not included in the proposed rule. The agency agrees with the comments and has revised paragraph (e) accordingly.

Another comment suggested that proposed § 764.353(d)(3) on calculating eligible physical losses be revised to include the value of replacement livestock products as well as replacement livestock. The agency agrees that such losses are covered under current § 764.3 and has revised the paragraph accordingly.

Lastly, the agency added in § 764.353(c)(4) and (d)(6) the words ''or insurance indemnities received or to be received'' from current § 764.5(c)(4) and (e)(1)(vi) that were inadvertently omitted in the proposed rule.

Section 764.354 Rates and Terms (Emergency Loans)

One comment suggested that § 764.354(b)(3) be revised to provide ''EM loans for annual operating expenses, except expenses associated with establishing a perennial crop, must be repaid within 12 months.'' The agency agrees that this provision in current § 764.7(c) was inadvertently omitted, in part, and has revised the paragraph accordingly.

The agency inadvertently omitted in the proposed rule the provision for expenses associated with establishing a perennial crop found in current 764.7(c). The agency has therefore, incorporated the provision in the final rule and has revised the CFR accordingly.

Section 764.355 Security Requirements (Emergency Loans)

Three comments were received on the security requirements for emergency loans provisions. One comment stated the requirement the applicant has had positive net cash farm income in at least three of the past 5 years should be removed for applicants with no security other than repayment ability, as it would prevent start-up and struggling limited resource operations from obtaining needed assistance. The agency believes that relying on the applicant's repayment ability in lieu of chattel or real estate security significantly increases the agency's level of risk associated with the loan. Therefore, the agency believes the requirement as written is essential to limit the agency's potential losses. In addition, the existing regulation includes an identical requirement when the applicant will utilize repayment ability as security. Further, the agency has not experienced significant problems with the provision as it currently exists and does not expect that it will in the future.

Two comments stated there is an inconsistency between the requirement that applicants provide copies of records to show they had positive net cash farm income in at least three of the past 5 years to obtain an emergency loan based on their repayment ability, and the requirement for applicants to provide records for only 3 years for any other loan. Therefore, the comments stated the records requirements under § 764.355(c)(3) should be revised to match the requirements under § 764.51(a). For the reasons stated above as well as in addressing comments for § 764.51(a), the agency believes that the requirements are reasonable. Therefore, the comments are not adopted.

Lastly, in § 764.355(c)(4) the agency added the provision from current § 764.8(f)(4) that was inadvertently omitted in the proposed rule.

Section 764.401 Loan Decision

Fourteen comments were received on the loan decision provisions. Three comments stated the agency should clarify that the maximum loan limits may be exceeded at the time of loan approval, however, loan limits cannot be exceeded at the time of loan closing. The agency agrees with the comments and has revised the CFR, at § 761.8, accordingly. In addition, the agency revised the guaranteed loan regulation at § 762.122 to incorporate the maximum loan limit of § 761.8.

One comment stated the CFR text does not address the requirement to notify the applicant of loan denial. Such notification is covered under § 764.54(a), which provides that within 60 calendar days after receiving a complete loan application, the agency must complete the processing of the loan request and notify the applicant of the decision reached. Further, the agency handbook provides guidance and information needed to be included in the notification to the applicant of loan denial. Therefore, the comment is not adopted.

Two comments stated the provisions on loan denial should be removed because they are redundant with the loan approval provisions. The agency disagrees. The loan denial provisions enumerate the conditions under which loan denial is appropriate. Therefore, the comments are not adopted.

One comment stated the CFR contains vague and not easily measurable standards because the agency will not make a loan if the applicant's circumstances may not permit continuous operation and management of the farm or the applicant, the operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws or Federal credit policies. The comment stated loan denial should be based on objective standards. The agency has responsibility, under sections 302, 311 and 321 of the Act, to

ensure it assists owner-operators or tenant-operators of family-sized farms; providing financial assistance to applicants who may not be available to continually operate the farm is not consistent with program objectives. Loan denials based on the applicant's availability to operate the farm are rare. The agency cannot anticipate every possible scenario that may be encountered since each operation, and the circumstances surrounding each one, in the country is unique, so some flexibility is needed. Applicants denied financial assistance will be advised of the reasons and provided appeal rights. In addition, the agency has a responsibility to implement Federal laws and Federal credit policies applicable to the Federal Government as a whole, not just its authorizing statute. Therefore, the comment is not adopted.

One comment stated the agency should make the National Appeals Division (NAD) official responsible for making a loan to an applicant the agency cannot certify meets all the conditions for loan approval. While the agency may not agree with all NAD final decisions, it is responsible for implementing them. A reversal of loan denial by NAD, however, does not automatically result in loan approval. The agency is still responsible for administering the applicable rules in light of the NAD decision and making a loan decision based on the particulars of the case and the NAD determination. Therefore, the comment is not adopted.

One comment stated the agency should establish timelines for requiring additional information when an agency loan denial is overturned in an appeal. The agency believes reasonable timelines for requiring information from an applicant when the agency's loan denial is overturned in an appeal are appropriate to be included in the agency handbook and in direct notices to the applicant. Therefore, the comment is not adopted.

Two comments stated the agency must implement the NAD decision when the agency's loan denial is overturned in an appeal and not request, what is in effect, a new application. The agency disagrees that updated financial data may never be requested to implement a NAD decision. The agency has the responsibility to make financial assistance available to eligible applicants with feasible operations in accordance with statutory and regulatory limitations, and at the same time protect the taxpayer and agency's financial interest. In most cases, from the time the agency denied a loan application to the time a final NAD decision is granted several months have passed. The actual age of the information would be substantially older in many cases. During that time, applicants' circumstances can and do change significantly so that the old financial information would inaccurately represent the current financial condition of the appellant and could result in significant losses to the agency. The amount of time that has passed may impact the applicant's yields or the ability to even produce a crop. Therefore, agency implementation of a final NAD decision without obtaining and evaluating recent financial information is irresponsible and contrary to sound loan making principles. The agency, however, will consider making a loan for crop production if the applicant can produce a crop in the production cycle in which the loan was requested or for the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the agency determines the loan can be repaid.

One comment supported the requirements that must be met for the loan to be approved after an agency decision is overturned in an appeal. One comment stated the loan approval section should follow the loan application section in the CFR. The proposed and final rules follow the loan process step-by-step from the application stage, through evaluation, to loan decision and closing. If the agency moves the loan approval section to follow the loan application section the step-by-step process will be broken, and thus, the rule will be more difficult to follow and understand. Therefore, the comment is not adopted.

Section 764.402 Loan Closing

Ten comments were received on the loan closing provisions. One comment supported the agency's proposal as written. One comment suggested that for entity applicants, all individuals with at least 10 percent ownership interest in the entity should be required to sign the promissory note to evidence individual liability. The agency believes the rule as written provides adequate and clear guidance on who is required to sign the promissory note in the case of an entity applicant. While the guaranteed regulation at § 762.130 provides for a waiver of individual liability in some cases for members with less than 10 percent ownership interest, direct loans inherently carry additional risk for the agency. Therefore, the comment is not adopted.

One comment stated the agency must provide additional guidance for States with community property laws regarding who is required to sign the promissory note. The comment stated it is not fair for a spouse in community property States to be required to sign the promissory note. Further, the comment stated the agency is vulnerable to lawsuits because it does not provide guidance to spouses in such States on how they can avoid signing the promissory note. Section 764.402(a) provides the signatures required on the promissory note. However, marital property rights and the requirements for obtaining a valid lien on property are governed by State law; therefore, the agency relies on its Regional Offices of General Counsel for guidance on compliance with State laws and regulations. Requirements for valid liens are required for all applicants. The agency does not provide legal advice to applicants. Therefore, the comment is not adopted.

One comment stated the CFR text should specify the minimum insurance and bonding requirements for closing agents. The agency believes the rule as written provides adequate protection against malfeasance or error by a closing agent. In the agency's experience, closing agents carry adequate insurance and fidelity bond to protect the integrity of the service they provide. Further, the documents closing agents execute for providing services for the agency's applicants specify the amount of insurance required. Therefore, the comment is not adopted.

Four comments stated the requirement that a new security agreement be obtained for each new loan prior to funds disbursement is overly restrictive. All comments stated a new security agreement should be required for each initial loan, when required under State law governing secured lender transactions, when there were substantial changes to the security, or the operation. In addition, one of the comments stated some new loans, such as annual operating loans, do not result in new security being taken. The agency agrees with the comments and has revised the CFR to require a new chattel security agreement for new loans as necessary to secure the loan under State law.

Two comments were received on the provision for making loan funds available to applicants within 15 days of loan approval, subject to funds availability. Both comments requested that the timeframe be changed to 30 days. Section 333A(b) of the Act (7 U.S.C. 1983a(b)) provides that loan funds will be available to applicants within 15 days of loan approval, unless the applicants agree otherwise or funds are unavailable. The proposed rule was

based on the Act's provisions; therefore, the comments cannot be adopted.

Section 764.451 Purpose (Borrower Training)

In the preamble of the proposed rule, the agency stated it was eliminating the requirement to assess the need for borrower training when a borrower requests primary loan servicing. Nine comments were received on the agency's decision to eliminate borrower training in primary loan servicing. Four comments fully supported the agency decision. One of the supporting comments stated borrowers who failed to complete borrower training as required, and have therefore become ineligible for direct loan assistance, should become eligible again under the provisions of the final rule. The agency will not retroactively reinstate direct loan eligibility for borrowers who were clearly required to complete borrower training but failed to do so. Therefore, this part of the comment is not adopted.

One comment stated it is not clear how the agency will handle delinquent borrowers applying for primary loan servicing who were required to complete borrower training and did not do so. Further, the comment stated it is not fair for borrowers who are currently delinquent and have not completed borrower training because they are not eligible for primary loan servicing, while borrowers who become delinquent after the final rule is effective will still be eligible for primary loan servicing even if they did not complete borrower training as required. After the final rule becomes effective, the agency will assess a borrower's training needs through the initial loan making stage and continuously evaluate the borrower's training needs with the year-end analysis, farm visits and information contained in the borrower's case file. If there are indications the borrower may need training, the agency may require the borrower to complete training when evaluating subsequent requests for direct loan assistance. Therefore, the comment is not adopted.

One comment stated delinquent borrowers requesting primary loan servicing are prime candidates for borrower training since delinquency indicates need for training. In addition, the comment stated primary loan servicing provides a great incentive for the borrower to complete required training. One comment stated borrower training can be helpful in primary loan servicing since borrowers can see that recordkeeping is a tool in the decision making process. The agency believes borrower training is most effective and beneficial at the beginning of the loan relationship with the borrower. The reason for eliminating the requirement in primary loan servicing is that borrower training is most beneficial in the loan making stages. When the borrower becomes delinquent, borrower training actually hinders the agency's ability to provide effective and timely primary loan servicing because the borrower's training needs have to be assessed before primary loan servicing can be considered. Moreover, eligibility requirements established in § 766.104 provide a borrower is eligible for primary loan servicing when the financial distress or delinquency is due to circumstances beyond the borrower's control. Therefore, the comments are not adopted.

One comment stated the agency should develop a workbook/DVD combination and provide it to all borrowers along with appropriate software. Further, the comment stated the agency should not provide any further direct assistance until borrowers complete all the assignments included in the workbook. Section 359 of the Act (7 U.S.C. 2006a) contains the agency's specific responsibilities for providing financial and farm management training to its borrowers. The requirements as stated in the Act cannot be met by a workbook/DVD combination as the comment provides. Therefore, the comment is not adopted.

One comment stated the provisions under § 764.452(f) and § 764.454(a)(4), if taken together, can be construed to conflict with each other. Therefore, the comment stated the agency should clarify the provisions to ensure borrowers required to take borrower training complete it. The provision under § 764.452(f) states the agency cannot reject an initial loan application based solely on the applicant's need for training, while the provision under § 764.454(a)(4) states that a borrower who is required to complete training and does not do so within the required timeframe, will be ineligible for additional FLP loans. This ineligibility is not based on the need for training but the failure to meet a loan condition. The agency does not believe the two provisions conflict with each other, since they are applicable under different circumstances. Therefore, the comment is not adopted.

Section 764.453 Agency Waiver of Borrower Training Requirements

Two comments were received on the agency waiver of borrower training requirements. One comment stated the agency should clarify whether or not a waiver of financial management training requires evidence of formal coursework. The other comment stated the agency should provide objective requirements that applicants must meet to obtain a waiver of borrower training instead of the broad provision that the applicant submit evidence to demonstrate to the agency's satisfaction the applicant possesses experience and training necessary for a waiver. The agency believes the rule as written provides adequate flexibility for applicants to provide evidence of financial management training through completion of a course as required by § 764.453(b)(1) or other means. Further, the agency evaluates each case based on its individual merits, since it is impossible to identify all possible means through which financial management training can be accomplished. Any additional specificity would limit the applicant and the agency's flexibility. Lastly, rigid guidelines would place excessive burden on some applicants and not require others who may benefit from borrower training to take the opportunity. Therefore, the comments are not adopted.

Section 764.454 Actions That an Applicant Must Take When Training Is Required

Four comments were received on the actions an applicant must take when training is required. Three comments stated it is not clear if a borrower who completes the required training outside of the allowed timeframe remains eligible for additional direct loans. The comments suggested language to be added clarifying whether or not this will affect the borrower's eligibility for primary loan servicing. The agency agrees with the first part of the comments and has revised the CFR to state that if such borrower later completes the training, the borrower will then become eligible for additional direct loans. However, the agency believes the impact on the borrower's eligibility for primary loan servicing is adequately addressed above. While the agency does not evaluate the need for borrower training when a borrower requests primary loan servicing, the eligibility requirements under § 766.104 provide the borrower has acted in good faith. The definition of good faith includes the borrower's adherence with all written agreements with the agency. Therefore, the second part of the comments is not adopted.

One comment stated the agency should replace the words ''direct FLP loans'' with the words ''direct FLP assistance'' in § 764.454(a)(4) to strengthen the lack of good faith denial when delinquent borrowers request

primary loan servicing. The agency believes the comment's concern is sufficiently addressed above. Therefore, the comment is not adopted.

Section 764.458 Vendor Approval

One comment was received on the vendor approval provisions. The comment stated the agreement to conduct training should be for five instead of 3 years. The comment stated Certified and Preferred Lender agreements are valid for 5 years, and lenders have greater fiscal responsibility as opposed to borrower training vendors that only provide training. In addition, the comment stated administrative time spent on renewing vendors' agreements will be cut in half. The agency believes the existing process is adequate. Vendor renewals require minimal time in most cases, and while the vendor is being reviewed for renewal, it is a great opportunity for the agency to assess the vendor's performance. Further, because agriculture is a fast-changing field, the agency needs to ensure that vendors provide cutting-edge training to its borrowers. Therefore, the comment is not adopted.

Miscellaneous Comments in Part 764

Three comments stated the lack of the Administrator's exception provision in the loan making CFR may adversely affect the agency's ability to deal with unique issues for which action outside of the CFR's provisions may be in the agency's financial interest. The agency must administer its loan programs according to the Act and all other Federal laws and regulations. Most loan making requirements are required by law and exceptions would primarily be for the benefit of the applicant only. In addition, the agency believes both the proposed and the final rule have adequately addressed mandatory loan making provisions and provided flexibility where needed. Further, existing regulations applicable to loan servicing only contain the suggested exception authority where exceptions may be needed to protect the agency's financial interest in an existing loan, if not prohibited by statute. Therefore, the comments are not adopted.

One comment stated the agency must implement the provision of the Federal Agriculture Improvement and Reform Act of 1996 authorizing a direct operating line of credit. The OMB has advised the agency that for budgetary purposes, under the provisions of the Credit Reform Act of 1992, a multi-year line of credit loan is treated as a series of individual loans. As a result, a 5-year operating line of credit requires the agency to obligate five times the budget authority as it would for a 1-year operating loan. Program funding levels have been limited so that the agency has exhausted or nearly exhausted operating loan funds over the past several fiscal years. Implementation of an operating line of credit, while it would benefit those who receive it, would consume excessive budget authority and prevent others in need of operating loan assistance from receiving it. As a compromise, the agency implemented the Lo-Doc program in 2002, which with the exception of a multi-year commitment, is similar in most respects to a line of credit. Therefore, the comment is not adopted.

One comment stated the agency must not provide any loan funds to agribusinesses that mistreat animals, but only to operations that grow animals humanely. The agency relies on local and state authorities to make determinations in cases of mistreatment of animals. Enforcement actions against such operations would prevent them from submitting a viable loan application. Moreover, the agency does not have authority to impose certain animal husbandry practices on applicants and borrowers. However, the agency does require production training for applicants that lack experience or education. Therefore, the comment is not adopted.

One comment stated the agency must include that an applicant must request the lower of the interest rates in effect at the time of loan approval or loan closing. In addition, the comment stated the provision should be clearly offered on the agency loan application form. The agency revised Part 764 to state the interest rate will be the lower at the time of loan approval or loan closing. Therefore, the agency will not take any further action on this comment.

Part 765—Direct Loan Servicing—Regular

The following discussion addresses the comments received on Part 765.

Section 765.51 Annual Review

Four comments were received on the provision for increasing a borrower's limited resource interest rate. One comment stated that if the regular interest rate becomes lower than the limited resource rate charged on the borrower's loans, the agency should change the borrower's interest rate from limited resource to the regular rate without notifying the borrower. One comment stated the agency should be allowed to change a borrower's limited resource interest rate to the regular rate if the regular interest rate is lower than the limited resource rate, as has occurred in recent years, and should not provide appeal rights when notifying the borrower, since lowering the borrower's interest rate is not an adverse action. The third comment stated that there should be a mechanism for the agency to provide the borrower with the lower interest rate when the regular interest rate drops below the limited resource interest rate. The fourth comment indicated that the proposed rule does not provide guidance to employees performing limited resource reviews when the regular interest rates are lower than the limited resource rates. The authority for limited resource interest rates was established by Congress during a period of high regular interest rates. The intent was to address high delinquency rates and help farmers stay on the farm. Congress did not anticipate that the regular interest rate would be lower than limited resource; therefore, this situation was not anticipated or addressed in the Act. The agency has established internal procedures to be followed in the unusual situation where the limited resource interest rate is higher than the regular interest rate. The lower of the regular or limited resource interest rate has been used while conducting normal limited resource reviews, year-end analyses, and primary loan servicing. Agency borrowers with limited resource rate loans have been positively impacted by the agency's internal procedures and the agency will continue this established internal guidance in the future. Therefore, the comments are not adopted.

Section 765.101 Borrower Graduation Requirements

Five comments were received on borrower graduation requirements. One comment stated that requiring all loans of the same type be refinanced undercuts graduation rates; therefore, the agency should count any loan refinanced as partial graduation. In accordance with the Act, the agency serves as a temporary source of credit. The agency does not believe its mission of assisting its borrowers to obtain commercial credit has been achieved unless all loans of the same type have been refinanced as part of the graduation process. Therefore, the comment is not adopted.

Three comments stated that, due to loan making and servicing requirements, most borrowers' loans are cross-collateralized which makes it virtually impossible for borrowers to partially graduate. Further, all comments stated the State Executive Director should be granted authority, in partial graduation cases, to release the

security typically associated with the loans under graduation provided the remaining security is at least 150 percent of the remaining debt. The agency disagrees. In loan making, the agency requires, except as provided in § 764.106, security up to 150 percent of the loan amount, if available. The security value for loan making purposes is established by an appraisal. In loan servicing under 7 CFR part 766, the agency requires the best lien obtainable on all the borrower's assets, except as provided in § 766.112(b). Graduation generally occurs a number of years after a loan is made. The borrower's assets securing the agency loans are not appraised as part of the graduation process; therefore, the agency would be basing the release of its liens solely on the security's estimated value. The additional costs the agency would incur by obtaining appraisals for such partial releases would offset any benefits achieved by the partial graduation. Therefore, the comments are not adopted.

One comment stated the agency should revise § 765.101(d) to include the statutory borrower notification requirement when the agency provides the borrower's prospectus to lenders. The agency agrees with the comment and has revised this paragraph accordingly.

Section 765.102 Borrower Noncompliance With Graduation Requirements

One comment was received on the provisions regarding borrower noncompliance with graduation requirements. The comment stated that only borrowers actually able to obtain commercial credit but refuse to do so should be considered as failing to graduate, and will, therefore, be in non-monetary default. In addition, the comment stated the agency should add that a borrower, for good cause, may request additional time to apply for commercial credit. The agency requires the borrower to provide the information needed to determine if commercial credit may be available, apply for a loan if a lender indicates interest in refinancing the borrower's agency loan, and refinance the agency loan if the lender extends credit. All of these requirements are well within the borrower's control. The agency's determination of non-monetary default, therefore, is not dependent on the borrower's successful graduation. To add the provision that a borrower for good cause may take additional time to apply for commercial credit unnecessarily requires additional criteria and subjective decisions from the agency. In addition, Section 319 of the Act (7 U.S.C. 1949) requires that borrowers graduate to commercial credit when able to do so. Therefore, the comment is not adopted.

Section 765.103 Transfer and Assignment of Agency Liens

In some States, graduation requirements are impeded by State laws preventing a lender from obtaining a valid lied on homestead property unless the lender has a purchase money interest in the property. As a result, approval of the transfer and assignment of the agency's lien to the lender refinancing the FLP loan must be approved on a case-by-case basis using the exception authority currently published in 7 CFR 1965.35. The agency inadvertently failed to address this issue in the proposed rule. The agency believes a provision allowing transfer and assignment of its lien should be included in the final rule as it will enable borrowers to graduate to commercial credit in a timely manner.

Section 765.152 Types of Payments

Five comments were received regarding types of payments. Three comments stated the agency should expand the provision allowing proceeds from the sale of real estate security to be applied as regular payments to also include proceeds from the sale of basic chattel security. In addition, the comments stated that the use of proceeds from real estate and basic chattel security as regular payments should be limited to only a delinquent and or current year's payments to prevent basic security proceeds from being used to pay ahead several years. The proposal limiting the use of proceeds from the sale of basic security to only real estate security conforms to the agency's existing regulations at § 1965.13. Allowing the use of proceeds from the sale of chattel basic security to be used as regular payments increases the risk of loss to the agency because, unlike real estate security, the value of chattel security generally declines each year due to depreciation. Approval to use the proceeds from the sale of real estate basic security as a regular payment is at the discretion of the agency; and each situation will be evaluated on its merits. The agency believes the CFR as written provides adequate clarification of its policy for classifying proceeds a ''regular'' or ''extra'' payment. Further, the agency clarified the authorized use for each type of payment it receives. Therefore, the comments are not adopted.

Two comments stated the agency should specify in the CFR the agency employee with the authority to determine if proceeds from the sale of real estate can be applied as regular payments. It is the agency's policy not to provide employee-specific titles in the CFR since they are internal matters. The agency handbook will delegate necessary responsibility. Therefore, the comments are not adopted.

Section 765.153 Application of Payments

Nine comments were received on the application of payments. Eight comments stated publishing the order in which payments will be applied to borrowers' accounts limits the borrower and agency official's flexibility and discretion to apply payments in a manner each feels is most beneficial. In addition, one comment suggested the agency consider the borrower's preference on which loan payments are applied. The agency believes that publishing the order in which payments are applied removes inconsistencies, ensures all borrowers are treated the same, and ensures payments are applied in a manner which best protects the agency's financial interest. Therefore, the comments are not adopted.

One comment stated that it is not clear what happens to proceeds after all payments due on FLP loans are made for the year. Sections 765.152, 765.153 and 765.154 describe the distinction between regular and extra payments and the order in which proceeds will be applied to agency loans. Release of proceeds after all FLP loan payments have been paid is addressed in § 765.301(h). The agency has modified that paragraph to clarify that in those circumstances all proceeds from the sale of normal income security will be released to the borrower. Therefore, the clarification suggested by the comment has already been adequately addressed.

Section 765.154 Distribution of Payments

Two comments were received on the distribution of payments. One comment stated that it is not clear what percentage of each payment will be applied to each of the items listed in § 765.154. The agency cannot assign a percentage to each of the items listed in § 765.154 because outstanding recoverable costs and protective advances must be paid in full before any of the other items listed can be paid. Therefore, the comment is not adopted.

The other comment stated the agency should revise the provision on the payment of accrued deferred interest to state ''only a pro-rata portion of accrued deferred interest will be paid before loan principal is paid.'' Accrued

deferred interest is scheduled for payment on an annual basis and borrower payments received are applied accordingly. Therefore, the comment is not adopted.

Section 765.155 Final Loan Payments

One comment was received on final loan payment provisions. The comment stated that it is not clear how the agency will settle underpayments of less than $10. The rule provides that the agency will not attempt to collect amounts less than $10, and since there is no impact on borrowers, guidance will be provided only in the agency handbook. Therefore, the comment is not adopted.

Section 765.202 Borrower Responsibilities

One comment was received on borrower's responsibilities. The comment stated that the agency should revise § 765.202(a)(2) to provide ''Borrower failure to keep agreements for reasons not beyond the borrower's control, will be considered* * *'' The agency believes that the provision as written allows the agency to consider circumstances for the borrower's failure to keep agreements. Therefore, the comment is not adopted.

Section 765.205 Subordination of Liens

Sixteen comments were received on subordination of liens. Two comments stated the agency should approve subordinations made in conjunction with a guaranteed loan only in a sufficient amount to cover what is currently ahead of the agency loan. Section 762.142(c) provides the conditions under which the agency will subordinate its liens to a guaranteed lender. Therefore, no change is needed to § 765.205, and the comments are not adopted.

One comment stated that the application form required for chattel subordinations is not referenced in the CFR. Another comment stated the agency should provide the general information needed for any subordination since the agency treats subordinations as a method to meet borrowers' annual operating needs, and subordinations are an important tool in assisting its borrowers to obtain commercial credit. As provided in the preamble of the proposed rule, it is the agency's policy not to publish form numbers in the CFR, except as provided by the Act. The agency handbook will provide the forms needed to complete requests for real estate and chattel subordinations, so that comment is not adopted. However, the agency agrees the subordination application requirements were inadvertently omitted in the proposed rule and has included them in the final rule.

One comment stated that it is not clear what the term ''operating cycle'' means under the subordination requirement that the borrower's farm business plan shows that all debts scheduled during the operating cycle will be paid. The agency agrees that the term ''operating cycle'' is not clear. Thus, the agency decided for consistency to use the term ''production cycle'' in place of ''operating cycle'' throughout the final rule. Further, in the final rule the agency clarified the definition of ''production cycle'' at § 761.2.

One comment stated that borrowers with partial or complete deferrals should not be eligible for subordinations. Further, the comment stated that while a borrower's loans are deferred, the borrower's payments are artificially low, and therefore, the operation shows a feasible plan whereas a feasible plan might not be achieved if the deferral is taken into consideration. The agency agrees the deferral may have a significant impact on the borrower's repayment ability. However, the agency makes decisions based on the borrower's current farm operating plan. It would not be in the agency's best interest to deny a subordination request if the subordination would allow the operation to continue, thus increasing the probability of repayment of the agency loan. Should the borrower experience financial difficulty after the deferral period expires, the agency will consider all available loan servicing options. Adoption of the comment would change a longstanding policy that the agency did not propose to change. Therefore, the comment is not adopted.

One comment stated the CFR should provide that the agency ''may'' approve a subordination, instead of ''will'' approve a subordination. The agency cannot use ''may'' in this instance because it would indicate that there are additional requirements beyond the requirements published. In addition, the agency has no basis on which to deny the subordination request if all conditions have been met. Therefore, the comment is not adopted.

One comment stated the agency should clarify § 765.205(a)(11) (§ 765.205(b)(12) as renumbered in the final rule) to provide the subordination has a definite maturity date. The agency agrees with the comment and has revised the CFR accordingly.

Three comments stated the agency should allow multiple subordinations on the same security to the same lender. The agency agrees with the comments and has revised the CFR accordingly.

Two comments stated the agency should be able to subordinate its lien a second time for the borrower to obtain crop insurance. This provision is authorized under proposed § 765.205(b)(2) (renumbered to § 765.205(c)(2) in final rule); therefore, no action is required regarding the comments.

One comment stated the agency should allow multiple subordinations of the same security to different lenders as the current regulations allow. The agency believes allowing multiple subordinations to multiple lenders on the same security increases the agency's risk because the complexities of servicing the account would be increased. When subordinations are granted to multiple lenders, agreements on responsibilities and lien priorities, as well as lines of communication, have to be established between all the lenders before subordination is provided. The agency cannot become involved in these agreements as a matter of course, nor can it be perceived as the mediator in any future possible disagreement between multiple lenders. Lastly, the agency has not allowed multiple subordinations of the same security to multiple lenders in the past and did not propose to change this longstanding policy. Therefore, the comment is not adopted.

One comment stated the agency should adopt a limited documentation subordination application similar to the Lo-Doc application. The agency believes Lo-Doc loans and subordinations are not similar actions since subordination may be considered for any authorized loan purpose, whereas Lo-Doc loan proceeds may only be utilized under limited specific circumstances. Therefore, the comment is not adopted.

One comment stated the agency should require the lender, to whom subordination is granted, to execute a prior lienholder's agreement. Further, the comment stated the agency should not grant a subordination, if agency calculations at the time the subordination is being considered indicate the agency would not make a protective advance to pay the prior lienholders, should default occur on the subordinated loan. The agency believes its interests are adequately protected as the provision was proposed. It is impracticable to approve subordinations and protective advances using similar requirements. Protective advances are generally necessary when a borrower's financial condition has severely deteriorated, and are used to protect agency security, while subordinations

are generally considered for borrowers able to meet commercial lenders' requirements and demonstrate repayment ability. Further, the agency believes adoption of the comment would impose unnecessary collections of information on its borrowers. Therefore, the comment is not adopted.

Section 765.252 Lease of Security

Two comments were received on the provisions regarding lease of security. One comment stated the agency should remove the provision that the term of consecutive leases cannot exceed 3 years, and allow additional years for the property to be leased if a generational transfer is involved. The agency agrees with the comment and has revised paragraph (a)(2) to allow lease of security for up to 5 years when the lessee and the borrower are related by blood or marriage. This will allow the lessee additional time to obtain the farming experience and managerial ability necessary to operate the farm with the elder farmer's guidance and help address the difficulties of affording increasing real estate costs and inadequate farm ownership loan funding. The 5-year limit should be sufficient time for agency funds to become available or the lessee to obtain a commercial loan to finance the purchase of the existing farm. Some lease limit is necessary in the case of such leases because the borrower agreed to operate the farm as a condition in obtaining the loan.

One comment stated the agency should provide the state level with authority to approve lease of security for more than 3 years under certain circumstances. The agency no longer includes in the CFR the office responsible for approving leases of security. A consistent, nation-wide policy is preferred. Further, the agency believes that by adopting the first comment, it has addressed this comment's concerns. Therefore, the comment is not adopted.

Section 765.253 Ceasing To Operate Security (Renamed in Final Rule)

One comment stated the provisions are not clear since it seems the borrower must meet all conditions under § 765.253. Further, the comment stated the provisions do not allow the agency to consent to a borrower's failure to operate the farm where the borrower transfers the operation to an S corporation in which the borrower is the sole member. The agency revised the CFR to provide that borrowers must meet the conditions specified under subparagraphs (a) through (d) and any of the conditions under subparagraph (e). However, the agency believes the example the comment provided does not fit conditions for the agency to consent to the borrower ceasing operating the security, as the borrower would continue operating the security with a different composition. In the example, the agency would proceed with a transfer and assumption and allow the new borrower entity to continue the loan and operate the security. Therefore, this part of the comment is not adopted.

Section 765.301 General

Six comments were received on the general requirements for disposing of chattel security. One comment stated that, instead of requiring the borrower to sell chattel security for the market value, the agency should require that ''the borrower may not dispose of normal income security for less than its market value and basic security for not less than its recovery value.'' Further, the comment stated that the net recovery value of basic security should be determined by an appraisal, less sales expenses. When determining whether or not adequate security is available at the time of loan approval, the agency uses the market value of potential security. Therefore, the agency cannot allow disposition of chattel security for less than its market value. Nation-wide agency devaluation of security will increase losses and is not in the agency's and the taxpayer's financial interests. In addition, under regular servicing circumstances the agency has no reason to calculate or accept estimated involuntary liquidation amounts. Therefore, the comment is not accepted.

Five comments stated the agency should revise § 765.301(h) to state that if all agency loan installments and any past due installments have been paid, checks from the sale of normal income security may be payable solely to the borrower. The agency agrees with the comments, and has revised the CFR accordingly.

Section 765.302 Use and Maintenance of Agreement for the Use of Proceeds

Three comments were received on the use and maintenance of the agreement for the use of proceeds. One comment stated that completing the agreement for the use of proceeds is time consuming and confusing. In addition, for the agreement to be properly completed, the borrower must plan each expense for the year and identify the source of income to pay for it. Then, at the end of the year, the agency needs to reconcile each expense paid with the source of income. The agency believes that the rule provides clear guidelines on when the agreement for the use of proceeds will be completed. Further, as stated in the agency's response to comments received on the definition of ''agreement for the use of proceeds,'' the agency may conduct further analysis to determine if changes are warranted. Therefore, the agency will take no further action on these comments at this time.

Two comments stated that the requirement for the borrower to date and initial changes made on the agreement for the use of proceeds should be eliminated. The agency believes that since the agreement for the use of proceeds is completed by both the borrower and the agency, any changes made should be concurred with by both. Therefore, the comments are not adopted.

Section 765.303 Use of Proceeds From Chattel Security

Three comments were received regarding the use of proceeds from the sale of chattel security. One comment stated that the guidance provided in the existing regulations under § 1962.17 is confusing as to when proceeds from the sale of normal income and basic security can be released. The agency believes that both the proposed and final rules clarified the use of proceeds from the sale of normal income and basic chattel security without changing current policy. Therefore, the agency believes the comment's concern is adequately addressed.

One comment stated the agency should add a provision to protect its interests when crop security is used as feed for a third party's livestock. This section allows for crop security that normally would be sold, to be fed to livestock the borrower owns, if the agency obtains a lien or an assignment on the livestock and the livestock products equal to the lien on the crops. If the borrower feeds agency crop security to a third party's livestock, the borrower has converted agency security and is in non-monetary default with the borrower's agreements with the agency. Agency actions when the borrower is in non-monetary default are addressed in 7 CFR part 766. Therefore, the comment is not adopted.

One comment stated the agency should clarify that proceeds from the sale of chattel security will not be used to acquire real estate but may be used to acquire property that meets the operating loan program's objectives. The agency agrees with the comment and has revised the CFR accordingly.

Section 765.304 Unapproved Disposition

Ten comments were received on unapproved disposition of chattel security. Six comments supported the provision as written. One comment stated that there are no standards established on what information the borrower has to provide for post-approval. In addition, the comment stated that the agency has to release proceeds for family living and farm operating expenses until the account is accelerated, implying that the borrower does not need to provide any information to the agency for post-approval. The agency disagrees. It is impossible to list all possible sources of documentation that a borrower could submit to provide evidence that proceeds were used for an authorized purpose. Further, the essential family living and farm operating expenses definition (§ 761.2(b)) establishes a list of expenses the agency considers to be essential and states that the agency will consider each expense on the list as it applies to each operation. Moreover, the agency and the borrower complete the agreement for the use of proceeds at the beginning of the production cycle. By establishing the conditions under which proceeds can be released, a borrower should be able to determine the type of documentation appropriate for post-approval. Therefore, the comment is not adopted.

Three comments stated the agency does not clearly provide that unauthorized dispositions of security are considered non-monetary defaults. The agency agrees with the comments and has revised the CFR accordingly.

Section 765.351 Requirements To Obtain Agency Consent

Six comments were received on the requirements to obtain agency consent to a partial release of real estate security. Two comments stated the agency should accept ''no less than the agency-defined recovery value'' or ''95 percent of the market value'' for the real estate proposed for partial release. Loan approvals are based on evaluation of the loan security at its market value. Approving real estate security releases for less than market value would be inconsistent with loan making provisions and fiscally irresponsible as doing so could increase the agency's losses. Therefore, the comments are not adopted.

Three comments stated that because many loans are cross-collateralized due to loan making or servicing actions, the agency should allow exchange of real estate security for ''any authorized loan purpose.'' The agency believes the loan purposes are broad enough to accommodate the few cases where exchange of property is considered. Therefore, the comments are not adopted.

One comment stated the agency should clarify that terms for contracts for deed will not exceed the remaining loan term. The agency agrees with the comment and has revised the CFR accordingly.

Section 765.352 Use of Proceeds

Eight comments were received on the use of proceeds from the partial release of real estate. Two comments supported the agency's decision not to allow proceeds from the sale of real estate to be used for developing land not owned by the borrower. One comment disagreed with the agency's decision to not allow borrowers to use proceeds from the sale of real estate security to make improvements on rented land, on which the agency does not have a lien. The comment stated in § 764.151(b) the agency provides the conditions under which loan funds can be used to make improvements on rented land. Moreover, the comment stated the agency accepts security interests in property not owned by the applicant, including leases that provide a mortgageable value. Therefore, the comment stated, the agency should not eliminate the provision. The agency disagrees. The agency accepts as security leases that provide a mortgageable value as well as security pledged by third parties to satisfy the agency's security requirements. Further, § 764.151(b) provides that for the agency to make a farm ownership loan, the applicant must have a lease to ensure the applicant will have use of the improvement over its useful life or to ensure the applicant will be compensated for any remaining economic life when the lease terminates. In those cases, the agency has a security interest in the land; therefore, loan funds can be used to make improvements. The agency removed the provision that allowed borrowers to use sale proceeds from agency security to make improvements on rented land, because the majority of the applicants found it difficult to meet the lease requirement. In addition, it is not prudent to release proceeds from the sale of agency security to improve land on which the agency does not have a lien. Therefore, the comment is not adopted.

One comment stated that the agency should not release proceeds from the partial release of real estate to pay other creditors, unless the amount is small and the agency debt to security ratio is over 1/1 after the transaction is completed. Another comment expressed concern about not allowing proceeds from partial real estate releases to be paid to other creditors ''to the extent needed to establish a basis for continuation of the other creditor's account.'' One comment stated that the agency should allow for SED discretion as to how proceeds from the partial release of real estate will be applied. The agency believes that allowing proceeds to be distributed outside of established lien priorities usually occurs at the expense of the agency, decreases the agency's equity in the security, and increases the taxpayers' risk. Therefore, the comments are not adopted.

One comment inquired about the interaction between § 765.152(c) and § 765.352. Section 765.152(c) establishes that proceeds from the sale of real estate security may be applied to the borrower's account as a regular payment, in which case it is credited toward the borrower's annual payment as opposed to an extra payment, which simply reduces the unpaid loan balance, if the agency's loans will be adequately secured after the transaction. Furthermore, §§ 765.152 and 765.153 only address the order in which payments are applied against agency loans, whereas § 765.352 establishes the use of proceeds from transactions affecting the real estate security. The agency sees no conflict between these provisions; therefore, no change has been made.

One comment stated the agency should replace the words, ''When liquidation is pending,'' with the words, ''After acceleration'' in § 765.352(b) to explain when the agency will approve transactions only in accordance with lien priorities and customary costs. The agency agrees with the comment and has revised the CFR accordingly.

Section 765.353 Determining Market Value

In the preamble of the proposed rule, the agency proposed to increase the estimated value of real estate security considered for partial release to $25,000 before obtaining an appraisal. However, the regulatory text provided that the agency would require an appraisal for a partial release of real estate when its estimated value exceeded $20,000. The agency's intent was to include in the regulatory text $25,000 as evidenced by the final rule published by the agency on June 2, 2004 (69 FR 30997–30999). Fourteen comments were received on the appraisal requirement for partial releases. Several comments pointed out the discrepancy between the preamble

and the regulatory text; however, 10 comments supported the change, while three comments stated the $25,000 limit is too low and should be increased to $35,000 (one comment) or $50,000 (two comments). The agency believes that changing the limit to $35,000 or $50,000, as suggested, would increase the agency's risk to a level the agency cannot accept. Therefore, the comments are not adopted and the $25,000 limit has been adopted.

One comment stated it was not clear who will determine the real estate's estimated value and what qualifications are required to make the determination, since agency personnel are no longer qualified. The agency assigns employee responsibilities in its administrative procedures. The agency handbook will provide the agency official authorized to determine estimated value for real estate; therefore, the comment is not adopted.

One comment was received on the provision not to appraise the remaining security when only part of the security is released (§ 765.353(b)). The comment stated it is sometimes not possible to determine the effect the security being released may have on the value of the remaining security. The rule provides that the agency will obtain an appraisal if the agency believes that the transaction will reduce the remaining security's value. In addition, the agency's handbook will provide further guidance, which will address the comment's concern. Therefore, the comment is not adopted.

Section 765.402 Transfer of Security and Loan Assumption on Same Rates and Terms

Five comments were received on the transfer of security and loan assumption on same rates and terms. Three comments stated that the process for releasing an entity member from liability in cases of transfer and assumption should be similar to the process of releasing a divorced spouse under § 765.406(b). The agency disagrees. The agency considers a change in the composition of the entity as a change in the entity, while a sole proprietorship remains the same sole proprietorship when a debtor leaves the farming operation. In addition, this section provides guidance for situations where the agency debt is being assumed by a party not currently liable for the debt. Section 765.406(b) is applicable in situations where both spouses are individually liable for the debt, but one is withdrawing from the operation. Therefore, the comments are not adopted.

Two comments stated the agency should allow assumptions by eligible applicants on new rates and terms. Assumption of debt by eligible borrowers is addressed in § 765.403; however, in reviewing this section, the agency determined that it failed to address the rates and terms for this type of assumption. Therefore, the agency added new paragraph (e) in the final rule to refer to the rates and terms in part 764 for the type of loan being assumed. The agency also revised paragraph (a) to clarify that EM loans for physical and production losses cannot be assumed under § 765.403. These loans may only be assumed by persons who were directly involved in the operation at the time of the loss as provided in § 765.402(e).

Section 765.404 Transfer of Security to and Assumption of Debt by Ineligible Applicants (Renamed in Final Rule)

Three comments were received on the transfer of security to and assumption of debt by ineligible applicants. Two comments supported the agency's decision to change the term for Non-program loans secured by real estate to 25 years or less, based on the applicant's repayment ability. One comment stated the agency should prohibit transfer and assumption by transferees who have received debt forgiveness from the agency. The agency agrees with the comment and has revised the CFR accordingly. This is a continuation of existing policy from 7 CFR 1962.34(b).

Section 765.451 Continuation of FLP Debt and Transfer of Security

Three comments were received on the continuation of FLP debt and transfer of security when a borrower is deceased. All comments stated the administrative processes the agency uses to continue FLP debt of deceased borrowers are not clearly established in the CFR. The agency disagrees. Section 765.451(a) provides the agency will continue the loan with any individual who is liable for the debt. In addition, § 765.451(b) provides the agency will continue the loan with any individual not liable for the debt in accordance with the transfer and assumption provisions established in § 765.401 through § 765.404. Therefore, the comments are not adopted.

Section 765.501 Agency Exception Authority

Two comments were received on the exception authority provisions. The comments stated the agency should provide in the CFR the internal process utilized by agency employees to request an exception. As stated above, the agency, like most Federal agencies, does not promulgate internal processes in the CFR. However, the agency handbook will provide administrative guidance for agency staff to process requests. Therefore, the comments are not adopted.

Miscellaneous Comments on Part 765

Six comments were received on the agency's decision to eliminate accelerated repayment agreements for borrowers able to graduate to commercial credit. One comment supported the agency's decision, while the remaining opposed it. The opposing comments stated accelerated repayment agreements are cost-efficient, because the agency collects the funds loaned faster and without incurring additional costs, that may result when taking action against a borrower for non-monetary default. In addition, the comments stated that the United States Attorney's offices usually will not pursue foreclosure on these cases. The agency believes that accelerated repayment agreements for borrowers who are able to graduate are not appropriate, since the agency has limited enforcement ability for these agreements, and the agreements cannot be applied consistently nation-wide. Therefore, the comments are not adopted.

Part 766—Direct Loan Servicing—Special

The following discussion addresses the comments received on part 766.

Section 766.1 Introduction

While loan making regulations in 7 CFR 764.304 clearly establish that the limited resource operating loan interest rate is not available for youth loans, loan servicing limitations for youth loans were not so clearly articulated. The agency is authorized under 311(b) of the Act to use operating loan funds for youths, who are rural residents, to enable them to operate enterprises in connection with their participation in 4–H Clubs, Future Farmers of America, and similar organizations. Youth loan enterprises are not the typical farming operations financed with other types of agency farm loans and, therefore, are treated differently in many respects. For example, section 311(c)(2) of the Act does not count youth loans against the applicant seeking a direct operating loan that are limited to beginning farmers or farmers with 6 years or less of previous direct operating loans. Section 302(b)(2) further provides that operation of a youth enterprise does not count towards the required 3 years of participation in a farm operation for a direct farm

ownership loan. Section 353(a)(2) of the Act provides one goal of restructuring delinquent debts is ''to ensure that borrowers are able to continue farming or ranching operations.'' Considering these sections together, the Congress did not intend youth loan borrowers to be treated like other delinquent loan borrowers and receive full servicing rights under section 353 of the Act. The agency will continue its current policy that provided youth loan borrowers may not receive Disaster Set-Aside and may only be considered for rescheduling and deferral under the primary loan servicing process. Therefore, the agency has revised § 766.1(b) to clearly reflect this existing policy.

Section 766.51 General (Disaster Set-Aside)

Two comments were received on the general Disaster Set-Aside (DSA) provisions. The comments stated the agency should not allow a borrower to obtain DSA on Non-program loans, even if the borrower also has program loans. The intent of DSA is to relieve the borrower's immediate financial stress caused by a natural disaster. The agency believes it is in both its and the borrower's financial interest to allow FLP borrowers that also have Non-program loans to obtain DSA. In addition, this policy has been in effect for several years without additional loss to the agency. Therefore, the comments are not adopted.

Section 766.52 Eligibility

Five comments were received on the DSA eligibility provisions. Two comments stated that it may be difficult for borrowers to meet the requirement that all program and Non-program loans be current or less than 90 days past due at the time the application for DSA is complete. Borrowers with January 1st scheduled payments may become 90 days past due before notice of DSA availability is published in local newspapers. The agency disagrees. Under § 766.101, borrowers are notified of primary loan servicing when they become 90 days past due, and those servicing options are designed to assist the borrower in resolving the financial distress and provide long-term financial viability. DSA is not intended to replace or supplant the statutorily mandated primary loan servicing for financially distressed or delinquent borrowers. Thus, DSA does not apply to the situation mentioned in the comments. Therefore, the comments are not adopted.

One comment stated the agency should provide that borrowers must not become 165 days past due before the appropriate agency documents for DSA are executed. The agency agrees with the comment and has revised the CFR accordingly. DSA must not interfere with statutory primary loan servicing requirements. Allowing the agency 15 days to send notices to borrowers 90 days past due and 60 days for the borrowers to submit a complete application for primary loan servicing, the DSA needs to be considered and closed prior to the borrower becoming 165 days past due (90+15+60=165 days).

Two comments stated the agency should clarify that the borrower's account may not have been accelerated or subject to any special servicing. DSA may not interfere with other available statutory loan servicing options. DSA is intended to be a temporary solution to address the borrower's financial distress due to a natural disaster. Distressed and delinquent borrower loan servicing options attempt to address the borrower's financial distress and delinquency, which are outside the borrower's control, and financially stabilize the operation for the long term. The agency agrees with the comments and has revised the CFR accordingly.

Section 766.54 Borrower Application Requirements

One comment was received on the borrower application requirements for DSA. The comment stated the agency should require borrowers to submit 3 years of Federal tax returns as part of the application for DSA, since in many instances analysis of the account has not been completed in several years. The agency believes that the rule as written provides the flexibility needed for agency officials to request information necessary to evaluate a borrower's application. Therefore, the comment is not adopted.

Section 766.56 Security Requirements

Four comments were received on the DSA security requirements. Two comments stated the requirements conflict with the requirements of § 766.52(b)(2). Two comments stated the security requirements are not clear. The agency disagrees. Sections 766.52(b)(2) and 766.56 do not conflict. The prior provision requires the loans to be current after DSA; the latter provision requires certain security if the loans are not current before and when the DSA is executed. The agency believes the security requirements are adequate; therefore, the comments are not adopted.

Section 766.57 Borrower Acceptance of Disaster Set-Aside

One comment was received on the borrower acceptance of DSA. The comment stated the agency should retain the provisions from the current regulations that allow: If a borrower repaid all previous DSA or all the borrower's previous DSA were cancelled through primary loan servicing, the loan is again eligible for DSA; if the borrower has more than one DSA outstanding, payments received will be applied to the oldest DSA until it is paid in full, before payments are applied to the second DSA; and, borrowers receive additional time to accept DSA for extenuating circumstances. The agency has clarified § 766.52 to state that to be eligible, the loan must not have a DSA outstanding. To avoid confusion, because a second DSA on the same loan has not been allowed since 2000, the agency did not include in the proposed rule how payments to multiple DSA will be applied. However, the agency handbook will provide guidance on such payment application and allow borrowers additional time to accept DSA for extenuating circumstances. Therefore, those portions of the comment are not adopted.

Section 766.101 Initial Agency Notification to Borrower of Loan Servicing Programs

Eleven comments were received on the initial agency notification to borrowers of loan servicing programs. Two comments stated the agency should spell out the abbreviation ''SA'' throughout this part. In the preamble of the proposed rule, the agency stated that all abbreviations and definitions applicable to FLP will be included in a single section of the CFR (§ 761.2) to eliminate the need for the public to search multiple CFR parts to determine if and where a term is defined, this includes Shared Appreciation loan. The abbreviation ''SA'' is included in § 761.2. Therefore, the comments are not adopted.

Two comments stated that the process of notifying borrowers with only delinquent SA is not published in the CFR. One comment inquired on the servicing available to borrowers with only SA. Borrowers with only SA debt are considered Non-program borrowers and may only be considered for reamortization under § 766.108 as under current policy. In addition, section 331D of the Act (7 U.S.C. 1981d) only requires the agency to publish the initial notification provided to program borrowers. The agency will address the

form of notification to borrowers with SA only in its handbook. Therefore, the comments are not adopted.

Two comments stated that FSA–2512, FSA–2510, and FSA–2514 do not identify their content. These notices are published in their entirety as appendices to 7 CFR part 766 and are identified as such in the table of contents. Therefore, no changes have been made in response to these comments.

Two comments stated the CFR does not include notification of loan servicing for borrowers who want to liquidate voluntarily. The agency will no longer send primary loan servicing to borrowers who, while current, request agency permission to voluntary liquidate the operation. Current 7 CFR 1965.26(a) requires the agency to send primary loan servicing notices under those circumstances and wait 60 days (within which time the borrower has to provide a complete primary loan servicing application) before the agency can process or consider the request for voluntary liquidation. By that time, the prospective buyer may no longer be interested and the borrower may be unable to sell the security. Under those circumstances, the agency believes that forced consideration of primary loan servicing would hinder the borrower's effort to liquidate and could be detrimental to the Government, especially if the agency loans will be paid in full with the transaction. Furthermore, voluntary conveyance is not a forced collection action by the agency requiring such notice under section 331D of the Act (7 U.S.C. 1981d). Therefore, the comments are not adopted.

Two comments stated the CFR does not mention that if the borrower does not accept the notice by certified mail, the agency will send it by regular mail. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated that since FSA–2512 does not provide a deadline for the borrower to submit a loan servicing application, the CFR should state that borrowers who received an FSA–2512 and did not submit a loan servicing application, will be renotified if they become 90 days past due. This is covered in § 766.103(a) and in FSA–2512 under the paragraph heading ''What Happens if You Do Not Apply?'' Therefore, the comment is not adopted.

Section 766.102 Borrower Application Requirements

Sixteen comments were received on the borrower application requirements for loan servicing. One comment stated the CFR should specify that in the case of an entity, all entity members must sign the acknowledgment form. The agency agrees with the comments and has revised the CFR accordingly.

Two comments supported the reduction in the amount of production and financial records requirement to 3 years. Four comments stated the agency should be allowed the flexibility to request additional years of records to properly evaluate the borrower's request and assess the agency's risk position. One comment stated that due to the number of natural disasters that have occurred throughout the country, 3 years of records may not be sufficient in providing an accurate assessment of a borrower's operation, so the agency should require the borrower submit records from ''normal'' years. For consistency, the agency desires to have the same records requirements for both loan making and loan servicing actions. In addition, the agency added in § 761.104 the methodology used by the agency to project yields and prices on farm operating plans for both loan making and servicing purposes. As mandated by section 331E(b) of the Act (7 U.S.C. 1981e), appropriate adjustments to projected yields are made when the borrower's production history has been substantially affected by a disaster. The agency believes this addresses the concerns expressed in the comments and, therefore, the comments are not adopted.

One comment stated that a complete application for loan servicing should include all items required for a complete loan making application, including legal description of property, leases, contracts, etc. The agency disagrees. Borrowers provide copies of legal description of property owned or operated, leases, and contracts at the time they apply for a loan. The agency maintains the loan making application records in the borrower's file and any updates as changes in the borrower's operation occur. Therefore, the comment is not adopted. However, the agency added the provision requiring borrowers to provide a current financial statement as part of a complete loan servicing application. This is a longstanding requirement that existed under the loan making and loan servicing regulations. The agency's application form contained the financial statement; however, due to agency's paperwork reduction efforts, the financial statement part was removed from the application form.

Two comments were received recommending that to be considered for a conservation contract, the borrower must submit an aerial photograph delineating the land proposed for a conservation contract and provide the term of the conservation contract in writing when applying for primary loan servicing. In § 766.102(b), the agency already proposed that the borrower must submit an aerial photograph delineating the land for the proposed conservation contract. The agency, with direct input of the borrower, utilizes a computer software program known as the Debt and Loan Restructuring System (DALRS) to evaluate each borrower's request for primary loan servicing. The agency and the borrower can, and do, consider different terms offered in combination with other servicing options available. Consequently, the agency and the borrower need the flexibility to evaluate all possible options, including conservation contracts, and enable the borrower to choose the best loan servicing option possible for the operation. Therefore, there would be no benefit from requiring the borrower to specify the conservation contract term at the point of application. No changes have been made in response to these comments.

Three comments suggested the requirement be added that, in cases where jointly liable borrowers have been divorced and one has withdrawn from the operation, to release the withdrawing individual from liability the remaining individual must develop a feasible plan. In many loan servicing cases, a feasible plan cannot be developed, yet it is not in the financial interest of the agency to keep a divorced spouse who has no repayment ability or non-essential assets liable for the loan, since all future servicing can become unduly complicated. Therefore, the comments are not adopted.

Two comments stated the agency should clarify that the financial records requirement is applicable to the entity as well as the entity members themselves. The agency does not agree. The agency believes the provision as written is adequate and does not believe that further clarification is needed, so no change has been made in response to these comments.

Section 766.103 Borrower Does Not Respond or Does Not Submit a Complete Application

Two comments were received on the provisions for notification requirements for borrowers who do not respond or do not submit a complete application. One comment supported the identical treatment of borrowers in monetary and non-monetary default. One comment stated that the agency's current internal policy of reminding borrowers that the agency had not received a complete loan servicing application was not included

in the CFR. The agency handbook will continue this policy. Therefore, the comment is not adopted.

Section 766.104 Borrower Eligibility Requirements

One comment was received on the requirement that borrowers use the net recovery value of any non-essential assets to resolve their financial distress or pay the delinquent portion of the loan (§ 766.104(a)(2)). The comment stated the requirement is harsh for a simple debt-restructuring request, may be overly burdensome, and may discourage borrowers from applying for servicing to resolve the financial distress or delinquency. Section 353(c)(2)(A)(ii) of the Act (7 U.S.C. 200h) requires that the net recovery value of all non-essential assets will be considered to determine if the borrower's loans may be restructured. Therefore, the comment cannot be adopted.

One comment suggested the words, ''in accordance with all loan agreements'' be dropped after the words, ''the borrower has acted in good faith'' in § 766.104(a)(4), since they are included in the definition of good faith. The agency agrees with the comment, and has revised the CFR accordingly.

One comment was received on the requirement that current or financially distressed borrowers requesting primary loan servicing must pay a portion of the interest due on the loans (§ 766.104(a)(5)). The comment disagreed with this requirement and stated that it seems the requirement is new. The requirement is currently published under § 1951.908(c)(5) and is not new. Further, Section 372 of the Act (7 U.S.C. 2008g) requires that to obtain servicing, non-delinquent borrowers must pay a portion of the interest due on the loan. Therefore, the comment cannot be adopted.

One comment stated the agency process of consulting the Office of General Counsel (OGC) when the agency determines that a borrower has not acted in good faith should be removed. The agency does not agree. Therefore, the agency will continue its current policy of considering acts of fraud, waste or conversion of security, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith. The comment is not adopted.

One comment supported the agency's inclusion of the list of circumstances beyond the borrower's control that may result in a borrower's failure to make payments as agreed. Another comment stated the agency should clarify that the list of circumstances beyond the control of the borrower is not exhaustive. In addition, the comment stated the agency should state in § 765.202(a)(2) that the borrower's failure to keep agreements will be considered when making eligibility determinations only when the failure is ''for reasons not beyond the borrower's control.'' The agency believes the circumstances as listed in § 765.202(a)(2) encompass all causes for a borrower to not make payments for reasons beyond their control. The agency believes that the suggested language for § 765.202(a)(2) is unnecessary as all aspects of the borrower's failure are to be ''considered'' and ''may'' adversely impact future requests for loans or servicing. Furthermore, a borrower's failure to keep agreements with the agency is evaluated when determining if the borrower has ''acted in good faith'' as required under the loan making and servicing eligibility requirements. The definition of ''good faith'' provides, ''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.'' Therefore, the comment is not adopted.

Two comments stated the agency should spell out the abbreviation ''SA.'' As noted previously, all abbreviations and definitions used are published in § 761.2. Therefore, the comments are not adopted.

One comment stated the agency should continue to assess a delinquent borrower's need for training to determine the reasons for not being able to pay. In cases where the delinquency is due to lack of financial management knowledge, the comment stated the agency should require financial management training. The agency initially evaluates a borrower's need for training in the loan making process according to § 764.452. As provided in § 761.103, as part of the farm assessment initiated in the loan making process, the agency reviews the borrower's progress at least annually to evaluate training needs. While the agency may recommend additional training, requiring training as a condition of loan servicing only hinders debt restructuring. Restructure of debt is a benefit to the borrower as they develop a payment plan based on past history and is a benefit to the agency as the debt continues to be repaid as serviced without liquidation. Therefore, the comment is not adopted.

One comment stated subparagraph (a)(1) as written is not clear. The agency agrees with the comment and has clarified the subparagraph introduction to state that the delinquency or financial distress is the result of reduced repayment ability due to one of the listed circumstances beyond the borrower's control.

Section 766.105 Agency Consideration of Servicing Requests

Three comments were received on the appraisal of a borrower's assets. All comments stated the agency should clarify if an appraisal of the borrower's assets is needed only when a feasible plan cannot be developed with a 110 percent debt service margin or when a write down is required to achieve at least a 100 percent debt service margin. The agency believes the rule as written specifies that the agency will not forgive debt, through write down or current market value buyout, before obtaining an appraisal of all the borrower's assets, without regard to debt service margin. In addition, the agency handbook will provide guidance on when the agency will obtain appraisals in loan servicing. Therefore, the comments are not adopted.

Section 766.106 Agency Notification of Decision Regarding a Complete Application

Nine comments were received on the agency notification of the decision regarding a complete application. Three comments stated the agency must continue to request mediation or voluntary meeting of creditors if the borrower cannot develop a feasible plan. One comment stated the agency should continue to initiate mediation proactively, otherwise the number of appeals and foreclosures will increase. Two comments stated section 353(d) of the Act (7 U.S.C. 2001) mandates the agency to initiate mediation when a borrower cannot develop a feasible plan for restructuring. The agency disagrees. This Section is applicable only when write down is being considered as a restructuring option. The section also provides that before eliminating the option for writedown, the Secretary will make a reasonable effort to contact the borrower's creditors, either directly or through the borrower to encourage restructuring. This statutory requirement is met by the agency's notification to the borrower of the availability of mediation or voluntary meeting of creditors, as applicable. Further, the agency participates in State-Certified mediation when available. Therefore, the comments are not adopted.

Two comments stated the agency should replace the terms ''the agency will notify the borrower'' and ''the agency will renotify the borrower'' with the terms ''the agency will send the

borrower a notification'' and ''the agency will send the borrower another notification.'' The agency agrees with this clarification and has revised the CFR accordingly.

One comment stated the statutory requirements to provide the borrower the agency's calculations and notify the borrower within 15 days of determining the borrower's ineligibility for loan servicing was not included in the proposed CFR. The agency agrees with the comment and has revised the CFR accordingly.

Section 766.109 Deferral

Five comments were received on the deferral provisions. Three comments supported the agency's clarification that the deferral term will be the shortest possible that provides a feasible plan. One comment stated the agency should not grant deferrals to borrowers who have accumulated excessive debt for non-essential expenses. The agency agrees that in some cases, a borrower's financial distress or delinquency may be the result of the borrower incurring excessive debt for non-essential expenses. The eligibility requirement that the financial distress or delinquency be the result of reduced repayment ability due to circumstances beyond the borrower's control, however, adequately addresses the concern. Therefore, the comment is not adopted.

One comment stated deferrals should be cancelled when a borrower files for bankruptcy protection, since by filing for bankruptcy, the borrower has elected to restructure the agency debt. When the agency restructures a borrower's loans with deferral of debt, the borrower executes the promissory note establishing the repayment schedule. The terms established by the promissory note take the deferral into consideration. If a borrower files for bankruptcy protection, the agency is not authorized to modify the repayment schedule without obtaining the prior approval of the court. Therefore, the comment is not adopted.

Section 766.110 Conservation Contract

Eighteen comments were received on the conservation contract provisions. Three comments stated the agency should include SA debt when calculating debt to be written down by a conservation contract. The agency agrees with the comments, provided the borrower has other outstanding program loans, and has revised the CFR accordingly. SA-only debt may not be serviced with a conservation contract. SA-only debt is classified as Non-program debt for borrowers who have no remaining program loans. The purposes of conservation contracts include allowing the borrower to timely repay the agency loans. Since those borrowers have no program loans remaining, this particular purpose of the conservation contract cannot be met. Therefore, the agency cannot offer conservation contracts to those borrowers. The section has been revised to provide that for borrowers who have at least one program loan outstanding, the Non-program debt can be considered for conservation contract because the conservation contract's purpose will be fulfilled as the borrower will be in a better position to repay the debt timely.

Three comments stated the agency should clarify that borrowers can appeal technical decisions made by NRCS according to NRCS's appeal process. The agency agrees with the comments and has revised the section to state that NRCS technical decisions will be handled in accordance with applicable NRCS regulations. At this time, the applicable NRCS regulations are published at 7 CFR part 614. Other aspects of a denial of conservation contract by the agency would be appealable under normal agency rules at 7 CFR parts 11 and 780.

Two comments stated the abbreviation ''SA'' should be spelled out; the agency loan under consideration for conservation contract must be secured by real estate; and that Non-program loans cannot be considered for conservation contracts. As noted previously, all abbreviations and definitions used are published in § 761.2. Therefore, this part of the comments is not adopted. The agency agrees that the loan under consideration for conservation contract has to be secured by real estate and has revised the CFR accordingly. The agency believes the benefit of conserving the nation's precious natural resources cannot be limited to program loans only. At least one program loan must be involved, however, for the agency to enter into a conservation contract with a Non-program borrower because the Act provides that only ''qualified'' borrowers may enter into conservation contracts. The CFR has been revised to accurately reflect this requirement and therefore, this part of the comments is not adopted.

Two comments suggested that the borrower select in writing the term of the conservation contract. As previously explained in the response to comments under § 766.102, the agency and the borrower can, and do, consider different options or combinations of options that will allow the borrower's account to be restructured. Consequently, the agency and the borrower need the flexibility to choose the best loan servicing option possible for the borrower's operation. Therefore, the comments are not adopted.

Two comments stated that NRCS should develop the conservation management plan and the agency should approve it, as specified in the Memorandum of Understanding between the agencies. The agency agrees and has revised the CFR accordingly.

Two comments stated the CFR does not state the borrower has to sign the conservation contract agreement nor does it provide the form number for the conservation contract agreement. Section 766.109(j) requires the borrower to sign the Conservation Contract Agreement. As stated previously, the agency does not publish form numbers in the CFR; however, the agency handbook will provide guidance for employees. Therefore, the comments are not adopted.

Two comments suggested the agency include required servicing for conservation contracts and agency actions if the borrower is not following the management plan or if the borrower sells the property under the conservation contract. One comment stated the penalties for violating the conservation contract agreement must be more severe than currently provided, because, if the only penalty the agency will assess is the reinstatement of the debt, it is sometimes to the borrower's economic benefit to violate the conservation contract. The agency did not propose to make substantive changes to the conservation contract requirements, but will do so through separate rulemaking procedures. Therefore, the comments are not adopted.

One comment stated the agency should require subordination of any prior liens and title clearance on the property under consideration for a conservation contract and that the conservation contract should not be renegotiated during its term or removed before expiration. The agency requires the real estate property under a conservation contract to be security for agency loans. Therefore, the agency would already have a lien on the property and additional title clearance is not required. Further, the agency, as a matter of policy, does not renegotiate the terms of the conservation contract, nor does it remove the conservation contract from the property until it expires. Some flexibility, however, should remain in the contract for unusual cases. Therefore, the comment is not adopted.

Two comments were received on the maximum debt reduction calculation by

a conservation contract used for current or financially distressed and delinquent borrowers (§ 766.110(h) and (i)). Both comments stated that the calculations should be the same for all. Section 349(e) of the Act (7 U.S.C. 1997) however, provides different calculations to be used for debt reduction by conservation contract for delinquent borrowers than non-delinquent borrowers. Therefore, the comments cannot be adopted.

Section 766.111 Writedown

Two comments stated the reference to the 101 percent debt service margin for writedown as provided in § 766.111(b) should be changed to 110 percent. The 101 percent reference is correct as used. When the agency calculations in DALR$ reflect that a feasible plan can be developed with writedown, the agency will determine if a feasible plan and a debt service margin of 101 percent or more can be achieved without a writedown. If so, the agency will provide the borrower the option to choose the plan used in the restructuring. Therefore, the comments are not adopted.

Three comments stated the agency should remove subparagraph (a)(2), excluding debtors with SA only, since subparagraph (a)(1)(iii) provides the borrower must not have received a previous debt forgiveness to be eligible for writedown. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated the agency should clarify on FSA–2512 (Appendix A to part 766, subpart C) that to receive writedown, the borrower must be delinquent on the agency loans. The agency agrees with the comment and has revised FSA–2512 accordingly.

Section 766.112 Additional Security for Restructured Loans

Eight comments were received on the additional security for restructured loans provision. Two comments stated the agency should continue its current policy of requiring a lien on all assets when servicing delinquent borrowers' loans only. Three comments stated the agency should not require a lien on all the borrower's assets when servicing a financially distressed borrower's loans, but instead require the borrower to provide security of up to 150 percent of the agency loans. The comments stated that requiring a lien on all assets may make financially distressed borrowers not apply for loan servicing even when such servicing may move their operation towards financial viability. The agency agrees and has revised the proposed language to require a lien on all assets only when the borrower is delinquent prior to restructuring. The agency does not agree with the comments on requiring such borrowers to provide security of up to 150 percent of the agency loans when servicing loans. This is consistent with current policy.

Two comments suggested agency employees be granted authority to waive the agency's lien on crops when the agency is not providing an annual operating loan because a lien on crops in a subordinate position frustrates lenders, borrowers, and employees when trying to secure new crop production financing. The agency believes that the lien on crops should continue to be taken as it helps secure the agency's interests and provides a valid lien on future crops. In addition, it ensures that crop proceeds, which are normal income security, are used to pay agency debt, after the prior lien holder has been paid. Therefore, the comments are not adopted.

One comment stated that when servicing loans, the agency should obtain a lien on the borrower's personal residence, even if the residence is not located on the farm, as the agency obtains a lien on chattels and crops for long-term loans. When the agency provides primary loan servicing to delinquent borrowers, the potential for loss to the agency is increased due to the borrowers' deteriorated financial position. Further, the agency will continue to obtain a lien on crops to ensure that normal income is applied to the agency debt after prior lien holders have been paid. Therefore, the agency agrees with the comment and has revised the CFR to remove the security exception for personal residences.

Section 766.113 Buyout of Loan at Current Market Value

One comment was received on the buyout of loan at current market value provisions. The comment stated it is not clear if buyout of loans at current market value is available for borrowers who are 90 days past due only. The agency agrees with the comment and has clarified the CFR to reflect its current policy making market value buyout is available to delinquent borrowers. Further, the agency clarified FSA–2512 and FSA–2514 to state that current market value buyout is available to delinquent borrowers.

Section 766.115 Challenging the Agency Appraisal

Three comments were received on the appraisal options available to a borrower requesting primary loan servicing. Two comments stated that a borrower who does not agree with the agency's appraisal should only be offered the option of a technical appraisal review. Further, one of the comments stated that borrowers should only be allowed to obtain a technical appraisal review to determine if the agency's appraisal meets the Uniform Standards of Professional Appraisal Practice (USPAP) requirements and if there are flaws in the agency's appraisal that would change the appraised value of the property. In addition, the comment stated if there are no flaws in the agency's appraisal there should be no further challenge to the appraisal and no need for a second appraisal. Section 353(c)(7) and (j) of the Act (7 U.S.C. 2001) requires negotiation of appraisals and appellant rights to independent appraisals. Therefore, the comments cannot be adopted.

Another comment stated that since the Act does not specify any percentage that the appraisals may differ in the negotiation process, the agency should not limit the borrower's right to have a third appraisal conducted. While the agency agrees the Act does not specify the percentage the appraisals may differ, the use of the five percent difference is reasonable and does not create limitations on the borrower's rights. If the appraisals differ by less than five percent, the agency provides the borrower the option to choose the appraisal to be used, thus saving the borrower and the agency the expense of a third appraisal. It would be unrealistic and cost prohibitive not to include any limit, and it would not be in the borrower and the agency's financial interest if the limit were any lower than five percent. Lastly, the agency has found that since its implementation, the provision has worked well for both the borrowers and the agency. Therefore, the comment is not adopted. However, the agency revised this section to correct that the borrower selects the appraisal to be used when the two appraisals differ by five percent or less (rather than by less than five percent) to reflect the agency's current policy.

Section 766.151 Purpose (Homestead Protection)

Two comments were received on the homestead protection program purpose provision. Both comments stated the agency should clarify that the former borrower possesses no statutory right to remain in possession of the acquired property. In addition, both comments stated the agency should replace the word ''retain'' with the word ''re-acquire.'' The agency agrees with the first part of the comments, however, it believes they are more applicable under

the liquidation provisions. The agency, therefore, has added § 766.353(e) to adopt the comments. This section has been removed as unnecessary.

Section 766.152 Applying for Homestead Protection (Renumbered to 766.151 in the Final Rule)

Two comments were received on the provision for applying for homestead protection. One comment stated that appeal rights should not be provided to borrowers who do not submit a complete application. When borrowers initially apply for loan servicing, homestead protection is included in the loan servicing options for which borrowers may be considered, and therefore, must automatically be considered for pre-acquisition homestead protection. If that option is denied for any reason, appeal rights will be provided. Therefore, the comment is not adopted.

The other comment stated section 352(c)(6) of the Act (7 U.S.C. 2000) provides for notice ''no later than the date of acquisition of the property'' but that the proposed rule requires notice ''After the agency acquires title to the property.'' The comment stated the agency should revise the CFR to comply with the Act's requirement. There is no substantive difference between these provisions. The proposed and final rule language mirrors existing language at 7 CFR 1951.911. Therefore, the comment is not adopted.

Section 766.153 Eligibility (Renumbered to 766.152 in the Final Rule)

Seven comments were received on the eligibility requirements for homestead protection. Two comments stated the former owner should be responsible for paying costs associated with obtaining and meeting all state and local requirements for dividing the homestead property; otherwise the agency should deny the homestead protection request. After the former owner's property becomes the agency's inventory property, the agency is the legal owner and is responsible for the costs associated with separating the homestead protection property. This furthers the intent of the Act requiring that the agency offer this benefit. Therefore, the comments are not adopted.

One comment stated the agency should only pay junior liens when a positive recovery can be made and when the cost of foreclosure will exceed the amount of the prior lien. The agency agrees, in part, with the comment and has revised § 766.152(a)(4) to reference the voluntary conveyance requirements in § 766.353. Further, § 766.353 was revised to provide that the agency may attempt to negotiate a settlement with the junior lienholder if it is in the agency's financial interest; however, the agency's attempt to negotiate with the junior lienholder does not imply or create a right for the borrower.

One comment stated the agency should clarify the homestead protection provisions applicable to entities. The agency agrees with the comment and has revised the CFR accordingly.

Three comments stated the agency should further clarify the lessee's responsibilities regarding making improvements to the property under the homestead protection lease provisions. The agency agrees with the comments and has revised the CFR accordingly.

Three comments were received on the former owner eligibility requirements for homestead protection. The comments stated that borrowers requesting servicing are required to provide 3 years of financial information, and, therefore, the Agency will not have financial records available to it to make the proposed 60 percent income determination from at least two of the preceding 6 years. Section 352(c)(1)(B) and (C) of the Act (7 U.S.C. 2000) provide the former owner eligibility requirements for homestead protection. Additionally, borrowers requesting homestead protection will have received assistance from the agency for a number of years and as a result, prior years' income records are likely to be in the borrower's agency file. If additional information is needed to satisfy this eligibility requirement, it must be submitted with the application under § 766.152. Therefore, no changes have been made in response to these comments.

Section 766.155 Homestead Protection Leases (Renumbered to 766.154 in the Final Rule)

Three comments were received on homestead protection leases. All comments stated the CFR does not specify that applicants can select the appraiser to conduct the independent appraisal to determine the property's market value. The agency agrees with the comments and has revised the CFR accordingly.

Further, one of the comments stated the agency should incorporate the Act's provisions requiring the agency to provide notice with appeal rights to former owners for failing to make rental payments and to comply with state and local laws governing evictions. The agency, at § 761.6, provided that review or appeal of adverse agency decisions will be handled in accordance with 7 CFR parts 11 and 780. In addition, the agency handbook will provide guidance for employees to implement notice requirements. Moreover, the agency already consults with OGC for the proper process to follow for evictions, due to the differences in state and local requirements. Therefore, these comments are not adopted.

The comment finally stated, the agency should not require borrowers with homestead protection leases to make costly improvements or replace systems during the lease term. The agency revised § 766.152(b)(5) to provide lessees will be responsible for the normal maintenance of the homestead protection property.

One comment was received on the requirement that a homestead protection lease term be no less than three and no more than 5 years. The comment stated that the requirement should read ''the lease term must be less than 5 years.'' Section 352(b)(3) of the Act provides that a homestead protection lease may not exceed 5 years, but in no case should it be less than 3 years. Therefore, the comment cannot be adopted.

Section 766.201 Shared Appreciation Agreement

One comment questioned the term of the Shared Appreciation Agreement as being 5 years instead of 10 years. The agency published a final rule on August 18, 2000 (65 FR 50401–50405) and revised the term for Shared Appreciation Agreements from 10 years to 5 years. The agreement may be triggered earlier by one of the events described in the agreement. Therefore, no change was made based on the comment.

Section 766.202 Determining Shared Appreciation Due

Five comments were received on determining the shared appreciation due. One comment stated the agency should clarify the term ''remaining contributory value'' as used in § 766.202(a)(3). The agency agrees inclusion of the word ''remaining'' in the phrase causes confusion and has removed it.

Two comments stated that an appraisal completed according to § 761.7 and within one year of the maturity date or the triggering event of the shared appreciation agreement, is timely. The agency agrees with the comments and has clarified the CFR accordingly.

Two comments stated the agency should clarify that the borrower is responsible for providing the capital improvements added during the term of the shared appreciation agreement and

should provide the information before the agency obtains the appraisal. The agency agrees with the comments and has clarified the CFR accordingly.

Section 766.203 Payment of Recapture

One comment was received regarding the payment of recapture. The comment stated it is not clear what happens if the borrower does not pay the recapture amount due within the timeframe provided. Section 766.204 describes the actions the agency will take if the borrower is not able to pay the recapture amount due. Other internal collection remedies available need not be discussed in the rule. Therefore, no change has been made in response to the comment.

Section 766.252 Unauthorized Assistance Resulting From Submission of False Information (Renumbered and Renamed in Final Rule)

Proposed § 766.251 (types of unauthorized assistance) was removed in the final rule as unnecessary

One comment was received regarding unauthorized assistance resulting from false information (§ 766.253 in proposed rule). The comment stated the agency should revise the section to state that false information includes information the borrower should have known to be false. As stated in the response to a similar comment regarding the definition of ''false information,'' it would be very difficult for the agency to prove the applicant or borrower should have known the information submitted to the agency was false. Therefore, the comment is not adopted.

Section 766.253 Unauthorized Assistance Resulting From Submission of Inaccurate Information by Borrower or Agency Error (Renumbered and Renamed in Final Rule)

Nine comments were received on the treatment of unauthorized assistance received by borrowers (§ 766.254 in proposed rule). Three comments stated that borrowers should be able to continue with the loan under program rates and terms if they are unable to repay the entire amount of unauthorized assistance in a lump sum. In addition, two comments stated borrowers may not be able to repay the loan under Non-program rates and terms. While the agency is willing to work with such borrowers on a repayment plan, the unauthorized debt must be repaid. The Act does not authorize the agency to allow borrowers who have received unauthorized assistance to continue with the loan on below market program rates and terms. Therefore, the comments are not adopted.

Another comment stated that the agency's proposal to reclassify the entire loan as a Non-program loan if a portion of the loan is unauthorized seems to be extreme, if the unauthorized loan was the result of employee misunderstanding. While the agency understands the concern expressed in the comment, it does not have the authority to allow continued assistance to an applicant or borrower that does not meet statutory program requirements. Therefore, the comment is not adopted.

One comment questioned the ability of the agency's Finance Office to process an accelerated repayment agreement. Two comments stated the provisions outlining possible resolutions needed to be clarified. Two comments stated the agency should specify if the terms of current accelerated repayment agreements (5 years or less), will be changed according to the proposed provisions. In evaluating the comments, the agency determined that use of an accelerated repayment agreement does not resolve the unauthorized assistance received, but rather allows for continued assistance during the period established by the agreement without program compliance. Therefore, the agency removed accelerated repayment agreements as an option for unauthorized assistance repayment. In cases where the unauthorized assistance is the result of borrower or agency error, the agency retained the option allowing the borrower to repay the unauthorized assistance in a lump sum. If the borrower is unable to repay all or part of the unauthorized amount in a lump sum and has repayment ability, the agency may convert the loan to a Non-program loan, using rates and terms identical to those proposed for accelerated repayment agreements. In addition, the agency revised § 766.251 to provide that the agency may reverse any unauthorized loan servicing received by the borrower, where possible. The agency believes this action provides those borrowers whose unauthorized assistance is the result of an error with reasonable alternatives, ensures borrowers do not retain benefits for which they are not entitled to, and establishes enforceable loan and security instruments ensuring repayment of the debt.

Section 766.351 Liquidation

Two comments were received on the general liquidation provision. Both comments stated the proposed rule did not provide for notification of loan servicing for borrowers who want to liquidate voluntarily. The agency disagrees. Section 766.351(b)(2)(ii) provides ''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.'' No changes, therefore, are necessary.

Section 766.352 Voluntary Sale of Real Property and Chattel

Three comments were received regarding the voluntary sale of real property and chattel. One comment stated that allowing borrowers to sell security voluntarily in lieu of involuntary liquidation should stop once the involuntary liquidation process has begun, otherwise the remaining security has to continually be updated through the court as the security changes with each partial sale. Sections 766.352(a)(1) and (2) provide that a borrower must sell all security until the debt is paid in full or all security is liquidated, if the agency approves the sale. Further, paragraph (b)(4)(ii) provides the agency will only approve a sale that does not result in full payment of the debt only when it is in the agency's financial interest. In addition, as stated in § 766.351(b)(2)(i), the agency will not delay involuntary liquidation for a voluntary sale to close. Therefore, the agency believes the comment's concerns are adequately addressed in the CFR and no action is required.

Two comments stated the sales proceeds in voluntary liquidation situations, for both real estate and chattel security, should be ''equal to or greater than either the agency debt or the agency-defined recovery value'' instead of ''equal to or greater than the market value of the property.'' The comments stated that often the agency receives only the recovery value if the agency has to liquidate the borrower's security. The agency disagrees. When the agency evaluates a loan request, the adequacy of the security is based on the market value of the property, therefore, allowing liquidation of security for less than its market value is not reasonable. Such policy would increase losses and is not in the agency and the taxpayers' financial interest. Therefore, the comments are not adopted.

Section 766.353 Voluntary Conveyance of Real Property

Four comments were received regarding the voluntary conveyance of real property. Three comments stated the agency form for voluntary conveyance is not addressed in the CFR. Two comments stated the same as to chattel property. The agency does not publish form numbers in the CFR;

however, the agency handbook will provide the form numbers required for voluntary conveyance of chattel and real property. Therefore, no changes have been made in response to the comments.

Two of the comments also stated junior liens, real estate taxes, and judgments can be charged to the borrower's account as recoverable costs. Recoverable costs may include administrative costs associated with the agency's acquisition of the property such as lien search or recording fees. The agency agrees that recoverable costs can be charged to the borrower's account as provided in the proposed rule.

One comment stated there was a conflict between § 766.353(c)(2) that provides the borrower has to pay junior liens, real estate taxes, judgments, and other assessments before the agency will accept a voluntary conveyance of real property and paragraph (d)(1) that provides the agency will charge the borrower's account for recoverable costs incurred in connection with a voluntary conveyance. As stated above, the agency has revised the CFR as proposed. Therefore, no further action is required.

Section 766.357 Involuntary Liquidation of Real Property and Chattel (as Renumbered in Final Rule)

Three comments were received regarding involuntary liquidation of real property and chattel (§ 766.356 in proposed rule). Two comments stated the agency should clarify that the borrower does not retain statutory or implied or inherent regulatory right of possession of the real estate property after the date of the foreclosure sale. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated the agency should incorporate the requirement found in 25 U.S.C. Section 483a(a) which provides, in part, that foreclosure proceedings involving Indian land will be in accordance with Tribal laws, or if Tribal foreclosure laws are absent, according to State laws. Further, the comment stated the agency should recognize Indian reservations as political subdivisions and Tribal entities as State-approved entities. Foreclosure proceedings differ from state to state, thus, it would make for exceptionally voluminous regulations for the agency to include all internal foreclosure procedures in its regulations. The agency has adhered to Tribal and State-specific foreclosure laws, as applicable, and will continue to do so. Furthermore, the agency does not impose different requirements on entities approved by States or by Tribes. Therefore, no changes have been made in response to the comment.

One comment stated the agency should incorporate the provisions found in Section 335(e) of the Act that provide detailed guidance for disposition and administration of inventory property located within an Indian reservation where the borrower is a member of the Tribe. Furthermore, section 335(e) of the Act provides detailed guidance regarding the acceleration of loans to Native American borrowers that was not addressed in the proposed rule. The agency redesignated proposed § 766.356 as § 766.357 in the final rule and added a new § 766.356 addressing statutory provisions regarding the acceleration of loans to Native American borrowers in the final rule. These policies are consistent with those currently addressed in internal agency notices.

While no comment was received regarding § 766.357(b)(2), the agency determined that the proposed rule modified existing regulations currently published in 7 CFR 1955.18(e)(2)(ii). Modification of the existing policy was unintended and was not addressed in the discussion of changes in the preamble of the proposed rule. Therefore, the agency revised § 766.357(b)(2) to provide that the agency will credit a borrower's account after a foreclosure sale based on the amount of its bid as provided in existing regulations, rather than the market value, less prior liens, as provided in the proposed rule. No substantive change was intended.

Appendices to 7 CFR Part 766

The agency renumbered all the Appendices in the final rule to accommodate its new numbering system for all forms used in loan servicing. Therefore, FSA–2501 has been renumbered to FSA–2512; FSA–2503 has been renumbered to FSA–2510; and FSA–2505 has been renumbered to FSA–2515. Further, under paragraph (f) in all appendices, the agency rearranged the forms comprising a complete primary loan servicing application in numerical order. Under current rules, applicants for primary loan servicing are required to provide multiple copies of a form to the agency to verify debts and assets of the applicant. Under the final rule, applicants will sign only one authorization to release information and provide it to the agency. The agency, in turn, will use the authorization to verify debts and assets as well as non-farm income. This process closely matches commercial lenders' practices. Therefore, paragraph (f) in all appendices is revised to reflect the agency's new policy.

Eight comments were received on the Appendices to 7 CFR part 766. One comment stated the agency should replace the word ''mediation'' with the words ''Alternative Dispute Resolution (ADR)'' because ADR is the term used in the agency's handbook and describes the agency's informal process for resolving disputes. The agency uses the term ''mediation'' in all the Appendices sent to the borrowers because the term covers both the formal and informal mediation process for resolving disputes. In addition, agency borrowers are familiar with the term ''mediation,'' while ADR encompasses a wider variety of techniques not used by the agency. Therefore, the comment is not adopted.

Two comments stated the title for FSA–2512 should be revised to ''Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed or Less Than 90 Days Past Due.'' In addition, both comments stated FSA–2512 should not include the option for writedown and shared appreciation agreement and inquired if a lien on all assets will be required for current or financially distressed borrowers. The agency agrees and has revised the Appendix's title as suggested. The agency published a final rule on February 4, 2004 (69 FR 5264–5267), that eliminated the 30-day past due period prior to a determination that a borrower is delinquent. As a result, borrowers are eligible for writedown, and therefore, shared appreciation agreement, the day after they miss a payment. Therefore, that part of the comments is not adopted. The agency did, however, revise FSA–2512 to clarify that writedown is only available to delinquent borrowers. The agency will not require current or financially distressed borrowers to provide a lien on all assets.

Three comments stated the agency should revise FSA–2510 to clarify that after the agency sends it to the borrower, along with the separate notice of administrative offset, administrative offset may occur at any time. Offset of payments are initiated according to the timeframes established in the offset notice and applicable regulations. Generally, offset may begin prior to the timeframe provided to the borrower to request loan servicing or pay the account current. As a result, inclusion of the reference to administrative offset in the notice of availability of primary and preservation loan servicing is misleading. Therefore, the agency removed the administrative offset provision from FSA–2510.

One comment stated the agency should revise the CFR to incorporate the property restrictions and easement

provisions found in the Appendices. As stated in the preamble of the proposed rule, the agency is eliminating the redundancy found in its current regulations. Once the agency has acquired a property into inventory, the property is subject to the provisions of 7 CFR 767, including Subpart E, pertaining to real property with important resources, or special hazard areas; therefore, the first part of the comment is not adopted.

The comment also stated the agency should revise the Appendices to inform borrowers that they can request a copy of the regulations and agency handbooks. The agency agrees with the second part of the comment and has revised the Appendices to state that regulatory text is included in the agency handbooks. The information had already been included on the availability of handbooks and forms. Regulations also are published in the Code of Federal Regulations.

Further, the comment stated the agency should inform borrowers that the negotiated appraisal non-appealability determination is appealable to the NAD Director. The comment stated the non-appealability determination of the negotiated appraisal is not statutory, and it should therefore be removed. Moreover, the comment stated the agency should remove the provision that only the balance of the 30 days will be available to the borrower to request an appeal on issues other than the negotiated appraisal since it is not statutory. According to section 353(c)(7) of the Act (7 U.S.C. 2001), the negotiated appraisal value by the appraiser mutually agreed upon becomes the final appraisal of the borrower's assets. Therefore, the negotiated appraisals are not appealable. The agency provides the borrower the opportunity to request a NAD Director review of non-appealability determinations in subsequent notices. In addition, 7 CFR 11.4(c)(1) provides if a borrower requests mediation prior to requesting an appeal to NAD, this stops the running of the 30-day period during which the borrower may appeal to NAD, and the borrower will have the balance of days remaining in that period to appeal to NAD once mediation has concluded. The agency, for consistency reasons, provides the borrower the balance of days remaining to request an appeal to NAD after the negotiation of the appraisal has concluded. Therefore, the comment is not adopted.

Another comment stated the agency should revise the Appendices by removing the last sentence under the reconsideration, mediation, negotiation and appeal rights subparagraph and include in FSA–2510 that the borrower may apply for debt settlement even if already applied for and rejected. The agency agrees with the first part of the comment and has revised all the Appendices accordingly. Further, the agency agrees with the last part of the comment and has revised FSA–2510, paragraph (i), accordingly.

One comment stated the agency should expressly provide, where not clear, that timeframes for borrower response commence from the time the agency's notice is received by the borrower. The agency believes that the borrower response timeframes are clearly stated in all the Appendices, so no change has been made in response to the comment.

Miscellaneous Comments on Part 766

Two comments were received requesting the agency continue to provide notification of primary loan servicing when a borrower's request to release proceeds of chattel security is denied. In addition, the comments stated that the agency has to release proceeds for essential family living and farm operating expenses until the loan is accelerated. The agency may deny a borrower's request to release proceeds of chattel security for expenses not considered essential family living or farm operating expenses. The agency is committed to helping borrowers resolve their financial distress at the earliest opportunity, before the financial condition of the operation deteriorates to the point that primary loan servicing is required. Such notification is not required by the Act; however, it was the agency's intent to continue notifying financially distressed and delinquent borrowers of primary loan servicing availability under § 766.101. However, the agency believes that initiating primary loan servicing in cases not related to financial distress or delinquency is a disservice to borrowers since the primary loan servicing process can be lengthy and complicated, when the benefits are not needed. Therefore, the comments are not adopted.

Three comments were received in support of the agency's decision not to provide appeal rights in the offer to restructure the account. The comments stated that the borrowers' rights are protected because borrowers are provided with appeal rights when the agency proposes to take adverse action. In addition, the comments stated that the agency and the taxpayers are benefiting from the change since it eliminates the inefficiencies and administrative expenses associated with multiple appeals. Two comments were received requesting the agency provide appeal rights with the offer to restructure a borrower's account. The agency's offer to restructure the account is a direct result of the borrower's request for loan servicing and the agency is granting the benefit. If a delinquent borrower does not accept the agency's offer to restructure the account, the agency will send notification of its intent to accelerate the account and will provide appeal rights. The borrower can then appeal both the offer to restructure and the intent to accelerate. Further, the borrower may seek NAD Director's review of the appealability determination or otherwise attempt to appeal without an adverse decision. Therefore, the comments are not adopted.

Part 767—Inventory Property Management

The following discussion addresses the comments received on Part 767.

Section 767.52 Disposition of Personal Property From Real Estate Inventory Property

One comment was received on the disposition of personal property from real estate inventory property. The comment stated the agency should clarify in the CFR how the former owner and any known lienholders will be notified when personal property has been left on the real estate inventory property. The agency believes the CFR as written adequately addresses the agency's obligation to provide notice, and the agency handbook will provide further guidance to agency personnel regarding the method for notifying former owners and prior lienholders. Therefore, the comment is not adopted.

Section 767.101 Leasing Real Estate Inventory Property

Two comments were received on leasing real estate inventory property. Both comments stated the agency should add that when the borrower or any other party remains in possession of the real estate property after the agency acquires the title to the property, that person does so without the benefit of a written lease agreement with the agency. Further, the comments stated, the agency, at its sole discretion, can remove such parties and property, pursue civil or criminal action, and pursue claims for use and occupancy of the agency's property. The agency agrees with the concerns expressed in the comments, and has revised § 766.357 to clarify that after the date of foreclosure, the former owner of the property does not retain any rights, except rights granted under state law. Since property can become inventory

only through foreclosure or voluntary conveyance, the agency believes it is more appropriate to revise § 766.353 similarly. Section 767.52 adequately addresses the removal of personal property. Lastly, 7 CFR 1955.61 provides that the agency will request OGC assistance when eviction is necessary. The agency will continue this policy in its handbook, since procedures may vary from state to state. Therefore, no change has been made to this section in response to these comments.

Section 767.151 General Requirements

Three comments were received on the general requirements for disposal of inventory property. All comments stated the proposed rule requires non-beginning farmers to make a 10 percent downpayment when purchasing inventory property. The comments stated non-beginning farmer applicants eligible for farm ownership loans should be able to purchase inventory property and the agency provide 100 percent of the financing as when a non-beginning farmer purchases real estate from a third party. The agency disagrees. Section 335 of the Act (7 U.S.C. 1985) requires the agency to ensure prompt sale of acquired inventory property, as well as the availability of acquired property to beginning farmers. The purchase of inventory property by beginning farmers may be financed with the agency's direct farm ownership loan allocation. As provided in section 346 of the Act (7 U.S.C. 1994), farm ownership funds are targeted for beginning farmers. Historically, non-targeted farm ownership funds are exhausted early in the fiscal year. While beginning farmer targeted farm ownership funds may also become exhausted, section 335(c)(5) of the Act authorizes the lease of inventory property only to beginning farmers when funds are not available to consummate the sale. Further, section 335(c)(1)(C) of the Act requires the sale of the property within 30 days after it is determined an acceptable offer has not been received from a qualified beginning farmer. To meet this timeframe, the purchaser generally is required to have funds available from sources other than the agency since non-targeted farm ownership funds are usually exhausted quickly. The 10 percent deposit is required to ensure only those with the necessary funds submit offers. Therefore, the comments are not adopted.

One comment stated the requirement in section 335(c)(1)(iv) of the Act that the Secretary will combine or subdivide inventory property, as appropriate, to maximize the opportunity for beginning farmers to purchase inventory property, was not included in the proposed rule. The agency agrees with the comment and has added the requirement in paragraph (a).

Lastly, the agency revised § 767.151(b) (renumbered from § 767.151(a)) by removing the last sentence of the paragraph that provided beginning farmers may apply up through 135 days after the advertisement to purchase inventory property. Section 335(c) of the Act, as well as existing regulations at 7 CFR 1955.107(a)(2)(i), provide that the agency has 135 days from acquisition to complete the sale to a beginning farmer. By providing beginning farmers up through 135 days after the advertisement to apply to purchase the inventory property, the proposed rule text would prohibit the agency from meeting the statutory deadline for closing the sale.

In addition, the agency revised § 767.151(d) (renumbered from 767.151(c)) which provided if no acceptable offer was received from a beginning farmer, the agency would offer to sell inventory property to the general public between days 136 and 165 after the agency obtained title to the property, As written, this requirement would prohibit the agency from selling the inventory property within the 165-day requirement as mandated under Section 335(c) of the Act.

Section 767.155 Selling Chattel Property

Five comments were received on selling chattel property. Three comments stated it may be in the agency's financial interest to sell specialty livestock and equipment by private contract instead of public auction. In addition, all three comments did not support the removal of the sealed bid method for selling chattel inventory property. One comment stated the agency should not make any changes to the way it currently sells chattel inventory property. The comment stated some small items must be sold through methods other than auction as the transportation costs to the auction site may be more than the value of the items to be auctioned. The agency believes its financial interests are protected when chattel inventory property is sold by public auction. However, the agency recognizes that a greater recovery may occur by selling specialty livestock and equipment by private contract. The agency agrees with the comments and has revised the section to provide for sealed bids.

One comment stated the agency should be prohibited from accepting chattels into inventory as the agency does not have the resources to manage the property and the property will depreciate while being held by the agency. As provided in § 766.354(b), the agency will only accept a conveyance of chattel property if the borrower has made every effort possible to sell the property voluntarily, the property is free of other liens, and it is in the agency's financial interest. Based on these requirements, the agency believes that the agency will rarely accept chattels into inventory. Therefore, the comment is not adopted.

Section 767.203 Inventory Real Property Containing Environmental Risks (Removed in Final Rule)

Three comments were received on the real estate inventory property containing environmental risks provisions. All comments stated the agency's proposed rule went far beyond the lender liability responsibilities as provided in applicable Federal and State laws. The comments stated the agency seems to take on the prior owner's responsibility for environmental problems and hazardous waste cleanup and provided the final rule should afford the lender liability protection to the agency as stated in all applicable statutes. The Comprehensive Environmental Response, Compensation, and Liability Act and other applicable laws specify actions the agency has to undertake when property held in inventory contains hazardous wastes and materials. The agency recognizes that this law provides some protection from lender liability for clean-up of hazardous waste. The agency, however, may choose to do more than legally required when such action is in the agency's best financial interests. The agency believes this matter is internal policy and has removed the section in the final rule. The agency handbook, however, will provide guidance to employees.

Miscellaneous Comments

Two comments were received supporting the elimination of the definitions for suitable and surplus property from the CFR. The comments stated the elimination of the definitions will help reduce unnecessary administrative burden placed on the agency and free employees' time to provide assistance to young and beginning farmers.

Miscellaneous CFR Parts

As stated in the preamble of the proposed rule, the agency intends to amend 7 CFR part 799 to incorporate environmental policies currently found in subpart G of 7 CFR part 1940. However, 7 CFR part 799 has not been

amended yet, therefore, the agency will refer to subpart G of 7 CFR part 1940 when environmental policies are discussed in the final rule. The agency will make conforming changes to subpart G when the final rule amending 7 CFR part 799 is published.

Further, as stated in the preamble of the proposed rule, the agency intends to amend 7 CFR part 792 to incorporate offset of Federal payments and debt settlement policies currently found in subpart C of 7 CFR part 1951 and subpart B of 7 CFR part 1956, respectively. However, 7 CFR part 792 has not been amended yet; therefore, the agency refers to subpart C of 7 CFR part 1951 and subpart B of 7 CFR part 1956 when offset of Federal payments and debt settlement policies are discussed in the final rule. The agency will make conforming changes to subpart C of 7 CFR part 1951 and subpart B of 7 CFR 1956 when the final rule amending 7 CFR part 792 is published.

The agency's policies on controlled substances and disqualification for Federal benefits due to Federal crop insurance violations are currently addressed in 7 CFR part 718. However, the agency determined that Farm Loan Programs were not adequately covered; therefore, the agency revised 7 CFR part 718 where appropriate. In addition, conforming changes were made to Commodity Credit Corporation regulations in 7 CFR 1405.8.

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 Assessment

FSA has completed 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 1940, subpart G. A finding of no significant impact (FONSI) was determined as a result of the EA process. The final EA and FONSI are available for review at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=enl-ea*. The agency will accept comments on the final EA and FONSI for a period of 30 days from the date of publication of this rule.

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 one 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

The Information Collection Packages for the amendments to 7 CFR parts 761, 764, 765, 766, and 767 contained in this final rule have been submitted to OMB for approval. A proposed rule containing an estimate of the burden impact of the rule was published on February 9, 2004 (69 FR 6055–6121). No comments regarding the burden estimates were received.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The agency has posted online at *http://www.sc.egov.usda.gov* all the forms an applicant or borrower either has to complete in their entirety or review and execute. For forms the applicant or borrower is required to complete in their entirety, the fillable version of the form, as well as detailed instructions on completing the form, are included online. Forms prepared by the agency, that applicants or borrowers simply review and sign, are also provided on the e-Gov Web site, however, in lieu of detailed instructions for completing those forms, the instructions state that the forms are provided on the Web site for information purposes only. Applicants or borrowers may download and review forms required to apply for benefits from the agency.

Lastly, the agency provides access to the handbooks that implement the CFR parts included in the final rule and provide internal and administrative guidance to its employees, at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=lare&topic=hbk*. Applicants or borrowers may download and review any agency handbook and become familiar with the requirements for applying for benefits.

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

List of Subjects

7 CFR Part 718

Acreage allotments, Agricultural commodities, Reporting and recordkeeping requirements.

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.

7 CFR Part 1405

Agricultural commodities, Feed grains, Grains, Loan programs ''Agriculture, Oilseeds, Price support programs, Reporting and record keeping requirements.

■ Accordingly, 7 CFR chapters VII and XIV are amended as follows:

7 CFR Chapter VII

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. The authority citation for part 718 continues to read as follows:

Authority: 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

■ 2. Revise § 718.1 to read as follows:

§ 718.1 Applicability.

(a) This part:

(1) Is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA), except that only §§ 718.6 and 718.11 are applicable to parts 761 through 774 of this chapter;

(2) Governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) For all programs, except for those administered under parts 761 through 774 of this chapter:

(1) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and carried out in the field by State and county FSA committees (State and county committees);

(2) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part;

(3) No provisions or delegation herein to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee;

(4) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) The programs under parts 761 through 774 will be administered according to the part, or parts, applicable to the specific program.

■ 3. Revise § 718.6 to read as follows:

§ 718.6 Controlled substance.

(a) The following terms apply to this section:

(1) *USDA benefit* means the issuance of any grant, contract, loan, or payment by appropriated funds of the United States.

(2) *Person* means an individual.

(b) Notwithstanding any other provision of law, any person convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year is ineligible during the crop year of conviction and the four succeeding crop years, for any of the following USDA benefits:

(i) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1412 of this title;

(ii) Any payments or benefits for losses to trees, crops, or livestock covered under disaster programs administered by FSA;

(iii) Any price support loan available in accordance with part 1421 of this title;

(iv) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(v) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act or any other Act;

(vi) Crop Insurance under the Federal Crop Insurance Act;

(vii) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law administered by FSA's Farm Loan Programs.

(2) Possession or trafficking of a controlled substance, is ineligible for any or all USDA benefits:

(i) At the discretion of the court,

(ii) To the extent and for a period of time the court determines.

(c) If a person denied benefits under this section is a shareholder, beneficiary, or member of an entity or joint operation, benefits for which the entity or joint operation is eligible will be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

■ 4. Revise § 718.11 to read as follows:

§ 718.11 Disqualification due to Federal crop insurance violation.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance, after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) The FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

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

(8) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to FSA that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person will be ineligible for payments under the programs specified in paragraph (a) of this section that are funded by FSA for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

■ 5. Revise part 761 to read as follows:

PART 761—GENERAL PROGRAM ADMINISTRATION

Subpart A—General Provisions

Sec.

Subpart B—Supervised Bank Accounts

Subpart C—Supervised Credit

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

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

Subpart A—General Provisions

§ 761.1 Introduction.

(a) The Administrator delegates the responsibility to administer Farm Loan Programs of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to the Deputy Administrator for Farm Loan Programs subject to any limitations established in 7 CFR 2.16(a)(2) and 7 CFR 2.42.

(b) The Deputy Administrator may:

(1) Redelegate authorities received under subparagraph (a); and

(2) Establish procedures for further redelegation of authority.

(c) 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 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.

(d) 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.

§ 761.2 Abbreviations and definitions.

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

(a) *Abbreviations.*

CLP Certified Lender Program.

DSA Disaster Set-Aside.

EE Economic Emergency loan.

EM Emergency loan.

FLP Farm Loan Programs.

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.*).

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 direct 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, aquaculture 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 is the individual or entity applying for a loan or loan servicing under either the direct or guaranteed loan program.

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.

Assumption agreement is a written agreement on the appropriate Agency form to pay the FLP debt incurred by another.

Average agricultural loan customer is a conventional farm borrower who is required to pledge crops, livestock, other chattel and/or 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) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;

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

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

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

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

(5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the acreage of the farms in the county where the property is located. If the farm is located in more than one county, the median 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 median farm acreage of the county where the major portion of the farm is located will be used. The median 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 or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term ''borrower'' includes all parties liable for such obligation, 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 or guaranteed lender.

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

Chattel or real estate essential to the 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; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

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, or probate or similar proceedings to settle and distribute

estates of incompetents or decedents, 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 is an area of land identified as part of the national Coastal Barrier Resources System under the Coastal Barrier Resources Act of 1980.

Compromise is the settlement of an FLP 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 FLP 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.

Controlled substance is the term as defined in 21 U.S.C. 812.

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, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of an entity applicant, the cosigner cannot be a member of the entity.

County 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 non-essential assets, less any prior liens.

Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, 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 forgiveness does not include:

(1) Debt reduction through a conservation contract;

(2) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;

(3) Prior debt forgiveness that has been repaid in its entirety; and

(4) Consolidation, rescheduling, reamortization, or deferral of a loan.

Debt settlement is a compromise, adjustment, or cancellation of an FLP 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 of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

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, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

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 the production of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area 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 operation during the production cycle 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 living and farm operating expenses:

(1) Are those that are basic, crucial or indispensable.

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

(i) The specific borrower's operation;

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

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

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

Established farmer is a farmer who operates the farm (in the case of 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 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 whose members are themselves entities;

(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 farming operation is not managed by an outside full-time manager or management service and Agency loans shall be based on the applicant's share of the agricultural production as set forth in the contract; or

(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;

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

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

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

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

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

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

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

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

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

Family living expenses are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

Family members are the immediate members of the family residing in the same household with the borrower.

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.

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

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

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

Financially distressed borrower is a borrower unable to develop a feasible plan for the current or next production cycle.

Financially viable operation, for the purposes of considering a waiver of OL term limits under § 764.252 of this chapter, is a farming operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:

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

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

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

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 is 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 judicial proceedings.

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

Good faith is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.

Graduation 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.

Guarantor is a party not included in the farming operation who assumes responsibility for repayment in the event of default.

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.

Highly erodible land is land as determined by Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.

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 Agency assignment form, the assignee becomes a holder.

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

Homestead protection property is the principal residence that secured an FLP direct 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 an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.

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 appropriate Agency form executed by 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.

Inventory property is real estate or chattel property and related rights that formerly secured an FLP loan and 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 claim against real or chattel 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 normally below the Agency's regular interest rate, which is available to applicants 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 security for recovery of amounts owed to the Agency or lender.

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 servicing programs include any primary loan servicing program, 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 FSA guaranteed loans made in the previous 7 years divided by the total loan amount of all such loans guaranteed during the same period.

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

Major deficiency is a deficiency that directly affects the soundness of the loan.

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.

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

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 have 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 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.

Net recovery value of non-essential assets is the appraised market value of the non-essential assets less any prior liens and any selling costs that 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 accrued 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) Produces exotic animals, birds, or aquatic organisms or their products which may be agricultural in nature, but are not normally associated with agricultural production, e.g. there is no established or stable market for them or production is speculative in nature.

(2) Produces non-farm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure and not typically associated with human consumption, fiber, or draft use.

(3) Markets non-farm goods or provides services which might be agriculturally related, but are not produced by the farming operation.

(4) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.

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 on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

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 FSA Farm Program payments.

Normal production yield as used in 7 CFR part 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 Noninsured Crop Disaster Assistance Program for the production year during which the disaster occurred;

(2) The applicant's own production records, or the records of production on which FSA Farm Program payments are made contained in the applicant's Farm Program file, if available, for the previous 3 years, when the actual production history in paragraph (1) of this definition is not available;

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

Operating loan is a loan made to an eligible applicant to assist with the financial costs of operating a farm. The term also includes a Youth loan.

Operator is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm.

Participated in the business operations of a farm requires that an applicant has:

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

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

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

Partnership 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.

Past due is when a payment is not made by the due date.

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 paragraphs (1) through (4) of this definition.

Production cycle is the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.

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.

Promissory note is a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms ''promissory note'' and ''note'' are interchangeable.

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, sister, uncle, aunt, or grandparent.

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

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 is changing the terms of a debt through rescheduling, reamortization, deferral, writedown, or a combination thereof.

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 instrument includes any document giving the Agency a security interest on real or personal property.

Security value is the market 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 on the appropriate Agency form 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. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

Socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

Softwood Timber 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 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, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, 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 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 any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.

U. S. 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 of the Food Security Act of 1985.

Working capital is cash available to conduct normal daily operations including, but not limited to, paying for 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 part 3018.

§ 761.6 Appeals.

Except as provided in 7 CFR part 762, appeal of an adverse decision made by the Agency will be handled in accordance with 7 CFR parts 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.* Except where specified elsewhere, 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) 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 the 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 an applicant or anyone who will sign the promissory note cannot exceed any of the following at the time of loan closing or assumption of indebtedness. If the outstanding principal balance exceeds any of the limits at the time of approval, the farm operating plan must reflect that funds will be available to reduce the indebtedness prior to loan closing or assumption of indebtedness.

(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 subpart G of 7 CFR part 1940;

(4) Must schedule development work to start as soon as feasible after the loan is closed and complete work 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 Agency'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 its 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 its financial interests. Certification must 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 its financial interests.

(4) Agency inspections do not create or imply any duty or obligation of the Agency 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 its 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 farming 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 paragraph (d) (6) of this section.

§§ 761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

§ 761.51 Establishing a supervised bank account.

(a) Supervised bank accounts will be used to:

(1) Assure correct use of funds planned for capital purchases or debt refinancing and perfection of the Agency's security interest in the assets purchased or refinanced when electronic funds transfer or treasury check processes are not practicable;

(2) Protect the Agency's security interest in insurance indemnities or other loss compensation resulting from loss or damage to loan security; or

(3) Assist borrowers with limited financial skills with cash management, subject to the following conditions:

(i) Use of a supervised bank for this purpose will be temporary and infrequent;

(ii) The need for a supervised bank account in this situation will be determined on a case-by-case basis; and

(iii) The borrower agrees to the use of a supervised bank account for this purpose by executing the deposit agreement.

(b) 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.

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

(d) If both spouses 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.

(e) 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, if possible, will 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, to 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:

(i) From any loan type, except Youth loan, and the balance is less than $1,000, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(ii) From a Youth loan, 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:

(i) From any loan type, except Youth loan, and the balance is $1,000 or greater, the Agency will apply the balance to the FLP loan;

(ii) From a Youth loan, 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 remaining 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.

This subpart applies to all direct 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, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance may adversely impact future requests for assistance.

§ 761.103 Farm assessment.

(a) The Agency assesses each farming 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 operation;

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

(5) Adequacy of chattel property used to conduct the farming 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. The 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 Developing the farm operating plan.

(a) An applicant or borrower must submit a farm operating plan to the Agency, upon request, for loan making or servicing purposes.

(b) An applicant or borrower may request Agency assistance in developing the farm operating plan.

(c) The farm operating plan will be based on accurate and verifiable information.

(1) Historical information will be used as a guide.

(2) Positive and negative trends, mutually agreed upon changes and improvements, and current input prices will be taken into consideration when arriving at reasonable projections.

(3) Projected yields will be calculated according to the following priorities:

(i) The applicant or borrower's own production records for the previous 3 years;

(ii) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments, if available;

(iii) FSA Farm Program actual yield records;

(iv) County averages;

(v) State averages.

(4) If the applicant or borrower's production history has been substantially affected by a disaster declared by the President or designated by the Secretary of Agriculture, or the applicant or borrower has had a qualifying loss from such disaster but the farming operation was not located in a declared or designated disaster area, the applicant or borrower may:

(i) Use county average yields, or state average yields if county average yields are not available, in place of the disaster year yields; or

(ii) Exclude the production year with the lowest actual or county average yield if their yields were affected by disasters during at least 2 of the 3 years.

(d) Unit prices for agricultural commodities established by the Agency will generally be used. Applicants and borrowers that provide evidence that they will receive a premium price for a commodity may use a price above the price established by the Agency.

(e) Except as provided in paragraph (f) of this section, the applicant or borrower must sign the final farm operating plan prior to approval of any loan or servicing action.

(f) If the Agency believes the applicant or borrower's farm operating plan is inaccurate, or the information upon which it is based cannot be verified, the Agency will discuss and try to resolve the concerns with the applicant or borrower. If an agreement cannot be reached, the Agency will make loan approval and servicing determinations based on the Agency's revised farm operating plan.

§ 761.105 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.

§§ 761.106–761.200 [Reserved]

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

§ 761.201 Purpose.

(a) This subpart addresses:

(1) The allocation of funds for direct and guaranteed FO and OL loans;

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

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

(b) 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.

(c) State funding information is available for review in any State Office.

§ 761.202 Timing of allocations.

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.

formula allocation = (amount available for allocation − national reserve − base allocation − administrative allocation) × 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 FO loans (percent)	Weight for OL 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
3-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 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 reallocated to the States.

§ 761.207 Distribution of 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.* (1) The Agency establishes target participation rates for providing FO and OL loans to members of socially disadvantaged groups.

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

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

(4) 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 loans based on ethnicity or race.* The FO loan target participation rate based on ethnicity or race in each:

(1) State is equal to the percent of the total rural population in the State who are members of such socially disadvantaged groups.

(2) County is equal to the percent of rural population in the county who are members of such socially disadvantaged groups.

(c) *OL loans based on ethnicity or race.* The OL loan target participation rate based on ethnicity or race in each:

(1) 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 is equal to the percent of the total number of farmers in the county who are members of socially disadvantaged ethnic groups.

(d) *Women farmers.* (1) The target participation rate for women farmers in each:

(i) State is equal to the percent of farmers in the State who are women.

(ii) County is equal to the percent of farmers in the county who are women.

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

§ 761.209 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.

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

(a) 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

(b) 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.

PART 762—GUARANTEED FARM LOANS

■ 6. 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.

PART 762—[AMENDED]

■ 7. Amend part 762 to read as follows:

■ a. Remove the phrase ''farm or ranch'' each time it appears and add in its place the term ''farm''.

■ b. Remove the phrase ''farmer or rancher'' each time it appears and add in its place the term ''farmer''.

■ c. Remove the phrase ''farmers or ranchers'' each time it appears and add in its place the term ''farmers''.

■ d. Remove the phrase ''Loan Applicant'' each time it appears and add in its place the term ''Applicant''.

■ e. Remove the phrase ''loan applicant'' each time it ppears and add in its place the term ''applicant''

■ f. Remove the phrase ''loan applicant's'' each time it appears and add in its place the term ''applicant's''.

■ g. Remove the phrase ''loan applicants'' each time it appears and add in its place the term ''applicants''.

■ h. Remove the phrase ''Non-farm enterprises'' each time it appears and add in its place the term ''Non-eligible enterprises''.

■ 8. Amend § 762.101 by revising paragraphs (b) and (c) to read 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.* Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(1) Standard Eligible Lender under § 762.105;

(2) Certified Lender, or

(3) Preferred Lender under § 762.106.

* * * * *

■ 9. 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.

§ 762.104 [Amended]

■ 10. Amend § 762.104 by removing paragraph (a) and redesignating paragraphs (b) through (d) as (a) through (c).

■ 11. Amend § 762.110 by adding a new paragraph (g) to to read as follows:

§ 762.110 Loan applications.

* * * * *

(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.

■ 12. Amend § 762.120 as follows:

■ a. In paragraph (a), remove the word ''CONACT'' everywhere it appears and add the word ''Act'' in its place.

■ b. Revise paragraph (l) to read as follows:

§ 762.120 Applicant eligibility.

* * * * *

(l) *Controlled substances.* The applicant, and anyone who will sign the promissory note, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

§ 762.121 [Amended]

■ 13. Amend § 762.121(b)(1) by removing the words ''1943, subpart A of this title'' and adding the words ''764 of this chapter'' in their place.

■ 14. Amend § 762.122 by redesignating paragraphs (a) through (d) as (b) through (e) and adding a new paragraph (a) to read as follows.

§ 762.122 Loan limitations.

(a) *Dollar limits.* The Agency will not guarantee any loan that would result in the applicant's total indebtedness exceeding the limits established in § 761.8 of this chapter.

* * * * *

§ 762.123 [Amended]

■ 15. Amend § 762.123(a)(2)(ii) by removing the words ''1945, subpart D, of this title'' and adding the words ''764 of this chapter'' in their place.

§ 762.124 [Amended]

■ 16. Amend § 762.124(e)(3) by removing the words ''1943, subpart A, of this title'' and adding the words ''764 of this chapter'' in their place.

§ 762.128 [Amended]

■ 17. Amend § 762.128 as follows:

■ a. In paragraph (c)(3), remove the words, ''and part 1901, subpart F, of this title.''

■ b. In paragraph (c)(4), remove the word ''CONACT'' and add the word ''Act'' in its place.

§ 762.129 [Amended]

■ 18. Amend § 762.129(b)(1) by removing the words ''farm credit program'' in the second sentence.

§ 762.130 [Amended]

■ 19. Amend § 762.130(d)(4)(iii)(C) by removing the words ''beginning farmers or ranchers,'' and adding the words ''beginning farmers'' in their place.

■ 20. Revise § 762.130(e) by removing the words ''in Louisiana and Puerto Rico.''

§ 762.143 [Amended]

■ 21. Revise § 762.143(b)(3)(ii) by removing the words ''credit officer,'' wherever they appear and adding the word, ''official'' in their place.

PART 763—[RESERVED]

■ 22. Add and reserve part 763.
■ 23. Revise part 764 to read as follows:

PART 764—DIRECT LOAN MAKING

Subpart A—Overview

Subpart B—Loan Application Process

Subpart C—Requirements for All Direct Program Loans

Subpart D—Farm Ownership Loan Program

Subpart E—Beginning Farmer Downpayment Loan Program

Subpart F—Operating Loan Program

Subpart G—Youth Loan Program

Subpart H—Emergency Loan Program

Subpart I—Loan Decision and Closing

Subpart J—Borrower Training and Training Vendor Requirements

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

Subpart A—Overview

§ 764.1 Introduction.

(a) *Purpose.* This part describes the Agency's policies for making direct FLP loans.

(b) *Types of loans.* The Agency makes the following types of loans:

(1) FO, including Beginning Farmer Downpayment loans;

(2) OL, including Youth loans; and

(3) EM.

§ 764.2 Abbreviations and definitions.

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

§§ 764.3–764.50 [Reserved]

Subpart B—Loan Application Process

§ 764.51 Loan application.

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

(b) A complete loan application, except as provided in paragraphs (c) through (e) 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;

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

(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, including tax returns, unless the applicant has been farming less than three 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 subpart G of 7 CFR part 1940;

(8) Verification of all non-farm income;

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

(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;

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

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

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

(d) For a youth loan request:

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

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

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

(e) 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.

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

(c) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.

(d) 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.

(e) In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

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

§ 764.54 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;

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

(i) Has a dependent family;

(ii) Is able to make a downpayment; or

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

(3) Third, to other eligible applicants.

§§ 764.55–764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

§ 764.101 General eligibility requirements.

The following requirements must be met unless otherwise provided in the eligibility requirements for the particular type of loan.

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

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

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

(d) *Credit history.* The applicant must have acceptable credit history demonstrated by debt repayment.

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

(2) When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's credit worthiness.

(3) A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history:

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

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

(iii) ''No history'' of credit transactions by the applicant.

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

relating to the purchase or contract for goods or services.

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

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

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

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

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

(h) *Federal crop insurance violation.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(i) *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:

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

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

(3) Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last 5 years.

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

(k) *Operator of a family farm.* (1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

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

(ii) Not related by blood or marriage, the entity members holding a majority interest must be operators of a family farm.

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

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

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

(iii) All of the members are or will become operators of the family farm; and

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

(l) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

§ 764.102 General limitations.

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

(b) 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 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through H of this part.

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

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) 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.

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

(e) The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of $5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) 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 the applicant's ability to repay the FLP 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 to:

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

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

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

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

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

(vi) Notify the Agency in writing of any breach by the applicant; and

(vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

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

(c) *Tribal lands held in trust or restricted.* The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the reports 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 subpart G of 7 CFR part 1940;

(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 FLP 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, working capital accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

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

§ 764.107 General appraisal requirements.

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

(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 amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.

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

§ 764.108 General insurance requirements.

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

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

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

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

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

§§ 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 farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

(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 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-operator of the farm financed with Agency funds after the loan is closed. In the case of an entity:

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

(2) The entity must be authorized to own and operate the farm in the State in which the farm is located;

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

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

(ii) Not related by blood or marriage, the entity members holding a majority interest must own and operate the farm.

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

(e) And anyone who will sign the promissory note, must satisfy at least one of the following conditions:

(1) Meet the definition of a beginning farmer;

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

(3) Have never received a direct FO loan.

§ 764.153 Limitations.

The applicant must:

(a) Comply with the general limitations established at § 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.

(4) The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.

(b) *Terms.* 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 be secured:

(a) In accordance with §§ 764.103 through 764.106;

(b) At a minimum, by the 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 farm by an eligible beginning farmer.

§ 764.202 Eligibility requirements.

The applicant must:

(a) Comply with the general eligibility requirements established at § 764.101 and the FO eligibility requirements of § 764.152; and

(b) Be a beginning farmer.

§ 764.203 Limitations.

(a) The applicant must:

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

(2) 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 all other creditors 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.

(a) Except as provided in paragraph (b), OL loan funds may only be used for:

(1) Costs associated with reorganizing a farm to improve its profitability;

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

(3) Farm operating expenses, including, but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;

(4) Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(5) Other farm needs;

(6) Costs associated with land and water development, use, or conservation;

(7) Loan closing costs;

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

(9) Borrower training costs required or recommended by the Agency;

(10) Refinancing farm-related debts other than real estate to improve the farm's profitability provided the applicant has refinanced direct or guaranteed OL loans four times or fewer

and one of the following conditions is met:

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

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

(11) Costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years.

(b) Lo-Doc funds approved under:

(1) Section 764.51(c)(3)(i) may be used for any OL purpose except for refinancing debt under paragraph (a)(10);

(2) Section 764.51(c)(3)(ii) may only be used for expenses under paragraph (a)(3).

§ 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 received debt forgiveness from the Agency on any direct or guaranteed loan.

(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 applicable requirements under this part, if the applicant:

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

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

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

(d) And in the case of an entity, the entity must be:

(1) Controlled by farmers engaged primarily and directly in farming in the United States; and

(2) Authorized to operate the farm in the State in which the farm is located.

(e) And anyone who will sign the promissory note, may close an OL loan in no more than 7 calendar years, either as an individual or as a member of an entity, except as provided in paragraphs (e)(1) through (4) of this section. The years may be consecutive or nonconsecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation. The following exceptions are applicable.

(1) This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer.

(2) This limitation does not apply if the applicant's land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.

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

(4) On a case-by-case basis, may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:

(i) Has a financially viable operation;

(ii) And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and

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

§ 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.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of annual OL loans made for family living and farm operating expenses when planned income is projected to be available.

(i) The term of the loan may not exceed 18 months from the date of the note.

(ii) The term of the loan may exceed 18 months in unusual situations such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established, marketing plans, or recovery from a disaster or economic reverse. In no event will the term of the loan exceed 7 years from the date of the note. Crops and livestock produced for sale will not be considered adequate security for such loans.

(2) The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal. Loans with balloon installments:

(i) Must have adequate security at the time the balloon installment comes due. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans;

(ii) Are only authorized when the applicant can project the ability to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan;

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

§ 764.255 Security requirements.

An OL loan must be secured:

(a) In accordance with §§ 764.103 through 764.106.

(b) By a:

(1) First lien on all property or products acquired or produced with loan funds;

(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

§§ 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:

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

(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 at least 10 but not yet 21 years of age at the time the loan is closed;

(d) Must reside in a rural area, city or town with a population of 50,000 or fewer people;

(e) Must be recommended and continuously supervised by a project advisor, such as a 4–H Club advisor, a vocational teacher, a county extension agent, or other agriculture-related organizational sponsor; and

(f) Must obtain a written recommendation and consent from a parent or guardian if the applicant has not reached the age of majority under state law.

§ 764.303 Limitations.

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

(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.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(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 essential property damaged or destroyed as a result of a disaster as follows:

(i) For any FO purpose, as specified in § 764.151, except subparagraph (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 essential property damaged or destroyed as a result of a disaster as follows:

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

(ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources (e.g., fees for legal, architectural, and other technical services, but not fees for agricultural management consultation, or preparation of Agency forms);

(iii) Repair or replace household contents damaged in the disaster;

(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 living and farm operating expenses, in the case of an operation that has suffered livestock losses not from breeding stock, or losses to stored crops held for sale; and

(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 losses to agricultural commodities (except the losses associated with the loss of livestock) may be used to:

(1) Pay costs associated with reorganizing the farm to improve its profitability except that such costs must not include the payment of bankruptcy expenses;

(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;

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

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

(5) Pay essential family living expenses;

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

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

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

(7) Replace lost working capital.

§ 764.352 Eligibility requirements.

The applicant:

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

(b) Must be an established farmer;

(c) Must be the owner-operator or tenant-operator as follows:

(1) For a loan made under § 764.351(a)(1), must have been:

(i) The owner-operator of the farm at the time of the disaster; or

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

(2) For a loan made under § 764.351(a)(2) or (b), must have been the operator of the farm at the time of the disaster; and

(3) In the case of an entity, the entity must be:

(i) Engaged primarily and directly in farming in the United States;

(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located;

(d) Must demonstrate the intent to continue the farming operation after the designated or declared disaster;

(e) And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:

(1) In the case of a loan in excess of $300,000, two written declinations of credit are required;

(2) In the case of a loan of $300,000 or less, one written declination of credit is required; and

(3) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(4) Notwithstanding the applicant's submission of the required written

declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(g) Must submit an application to be received by the Agency no later than 8 months after the date the disaster is declared or designated in the county of the applicant's operation.

(h) For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, which comprises a basic part of an applicant's total farming operation.

(i) For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(j) Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:

(1) The applicant, including all owners must meet all of the eligibility requirements;

(2) The individual applicant, or all owners of a entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and

(3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(k) Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the applicant for the same purpose from another source.

§ 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 (c) 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 or insurance indemnities received or to be 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 and livestock products for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

(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 household contents, not to exceed $20,000; and

(6) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.

(e) EM loan funds may not be used for physical loss purposes unless:

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

(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:

(i) Applied for, but was unable to obtain hazard insurance for the chicken house;

(ii) Uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the applicant submits an application for the loan;

(iii) Obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

(iv) Meets all other requirements for the loan.

(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.* (1) The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

(2) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 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 7 years) may not exceed 7 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) Notwithstanding the requirements of paragraphs (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

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

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

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

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

(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 Agency 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 farm 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 farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(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 farm 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 of this chapter;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overturn of an Agency decision by appeal.* If an FLP loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;

(2) Approve a loan for crop production:

(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or

(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the Agency determines the loan can be repaid. The new farm operating plan must reflect any financial issues resolved in the appeal.

(3) Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

§ 764.402 Loan closing.

(a) *Signature requirements.* Signatures on loan documents are required as follows:

(1) For individual applicants, only the applicant is required to sign the promissory note.

(2) 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.

(3) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(4) A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.

(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

(b) *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.

(c) *Chattel-secured loans.* The following requirements apply to loans secured by chattel:

(1) The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;

(2) A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

(3) A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.

(d) *Real estate-secured loans.* (1) The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:

(i) For loans of $10,000 or less;

(ii) As provided in § 764.355 for EM loans;

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

(2) The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

(3) The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:

(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 that 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.

(e) *Disbursement of funds.* (1) Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

(2) 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 for the Agency to reconfirm approval and proceed with loan closing.

(3) The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer process, followed by Treasury checks, are the Agency's preferred methods of loan funds disbursement. The Agency will use these processes on behalf of borrowers to disburse loan proceeds directly to creditors being refinanced with loan funds or to sellers of chattel property that is being acquired with loan funds. A supervised bank account will be used according to subpart B of part 761 of this chapter when these processes are not practicable.

§§ 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 an applicant develop and improve skills necessary to:

(a) Successfully operate a farm;

(b) Build equity in the operation; and

(c) Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.

§ 764.452 Borrower training requirements.

(a) The applicant must agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453, or the applicant has previously satisfied the training requirements. In the case of an entity:

(1) Any individual member holding a majority interest in the entity or who is operating the farm must complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for production or financial management, then only that member will be required to complete training.

(b) When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.

(c) When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

(d) An applicant who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, must agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453.

(e) Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR part 761 subpart C reflects that such training is needed.

(f) The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.

(g) The Agency will provide written notification of required training or waiver of training.

§ 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 the Agency determines that additional training is not needed; or

(2) The applicant submits evidence which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.

(c) If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of those individuals when determining whether to waive training requirements.

§ 764.454 Actions that an applicant must take when training is required.

(a) *Deadline for completion of training.* (1) If the Agency requires an applicant to complete training, at loan closing the applicant must agree in writing to complete all required training within 2 years.

(2) The Agency will grant a one-year extension to complete training if the

applicant is unable to complete training within the 2-year period due to circumstances beyond the applicant's control.

(3) The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

(4) An applicant who does not complete the required training within the specified time-period will be ineligible for additional direct FLP loans until the training is completed.

(b) *Arranging training with a vendor.* The applicant must select and contact an Agency approved vendor and make all arrangements to begin training.

(c) *Payment of training fees.* (1) The applicant is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) The 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 applicant and the vendor.

(d) *Evaluation of a vendor.* Upon completion of the required training, the applicant will complete an evaluation of the course and submit it to the vendor. The vendor will forward the completed evaluation forms to the Agency.

§ 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, including cost for additional members of a farming operation;

(8) The minimum and maximum class size;

(9) The vendor's experience in developing and administering training to farmers;

(10) The monitoring and quality control methods the vendor will use;

(11) The policy on allowing Agency employees to attend the course for monitoring purposes;

(12) A plan of how the needs of applicants with physical, mental, or learning disabilities will be met; and

(13) A plan of how the needs of applicants who do not speak English as their primary language will be met.

§ 764.457 Vendor requirements.

(a) *Minimum experience.* The vendor must demonstrate a minimum of 3 years of experience in conducting training courses or teaching the subject matter.

(b) *Training objectives.* The courses provided by a vendor must enable the applicant to accomplish one or more of the following objectives:

(1) Describe the specific goals of the farming operation, any changes required to attain the goals, and outline how these changes will occur using present and projected cash flow budgets;

(2) Maintain and use a financial management information system to make financial decisions;

(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 3 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 3 years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving the Agency 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 the vendor a written 30-day notice.

(b) *Renewal of agreement to conduct training.* (1) To renew the agreement to conduct training, the vendor must submit in writing to the Agency:

(i) A request to renew the agreement;

(ii) Any changes in curricula, instructor, or cost; and

(iii) Documentation that the vendor is providing effective training.

(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: • Attended 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:	

Score	Criteria used to determine score	Agency consideration
	• Attended sessions as agreed, and • Attempted to complete all assignments, but • Does not demonstrate an understanding of the course material.	Training requirement associated with couse is complete. Additional Agency supervision may be necessary.
3	If the borrower did not: • Attend 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 until the training is completed.

■ 24. Add part 765 to read as follows:

PART 765—DIRECT LOAN SERVICING—REGULAR

Sec.

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

Subpart A—Overview

§ 765.1 Introduction.

(a) *Purpose.* This part describes the policies for servicing direct FLP loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.

(b) *Servicing actions.* 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 direct FLP 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—Borrowers 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 provided in accordance with § 761.105 of this chapter.

(b) If the borrower's farm operating plan shows that the debt service margin exceeds 110 percent, the Agency will increase the interest rate on the loans with a 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;

(3) Ceases farming, as described in § 765.253; or

(4) Is ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(d) If the borrower has limited resource interest rate loans that are deferred, the Agency will not change the interest rate during the deferral period.

§ 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.

(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. The Agency will notify the borrower when the borrower's prospectus is provided to one or more lenders.

(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 in 7 CFR part 766.

§ 765.103 Transfer and assignment of Agency liens.

The Agency may assign its lien to the new lender when the borrower is graduating and all FLP debt will be paid in full.

§§ 765.104–765.150 [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 the 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 FLP debt;

(4) Cash proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;

(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 FLP 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 program and non-program loans. Regular payments are applied to loans in the following order:

(1) Annual operating loan;

(2) Delinquent FLP installments, paying least secured loans first;

(3) Non-delinquent FLP installments due in the current production 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 except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.

§ 765.154 Distribution of payments.

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

(a) Recoverable 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) Unless the Agency has reservations regarding the validity of the payment, the Agency may release the borrower's security instruments at the time payment is made, if the borrower makes a final payment by one of the following methods:

(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 instruments 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 may collect all account balances

resulting from its error. If the Agency cannot collect an underpayment from the borrower, the Agency will attempt to settle the debt in accordance with subpart B of 7 CFR part 1956.

§§ 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 security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.

§ 765.202 Borrower responsibilities.

The borrower must:

(a) Comply with all provisions of the loan agreements;

(1) Non-compliance with the provisions of loan agreements and documents, other than failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default on FLP loans by the borrower;

(2) Borrower non-compliance 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 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 Agency 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 Central Filing System (CFS).* The Agency participates and complies with central filing systems in States where CFS has 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 CFS.* In a State without 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) *Borrower application requirements.* The borrower must submit the following, unless it already exists in the Agency's file and is still current as determined by the Agency:

(1) Completed Agency application for subordination form;

(2) A current financial statement, including, in the case of an entity, financial statements from all entity members;

(3) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(4) Verification of all non-farm income;

(5) The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

(6) Verification of all debts.

(b) *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 FLP loans by the time the subordination closing is complete;

(2) The loan will be used for an authorized loan purpose or is made in conjunction with a guaranteed loan;

(3) The credit is essential to the farming 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 production cycle;

(5) The FLP 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 loan purpose may be approved when it is needed for the entity member to finance a separate farming operation, provided the subordination does not cause the unpaid principal and interest on the FLP loans to exceed the value of loan security or otherwise adversely affect the security;

(8) The borrower must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718 of this chapter;

(10) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in subpart G of 7 CFR part 1940;

(11) There is no other subordination outstanding with another lender in connection with the same security;

(12) The subordination is limited to a specific amount; the loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;

(13) 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 accordance with § 764.402 of this chapter;

(14) 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;

(15) Subordinations of SAA mortgages may only be approved when there is no increase in the debt which is prior to the SAA debt; and

(16) 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 in accordance with this section.

(c) *Chattel security.* (1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(1) through (12) 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 (b)(1) through (12) of this section.

(d) *Appraisals.* An appraisal of the property that secures the FLP 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 farm operating plan submitted to the junior lienholder, and the plan is 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 FLP debt. The Agency will consent to severance agreements if all of the following conditions are met:

(a) The financing arrangements are in the 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, loan agreements, and security instruments.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan agreements and security instruments.

(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;

(2) The term of consecutive leases does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage;

(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 FLP 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 subpart G of 7 CFR part 1940.

(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.

(e) *Lease of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest in the allotment.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

§ 765.253 Ceasing to operate 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 Agency's best interests;

(b) The borrower is unable to graduate;

(c) The borrower is not ineligible as a result of disqualification for Federal crop insurance violation according to 7 CFR part 718;

(d) The borrower has leased the security according to § 765.252(a)(2); and

(e) Any one of the following conditions is met:

(1) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;

(2) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or

(3) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 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 farming operation or jeopardize the borrower's ability to repay the FLP loan.

(f) The disposition must enhance the program objectives of the FLP 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 farming 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. If all FLP loan installments and any past due installments, for the period of the agreement for the use of proceeds have been paid, however, these payments from the sale of normal income security may be payable solely to the borrower.

§ 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 farm operating 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 chattel security 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.* (1) Proceeds from the sale of basic security and normal income security must be remitted to lienholders in order of lien priority.

(2) Proceeds remitted to the Agency may be used as follows:

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

(3) 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 in time to prevent the borrower and the Agency from suffering a substantial loss.

(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 the borrower's livestock, if this is preferable to marketing, provided the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.

(b) *Proceeds from the sale of normal income security.* In addition to the uses specified in paragraph (a) of this section, 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.

(c) *Proceeds from the sale of basic security.* In addition to the uses specified in paragraph (a) of this section:

(1) Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

(2) Security may be exchanged for chattel 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.

(3) Proceeds may be used to purchase chattel 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 FLP loan, must at least equal the value of the Agency lien on the old security.

§ 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, constitutes a non-monetary default, will be considered by the Agency when making eligibility determinations for future requests for assistance, may adversely impact such requests, 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.* The following conditions apply to all transactions affecting real estate:

(1) The transaction will enhance the objectives for which the FLP loan or loans were made;

(2) The transaction will not jeopardize the borrower's ability to repay the FLP loan, or is necessary to place the borrower's farming 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 farming operation;

(6) The market value of the remaining security is adequate to secure the FLP loans, or if the market value of the security before the transaction was inadequate to fully secure the FLP loans, the Agency's equity in the security is not diminished;

(7) The environmental requirements of subpart G of 7 CFR part 1940 must be met;

(8) The borrower cannot graduate to other credit;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718; and

(10) The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

(b) *Sale of timber, gravel, oil, gas, coal, or other minerals.* (1) Agency security 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 that secures an FLP 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.

(c) *Exchange of security property.* (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352.

(2) 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 or the remaining term of the FLP loan, whichever is less. 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's 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 repayment ability, place the borrower's farming 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) After acceleration, 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 $25,000.

(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.

(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 FLP 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 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 FLP loan on 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) A family member of the borrower or an entity comprised solely of 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 a family member of the original borrower or an entity that is comprised solely of 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 applicants.

(a) *Transfer of real estate and chattel security.* The Agency may approve transfers of security with assumption of FLP debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in part 764 of this chapter 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 part 764 of this chapter 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 an FO loan.

(c) *Loan types that the Agency no longer makes.* Real estate loan types the Agency no longer makes (*i.e.* EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter 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 market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.

(e) *Rates and terms.* The interest rate and loan term will be determined according to rates and terms established in part 764 of this chapter for the type of loan being assumed.

§ 765.404 Transfer of security to and assumption of debt by ineligible applicants.

(a) *General.* (1) The Agency will allow the transfer of real estate and chattel security property to applicants 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:

(1) Provide written documentation verifying their credit worthiness and debt repayment ability;

(2) Not have received debt forgiveness from the Agency;

(3) Not be ineligible for loans as a result of a conviction for controlled

substances according to 7 CFR part 718; and

(4) Not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(c) *Assumption amount.* The transferee must assume the total outstanding FLP debt or if the value of the property is less than the entire amount of debt, an amount equal to the market value of the security less any prior liens. The total outstanding FLP debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's 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 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 applicant's repayment ability.

(2) For a Non-program loan secured by chattel property only, the Agency schedules repayment in 5 years or less, based on the applicant'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 subpart B of 7 CFR part 1956.

(4) Except for loans in default being serviced under 7 CFR part 766, if an individual who is jointly liable for repayment of an FLP loan withdraws from the farming 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.* Following the death of a borrower, the Agency will continue the loan with any individual who is 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 remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.

(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 according to the loan and security instruments.

(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 Agency'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 Agency's financial interest.

■ 25. Add part 766 to read as follows:

PART 766—DIRECT LOAN SERVICING—SPECIAL

Sec.

Subpart A—Overview

Subpart B—Disaster Set-Aside

Subpart C—Loan Servicing Programs

Authority: 5 U.S.C. 301 and 7 U.S.C. 1981d and 1989.

Subpart A—Overview

§ 766.1 Introduction.

(a) This part describes the Agency's servicing policies for direct loan 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 direct FLP loans under the policies contained in this part.

(1) Youth loans:

(i) May not receive Disaster Set-Aside under subpart B of this part;

(ii) Will only be considered for rescheduling according to § 766.107 and deferral according to § 766.109.

(2) 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 agreements 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) DSA is available to borrowers with 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 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) The 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 family living and farm operating expenses, other creditors, and debts 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 Agency;

(iii) Compensation received for losses; and

(iv) Increased expenses incurred because of the natural disaster.

(5) For the next production cycle, the borrower must develop a feasible plan 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 farm operating plan.

(6) The borrower must not be in non-monetary default.

(7) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(8) The borrower must not become 165 days past due before the appropriate Agency DSA documents are executed.

(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 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 special servicing action under this part 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.

(6) The loan must not have a DSA in place.

§ 766.53 Disaster Set-Aside amount limitations.

(a) The DSA amount is limited to the lesser of:

(1) The first or second scheduled annual installment on the FLP 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) All borrowers must sign the DSA request.

(b) *Required financial information.* (1) The borrower must submit actual production, income, and expense records for the production cycle 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, prior to executing the appropriate DSA Agency documents, the borrower is not current on all FLP loans, the borrower 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 current 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 farm 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–2512 (Appendix A to this subpart);

(2) A borrower who is 90 days past due will be sent FSA–2510 (Appendix B to this subpart);

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA–2514 (Appendix C to this subpart);

(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. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. The appropriate response time will begin three days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand-delivered.

(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–2510;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA–2514.

§ 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 and signed by all borrowers;

(2) Completed Agency application form;

(3) Financial records for the 3 most recent years, including income tax returns;

(4) The farming operation's production records for the 3 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 subpart G of 7 CFR part 1940;

(6) Verification of all non-farm income;

(7) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and debt repayment plan. In the case of an entity, the entity and all entity members must provide current financial statements; 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 subpart B of 7 CFR part 1956.

(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 farming 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 FLP 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 is financially distressed or current, requested loan servicing and received FSA–2512, but fails to respond timely 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 and received FSA–2510, or is in non-monetary, or both monetary and non-monetary default and received FSA–2514, 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 parts 11 and 780.

§ 766.104 Borrower eligibility requirements.

(a) A borrower must meet the following eligibility requirements to be considered for primary loan servicing:

(1) The delinquency or financial distress is the result of reduced repayment ability due to one of the following circumstances beyond the borrower's control:

(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 farming 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.

(5) Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.

(6) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(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 send the borrower notification 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 send the borrower another notification 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 send the borrower the calculations used and the reasons for the adverse decision.

(i) The borrower may request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780 of this title.

(ii) The Agency will send the borrower another notification 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 timely 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 send the borrower notification within 15 days, including the calculations used and reasons for the adverse decision, 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 parts 11 and 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 buy out 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 § 766.151.

§ 766.107 Consolidation and rescheduling.

(a) *Loans eligible for consolidation.* The Agency may consolidate OL loans if:

(1) The borrower meets the 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 the 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 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 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 interest rate for that type of loan on the date a complete servicing application was received;

(ii) The 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 executed 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 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 requirements 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 in paragraphs (2)(i) through (iv), 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 interest rate for that type of loan on the date a complete servicing application was received;

(ii) The 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 executed 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 in § 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 farm operating 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 not exceed 5 years and will be determined based on the post-deferral plan that results in the:

(i) Greatest improvement over the first year cash available to service FLP debt;

(ii) The shortest possible deferral period.

(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 during the deferral period the borrower's repayment ability has increased to allow the borrower to make payments on the deferred loans, 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 or Non-program loans is not eligible for a Conservation Contract. However, an SA or Non-program loan may be considered for a Conservation Contract if the borrower also has program loans.

(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 in § 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.

(6) Only loans secured by the real estate that will be subject to the easement, may be considered for a Conservation 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; 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 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 approving the 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.

$$\frac{\text{Contract acres}}{\text{Total acres}} \text{ divided by } = \text{Percent of contract acres to total acres}$$

(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 paragraph (h)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\text{Total FLP debt} \times \text{Percent calculated under (h)(1)} = \text{FLP debt secured by contract acres}$$

(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by 33 percent.

$$\text{Total FLP debt} \times 33\% = \text{———}$$

(4) The lesser of the amounts calculated in paragraphs (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 paragraph (h)(4) of this section for a 30-year contract.

Result from (h)(4) × 60% = Maximum debt reduction for a 30-year contract

(6) The borrower will receive 20 percent of the amount calculated in paragraph (h)(4) of this section for a 10-year contract.

Result from (h)(4) × 20% = Maximum debt reduction for a 10-year contract

(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.

Contract acres divided by Total acres = 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 paragraph (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

Total FLP debt × Percent calculated in (i)(1) = FLP debt secured by contract acres

(3) Multiply the 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 paragraph (i)(1) of this section to determine the current value of the acres in the contract.

Market value of total acres less contributory value of structural improvements × Percent calculated in (i)(1) = Market value of acres in the contract

(4) Subtract the market value of the contract acres calculated in paragraph (i)(3) of this section from the FLP debt secured by the contract acres as calculated in paragraph (i)(2) of this section.

Result from (i)(2) − Result from (i)(3) = Difference

(5) Select the greater of the amounts calculated in either paragraphs (i)(3) and (i)(4) of this section.

(6) The lesser of the amounts calculated in paragraphs (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 paragraph (i)(6) of this section for a 30-year contract term.

Result from (i)(6) × 60% = Maximum debt cancellation for a 30-year term

(8) The borrower will receive 20 percent of the amount calculated in paragraph (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.* Borrower appeals of the Natural Resources Conservation Service's (NRCS) technical decisions made in connection with a Conservation Contract, will be handled in accordance with applicable NRCS regulations. Other aspects of the denial of a conservation contract may be appealed in accordance with 7 CFR parts 11 and 780.

§ 766.111 Writedown.

(a) *Eligibility.* The Agency will only consider a writedown if the borrower:

(1) Meets the eligibility criteria in § 766.104;

(2) Is delinquent;

(3) Has not previously received debt forgiveness on any FLP direct loan; and

(4) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12.

(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, excluding debt reduction received through Conservation Contract, does not exceed $300,000.

(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) If the borrower is delinquent prior to restructuring, the borrower, and all entity members 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 subpart G of 7 CFR part 1940;

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

(4) 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 contents, or small equipment such as hand tools and lawn mowers; or

(5) 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 may buy out the borrower's FLP 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 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 reconsideration or 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 five percent or less.

(3) Negotiate the Agency's appraisal by obtaining a second appraisal.

(i) If the difference between the two appraisals is five percent or less, 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 utilized to make the appeal decision, unless stated otherwise in the appeal decision letter.

§§ 766.116–766.150 [Reserved]

Appendix A to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due

This form is available electronically.

FSA-2510 (12-31-07)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE

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 or retain your farm property and 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 U. S. Department of Agriculture (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 that 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 loans if you do not bring your 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 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:

(1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:

(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 farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) 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 write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and 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.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The 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 restructured.

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 five 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 5 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 5 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 4 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.

Time limits

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.

(b) **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 with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

(c) **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.

(d) **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 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 all past dealings with the Agency and in accordance with your loan agreements.

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 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 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 5 years but no less than 3 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 (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or 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 (8) and (11) are included with this package.

(1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2510," signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 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. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 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.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. 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 the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) 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.

(10) 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.

(11) 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.

(12) 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 borrower who has left the farming 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 programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, 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.

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. 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 Agency 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 five 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 five 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 of the appraisal 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 demonstrates why you believe 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 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, 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;
(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, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

BILLING CODE 3410–05–P

Appendix B to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

This form is available electronically.

FSA-2512 (Proposal 4)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE

This notice informs you of servicing options that may be available to current borrowers, 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 (f).

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 U. S. Department of Agriculture (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 that shows that you can pay all debts and expenses.

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

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 the Agency's handbooks and forms;
(h) Reconsideration, mediation, negotiation and appeal rights;
(i) 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:

(1) You are financially distressed or delinquent due to one of the following circumstances beyond your control:
(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 farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) 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 or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and 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 delinquent, 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.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest
rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In 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.

In 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 consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The 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 restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certa in 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 five 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 5 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 to delinquent borrowers 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 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 are delinquent on your FLP loan and 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 5 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 4 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 you are delinquent and 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 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 all past dealings with the Agency and in accordance with your loan agreements.

Time limits

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 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 with 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 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 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 5 years but no less than 3 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 FLP debt you owe the Agency 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. The Agency will not finance these alternatives.

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.

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 (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or 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 (8) and (11) are included with this package.

(1) FSA-2513, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2512" signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History" or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 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. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 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.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. 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 the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) 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.

(10) 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.

(11) 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.

(12) 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 borrower who has left the farming 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 programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, 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.

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. 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 Agency 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 five 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 five 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 of the appraisal 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 demonstrates why you believe 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) **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, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

Appendix C to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are in Non-Monetary Default

This form is available electronically.

FSA-2514 (12-31-07)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE IN NON-MONETARY DEFAULT

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):
[Describe property]

☐ You have stopped farming.

☐ A foreclosure action has been filed against you by

_____

☐ You have: _____

_____

_____

☐ You are also $ _____ behind on your payments.

You are in default on your FLP loans and 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 help 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 U. S. Department of Agriculture (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 that 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 loans 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 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 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:

(1) You must resolve all non-monetary defaults prior to closing the servicing action.

(2) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

(3) If you are also financially distressed or delinquent, it must be due to one of the following circumstances beyond your control:

(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 farming operation; or

(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(4) 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 write down 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.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The 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 restructured.

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 five 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 5 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 to delinquent borrowers 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 5 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 4 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 you are delinquent and 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 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 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 all past dealings with the Agency and in accordance with your loan agreements.

Time limits

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 with 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 6 years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 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 5 years but no less than 3 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 (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or 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 (8) and (11) are included with this package.

(1) FSA-2515, "Borrower Response to Notice of the Availability of Loan Servicing - For Borrowers who Received FSA-2514," signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents for each of the 3 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. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 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.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. 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 the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) 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.

(10) 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.

(11) 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.

(12) 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 borrower who has left the farming 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 programs.

(g) How to get copies of Agency handbooks and forms

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, 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.

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. 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 Agency 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 five 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 five 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 of the appraisal 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 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, 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;
(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, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR part 766.

BILLING CODE 3410–05–C

Subpart D—Homestead Protection Program

§ 766.151 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 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; and

(iii) Identification of land and buildings to be considered.

(b) *Post-acquisition*—(1) *Notification.* After the Agency acquires title to the real estate 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 part 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.

§ 766.152 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. Homestead protection does not apply if the FLP loans were secured only by chattels.

(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 process any request for voluntary conveyance according to § 766.353.

(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. For homestead protection purposes, an owner or former owner includes:

(i) A member of an entity who is or was personally liable for the FLP loan secured by the homestead protection property when the applicant or entity held fee title to the property; or

(ii) A member of an entity who is or was personally liable for the FLP loan that possessed and occupied a separate dwelling on the security property;

(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 2 calendar years during the 6-year period immediately preceding the calendar year in which the applicant applied for homestead protection;

(3) Must have received 60 percent of gross income from farming in at least two of the 6 years immediately preceding the year in which the applicant applied for homestead protection;

(4) Must have lived in the home during the 6-year period immediately preceding the year in which the applicant applied for homestead protection. The applicant may have left the home for not more than 12 months if it was due to circumstances beyond their control;

(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease, and maintain the property in good condition. The lessee will be responsible for any normal maintenance; and

(6) Must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

§ 766.153 Homestead Protection transferability.

Homestead protection rights are not transferable 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, upon the spouse's agreement to comply with the terms and conditions of the lease.

§ 766.154 Homestead Protection leases.

(a) *General.* (1) The Agency may approve a lease-purchase agreement on the appropriate Agency form 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;

(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 3 years and will not exceed 5 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 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 FLP 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 six months from the date of the application for considering homestead protection. If a current appraisal does not exist, the applicant will select an independent real estate appraiser from a list of appraisers approved by the Agency.

§ 766.155 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.

§§ 766.156–766.200 [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 covering all real estate security 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 (market value) will 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 market value of the real estate security property will be determined based on a current appraisal completed within the previous 12 months in accordance with § 761.7 of this chapter, and subject to the following:

(1) Prior to completion of the appraisal, the borrower will identify any capital improvements that have been added to the real estate security since the execution of the SAA.

(2) The appraisal must specifically identify the contributory value of capital improvements made to the real estate security during the term of the SAA to make deductions for that value.

(3) For calculation of shared appreciation recapture, the contributory value of capital improvements added during the term of the SAA will be deducted from the 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 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 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 4 years or less from the date of the writedown; or

(2) Fifty percent of such appreciation if the agreement is triggered more than 4 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(b), 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 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 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 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 Repayment of unauthorized assistance.

(a) Except where otherwise specified, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice. The Agency may reverse any unauthorized loan servicing actions, when possible.

(b) The borrower has the opportunity to meet with the Agency to discuss or refute the Agency's findings.

§ 766.252 Unauthorized assistance resulting from submission of false 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 false.

§ 766.253 Unauthorized assistance resulting from submission of inaccurate information by 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.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the loan will be converted to a Non-program loan under the following conditions:

(i) The borrower did not provide false information;

(ii) It is in the interest of the Agency;

(iii) The debt will be subject to the interest rate for Non-program loans;

(iv) The debt will be serviced as a Non-program loan;

(v) The term of the Non-program loan 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; or

(C) The life of the security for chattel loans.

(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.

§§ 766.254–766.300 [Reserved]

Subpart G—Loan Servicing For Borrowers in 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 received notice of all loan servicing options available under subpart C of this part prior to the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available.

§ 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 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 FLP debt. A borrower who filed chapter 7 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) 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 FLP 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 and 766.356, as appropriate.

(2) Borrowers may voluntarily liquidate their security in accordance with §§ 766.352, 766.353 and 766.354. In such case, the Agency will:

(i) Not delay involuntary liquidation action.

(ii) Notify the borrower in accordance with subpart C of this part, prior to acting on the request for voluntary liquidation, if the conditions of paragraph (b)(1) of this section have not been met.

(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 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 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 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) *General.* A borrower may voluntarily sell real property or chattel security to repay FLP debt in lieu of involuntary liquidation if all applicable requirements of this section are met. 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 FLP 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 provided:

(i) The costs are reasonable in amount;

(ii) The borrower is unable to pay the costs from personal funds or have the purchaser pay;

(iii) The costs must be paid to complete the sale;

(iv) Costs are not for postage and insurance of the note while in transit when required 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.

(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 financial interest.

(5) If an unpaid loan balance remains after the sale, the Agency will continue to service the loan in accordance with subpart B of 7 CFR part 1956.

(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 if the borrower obtains the agreement of lienholders as necessary to complete the public sale; or

(2) Private sale if the borrower:

(i) Sells all of the security for not less than the 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) Obtains the Agency's agreement for the sale.

§ 766.353 Voluntary conveyance of real property.

(a) *Requirements for conveying real property.* 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 warranty deed or other deed acceptable to the Agency;

(5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity;

(6) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;

(7) Title insurance or title record for the security, if available;

(8) Complete debt settlement application in accordance with subpart B of 7 CFR part 1956 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the FLP debt; and

(9) Any other documentation required by the Agency to evaluate the request.

(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 financial interest;

(2) The borrower conveys all real property securing the FLP 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 financial interest.

(2) Before conveyance, the borrower must pay or obtain releases of all junior liens, real estate taxes, judgments, and other assessments. If the borrower is unable to pay or obtain a release of the liens, the Agency may attempt to negotiate a settlement with the lienholder if it is in the Agency's financial interest.

(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.

(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 an American Indian 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 with the greater of the market value of the security or the borrower's FLP debt.

(e) *Right of possession.* After voluntary conveyance, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights under an approved lease-purchase agreement executed according to § 766.154 or required by State law.

§ 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) A resolution approved by the governing body that authorizes the conveyance in the case of an entity borrower;

(6) Complete debt settlement application in accordance with subpart B of 7 CFR part 1956 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 financial interest;

(4) The borrower conveys all chattel securing the FLP 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.

(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:

(i) State law imposes separate restrictions on accelerations;

(ii) The borrower is American Indian, whose real estate is located on an Indian reservation.

(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)(8).

(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, as appropriate.

(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 § 766.357 if the borrower does not pay the account in full within the time period specified in the acceleration notice.

§ 766.356 Acceleration of loans to American Indian borrowers.

(a) *General.* (1) The Agency accelerates loans to American Indian borrowers whose real estate is located on an Indian reservation 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)(8).

(4) At the time of acceleration, the Agency will notify the borrower and the Tribe that has jurisdiction over the Indian reservation of:

(i) The possible outcomes of a foreclosure sale and the potential impacts of those outcomes on rights established under paragraphs (a)(4)(ii) and (iii) of this section;

(ii) The priority for purchase of the property acquired by the Agency through voluntary conveyance or foreclosure;

(iii) Transfer of acquired property to the Secretary of the Interior if the priority of purchase of the property established under paragraph (a)(4)(ii) of this section is not exercised.

(b) *Borrower options.* The Agency will notify an American Indian borrower of the right to:

(1) Request the Tribe, having jurisdiction over the Indian reservation in which the real property is located, be assigned the loan;

(i) The Tribe will have 30 calendar days after the Agency notification of such request to accept the assignment of the loan.

(ii) The Tribe must pay the Agency the lesser of the outstanding Agency indebtedness secured by the real estate or the market value of the property.

(iii) The Tribe may pay the amount in a lump sum or according to the rates, terms and requirements established in part 770 of this chapter, subject to the following:

(A) The Tribe must execute the promissory note and loan documents within 90 calendar days of receipt from the Agency;

(B) Such loan may not be considered for debt writedown under 7 CFR part 770.

(iv) The Tribe's failure to respond to the request for assignment of the loan or to finalize the assignment transaction within the time provided, shall be treated as the Tribe's denial of the request.

(2) Request the loan be assigned to the Secretary of the Interior. The Secretary of the Interior's failure to respond to the request for assignment of the loan or to finalize the assignment transaction, shall be treated as denial of the request;

(3) Voluntarily convey the real estate property to the Agency;

(i) The Agency will conduct a environmental review before accepting voluntary conveyance.

(ii) The Agency will credit the account with the greater of the market value of the real estate or the amount of the debt.

(4) Sell the real estate;

(i) The buyer must have the financial ability to buy the property.

(ii) The sale of the property must be completed within 90 calendar days of the Agency's notification.

(iii) The loan can be transferred and assumed by an eligible buyer.

(5) Pay the FLP debt in full.

(6) Consult with the Tribe that has jurisdiction over the Indian reservation to determine if State or Tribal law provides rights and protections that are more beneficial than those provided under this section.

(c) *Tribe notification.* At the time of acceleration, the Agency will notify the Tribe that has jurisdiction over the Indian reservation in which the property is located, of the:

(1) Sale of the American Indian borrower's property;

(2) Market value of the property;

(3) Amount the Tribe would be required to pay the Agency for assignment of the loan.

(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 § 766.357 if:

(1) The borrower does not pay the account in full within the time period specified in the acceleration notice;

(2) The borrower does not voluntarily convey the property to the Agency;

(3) Neither the Tribe nor the Secretary of the Interior accepts assignment of the borrower's loan.

§ 766.357 Involuntary liquidation of real property and chattel.

(a) *General.* The Agency will liquidate the borrower's security if:

(1) The borrower does not satisfy the account in accordance with §§ 766.355 and 766.356, as appropriate;

(2) The involuntary liquidation is in the Agency's 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.

(2) If the Agency acquires the foreclosed property, the Agency will credit the borrower's account in the amount of the Agency's bid except when incremental bidding was used, in which case the amount of credit will be the maximum bid that was authorized. 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.

(3) Notwithstanding paragraph (b)(2), for an American Indian borrower whose real property secures an FLP 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 FLP debt against the property.

(4) After the date of foreclosure, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights granted by State law.

(5) If an unpaid balance on the FLP loan remains after the foreclosure sale of the property, the Agency may debt settle the account in accordance with subpart B of 7 CFR part 1956.

(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 FLP loan remains after the sale of the repossessed property, the Agency may debt settle the account in accordance with subpart B of 7 CFR part 1956.

§§ 766.358—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 Agency'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 its financial interest.

■ 26. Add part 767 to read as follows:

PART 767—INVENTORY PROPERTY MANAGEMENT

Subpart A—Overview

Subpart B—Property Abandonment and Personal Property Removal

Subpart C—Lease of Real Estate Inventory Property

Subpart D—Disposal of Inventory Property

Subpart E—Real Estate Property with Important Resources or Located in Special Hazard Areas

Subpart F—Exception Authority

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

Subpart A—Overview

§ 767.1 Introduction.

(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, or located in special hazard areas; 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 Agency's financial interest. If the security is in jeopardy, the Agency will take the above actions prior to completing servicing actions contained in 7 CFR part 766.

§ 767.52 Disposition of personal property from real estate inventory property.

(a) *Preparing to dispose of personal property.* If, at the time of acquisition, personal property has been left on the real estate inventory 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 FLP loan; and

(4) To the borrower, if the borrower's whereabouts are known.

§§ 767.53–767.100 [Reserved]

Subpart C—Lease of Real Estate Inventory Property

§ 767.101 Leasing real estate inventory property.

(a) The Agency may lease real estate inventory property:

(1) To the former owner under the Homestead Protection Program;

(2) To a beginning farmer selected to purchase the property but who 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) The Agency will lease real estate inventory property in an ''as is'' condition.

(c) The Agency will lease property for:

(1) Homestead protection in accordance with part 766, subpart D, of this chapter.

(2) A maximum of 18 months to a beginning farmer the Agency selected as purchaser when no Agency loan funds are available; or

(3) The shortest possible duration for all other cases subject to the following:

(i) The maximum lease term for such a lease is 12 months.

(ii) The lease is not subject to renewal or extension.

(d) The lessee may pay:

(1) A lump sum;

(2) On an annual installment basis; or

(3) On a crop-share basis, if the lessee is a beginning farmer under paragraph (a) of this section.

(e) The Agency leases real estate inventory property for a market rent amount charged for similar properties in the area.

(f) The Agency may require the lessee to provide a security deposit.

(g) Only leases to a beginning farmer or Homestead Protection Program participant will contain an option to purchase the property.

§ 767.102 Leasing non-real estate inventory property.

The Agency does not lease non-real estate property unless it is attached as a fixture to real estate inventory property that is being leased and it is essential to the farming operation.

§ 767.103 Managing leased real estate inventory property.

(a) The Agency will pay for repairs to leased real estate inventory property only when necessary to protect the Agency's interest.

(b) If the lessee purchases the real estate inventory 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 combine or divide inventory property, as appropriate, to maximize the opportunity for beginning farmers to purchase real property.

(b) The Agency will advertise all real estate inventory 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.

(c) 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 is final and not subject to administrative appeal.

(d) If there are no offers from beginning farmers, the Agency will sell inventory property by auction or sealed bid to the general public no later than 165 days after the Agency obtains title to the property. All bidders will be required to submit a 10 percent deposit with their bid.

(e) 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.

(f) 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 real estate inventory 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 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 reviews.

(d) If the property was owned by an American Indian borrower and is located on an Indian reservation, the Agency will:

(1) No later than 90 days after acquiring the property, offer the opportunity to purchase or lease the property in accordance with:

(i) The priorities established by the Indian Tribe having jurisdiction over the Indian reservation;

(ii) In cases where priorities have not been established, the following order:

(A) A member of the Indian Tribe that has jurisdiction over the Indian reservation;

(B) An Indian entity;

(C) The Indian Tribe.

(2) Transfer the property to the Secretary of the Interior if the property is not purchased or leased under paragraph (1) of this section.

(e) If Agency analysis of farm real estate market conditions indicates the sale of the Agency's 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 real estate inventory property.

(a) *Pricing.* (1) The Agency will advertise property for sale at its market value, as established by an appraisal obtained in accordance with § 761.7.

(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 by the Agency, the Agency returns any deposit to the bidder. If the contract is terminated by the purchaser, any deposit will be retained by the Agency as full liquidated damages, except where failure to close is due to Agency non-approval of credit.

(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) The Agency will use sealed bid or 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) The Agency may sell chattel inventory property, including fixtures, concurrently with real estate inventory property 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 chattel inventory 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 Estate Property With Important Resources or Located in Special Hazard Areas

§ 767.201 Real estate inventory property with important resources.

In addition to the requirements established in subpart G of 7 CFR part 1940, 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 real estate inventory 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 5 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 real estate inventory 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 Agency's financial interest.

(e) *Use restrictions on real estate inventory 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 property with important resources or real property interests must allow the Agency or its representative to periodically inspect the property to determine if it is being used for conservation purposes.

§ 767.202 Real estate inventory property located in special hazard areas.

(a) The Agency considers the following to be special hazard areas:

(1) Mudslide hazard areas;

(2) Special flood areas; and

(3) Earthquake areas.

(b) The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.

(c) The Agency will incorporate use restrictions in its leases of property in special hazard areas.

§§ 767.203–767.250 [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 Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PART 768–769—[RESERVED]

■ 27. Add and reserve parts 768 and 769.

7 CFR Chapter XIV

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

■ 28. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 1515; 7 U.S.C. 7416a; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

■ 29. Amend § 1405.8 as follows:

■ a. Revise the section heading to read as set forth below;

■ b. Revise paragraph (a)(1) to read as set forth below; and

■ c. Redesignate paragraph (a)(7) as (a)(8) and add a new paragraph (a)(7) to read as set forth below.

§ 1405.8 Disqualification due to crop insurance violation.

(a) * * *

(1) The FCIA.

* * * * *

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

* * * * *

Signed in Washington, DC, on October 23, 2007.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation and Administrator, Farm Service Agency.

[FR Doc. 07–5374 Filed 11–7–07; 8:45 am]

BILLING CODE 3410–05–P