

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
P.O. Box 2415  
Washington, DC 20013-2415

Notice FC-37

**For:** State and County Offices

**Implementation of Farm Bill Provisions Affecting Loan Servicing and Inventory Property**

**Approved by:** Deputy Administrator, Farm Credit Programs

*SauAnne Kling*

**1 Overview**

**A**

**Background**

The Federal Agriculture Improvement and Reform Act (FAIR Act) became law on April 4, 1996. It revises several FSA loan servicing authorities and procedures. Certain portions of the FAIR Act became effective upon enactment; others are delayed until 90 days after enactment.

**B**

**Purpose**

This notice provides information and guidance on changes that are effective immediately and affect loan servicing authorities and procedures. A separate FC notice is being issued to address loan making issues.

**2 Statutory Changes and Implementation**

**A**

**Changes in Leaseback/Buyback Program**

The following statutory changes in the Leaseback/Buyback Program are effective immediately. No exceptions can be granted for any reason.

- The Leaseback/Buyback Program (FmHA Instruction 1951-S, Section 1951.911(a)) is eliminated.
- Former owners have no priority right to purchase inventory property except under the Homestead Protection Program (Section 1951.911(b)), as modified by this notice. Spouses, children, and former operators no longer have any priority rights.

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<b>Disposal Date</b>	<b>Distribution</b>
April 1, 1997	State Offices; State Offices relay to County Offices and Ag Credit Teams

**2 Statutory Changes and Implementation (Continued)**

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**A**

**Changes in  
Leaseback/  
Buyback  
Program  
(Continued)**

- No pending pre-acquisition applications to lease property can be approved. No pending post-acquisition leases can be approved. Pending post-acquisition sales can be closed only if a complete application that contains all information the Agency needs from the applicant to complete the sale was submitted on or before the enactment date. All other pending offers must be rescinded and pending applications rejected.
- There may be cases in which the borrower has already conveyed property to FSA under a written agreement that the Agency will provide leaseback/buyback consideration. Since this is a contract entered into before enactment, it will be honored.
- Leases in effect as of the date of enactment will be honored, and purchase options may be exercised in accordance with the terms of the lease. Leases may not be renewed or extended for lack of credit sale funds or any other reason. No exceptions can be made.
- In rescinding and rejecting pending offers and applications, the borrower should be advised that this action "is taken in accordance with the Federal Agriculture Improvement and Reform Act, which became law on April 4, 1996."
- FmHA Instruction 1951-S, Exhibit A and its Attachments and Exhibit K contain several references to leaseback/buyback. An example of these documents with this language deleted will be sent shortly. FmHA Instruction 1951-S, Exhibits N, O, P, and Q will no longer be used.
- See subparagraph D regarding cases in appeal.

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2 Statutory Changes and Implementation (Continued)

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**B**  
**Changes for**  
**Homestead**  
**Protection**

The following statutory changes for homestead protection are effective immediately.

- The deadline for former owners to submit an application for post-acquisition homestead protection is reduced from 90 days to 30 days from the date of Agency acquisition. All references to a 90-day application period in FmHA Instruction 1951-S, Section 1951.911(b)(2)(iii) and Exhibit M should be changed to 30 days. (Pre-acquisition homestead protection procedures are not affected by the new law.)
  - Former owners of these properties must be advised of their homestead protection rights not later than the date FSA acquires the property (not within 30 days of acquisition, as specified by Section 1951.911(b)(2)(iii). For homestead properties presently in inventory, former owners who have not already been advised of these rights **must be notified by April 9, 1996.**
  - If Exhibit M, offering a 90-day deadline for application, has been sent and the time remaining is more than 30 days, that offer should be rescinded and a new Exhibit M with a 30-day deadline sent **before April 9, 1996.** Both of these actions should be accomplished with the same letter, referencing to the action being taken "in accordance with the Federal Agriculture Improvement and Reform Act of 1996, which became effective on April 4, 1996."
  - Outstanding offers having 30 days or less remaining before the application deadline should **not** be rescinded.
  - See subparagraph D regarding cases in appeal.
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**C**  
**Changes and**  
**Limitations for**  
**Debt Forgiveness**

The following statutory changes and limitations for debt forgiveness are effective immediately. No exceptions can be granted for any reason.

- No individual or entity may receive more than one instance of debt forgiveness for any **direct** CONACT loans. This applies to any direct loan losses sustained by the Agency in the past.
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2 Statutory Changes and Implementation (Continued)

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C  
Changes and  
Limitations for  
Debt Forgiveness  
(Continued)

- Debt forgiveness for loan servicing purposes is defined as reducing or terminating a direct CONACT loan in a manner that results in a loss through writedown or writeoff under FmHA Instruction 1951-S.  
  
**Note:** National Office referral is required for cases in which a borrower who has received previous debt forgiveness under any authority **except FmHA Instruction 1951-S** is now being considered for additional debt forgiveness.
- A loss involving a loan guarantee is **not** considered debt forgiveness for loan servicing purposes.
- Borrowers who have received direct loan forgiveness in the past may receive such a benefit again only if an Agency approval has been made **in writing before the date of enactment**. No pending resolution under FmHA Instruction 1951-S may be closed after that date for borrowers who have received previous direct debt forgiveness. Until further notice, accounts of such borrowers which would otherwise be ready for final settlement should be placed in collection only status, per FmHA Instruction 404.1.
- In rescinding and rejecting pending offers and applications, the borrower should be advised that this action "is taken in accordance with the Federal Agriculture Improvement and Reform Act of 1996, which became law on April 4, 1996."
- See subparagraph D regarding cases in appeal.

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D  
Appeals

Cases in the administrative appeal process on the date of enactment will continue through that process until a final decision is obtained. That decision should be promptly implemented in accordance with applicable regulations, as modified by this notice.

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## Notice FC-37

### 2 Statutory Changes and Implementation (Continued)

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#### E

#### Selling Inventory Property

The following statutory changes for selling inventory property are effective immediately.

- The random selection process as outlined in FmHA Instruction 1955-C, Section 1955.107 is revised to include only beginning farmers and ranchers. The 5 categories previously used in classifying applicants will no longer be used.
- There will be no specific preference for socially disadvantaged applicants in the purchase of inventory properties.
- Inventory properties must be advertised for sale no later than 15 days after acquisition.

**Note:** If the property is already in inventory before the date of this notice and is not leased, the property will be offered for sale within 60 days of the enactment date in accordance with the instructions provided by this notice.

- Inventory properties contaminated with hazardous waste will be sold subject to the hazardous waste contamination being cleaned up.
  - The advertisement should contain notification that the property is contaminated and that it will be sold subject to the Government providing cleanup.
  - In the case of property offered for sale to beginning farmers or ranchers, the property will be advertised for sale at its "as improved" market value as determined by a current appraisal.
  - The deed will contain language that provides notification to the grantee of the types and amounts of hazardous substances released on the property along with provisions that guarantee remediation by the Government. An example of the language to use will be issued shortly. Seek the advice of the Regional Office of OGC in preparing the deed.
- Advertisements must contain a notification that the property is being sold subject to redemption rights if provided in State statute.

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2 Statutory Changes and Implementation (Continued)

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E

**Selling Inventory  
Property  
(Continued)**

- Not later than 75 days from acquisition, all properties either classified as suitable or meeting the definition of a farm as provided for in FmHA Instruction 1943-A, Section 1943.4 must be sold to an eligible beginning farmer or rancher at the property's current market value.
- To be eligible to purchase a farm as a beginning farmer or rancher, the applicant must meet the definition of a beginning farmer or rancher as provided for in FmHA Instruction 1943, Section 1943.4 as revised by the FAIR Act.
- If more than one beginning farmer or rancher applies to purchase the property, a random selection process similar to that outlined in FmHA Instruction 1955-C, Section 1955.107(f)(2) will be used to select the successful purchaser.
- The selection of a purchaser through a random selection process shall be final and will not be subject to appeal rights.
- An applicant may request review by SED within 30 days after denial of their application. SED will then provide an expedited review and determination of whether the applicant is a beginning farmer or rancher for the purpose of acquiring inventory property. SED's determination shall be final and is not appealable. Records on such reviews must be maintained at the State Office for statistical purposes.
- If the property is not sold to a beginning farmer or rancher within the 75-day period after acquisition, then not later than 30 days (the 30-day period begins immediately after the 75-day period ends) the property will be sold by public notice at a public sale.
  - A public sale may either take place in the form of sealed bids or a public auction as outlined in FmHA Instruction 1955-C, Section 1955.108(c).
  - If no acceptable bid is received, the property may be sold by negotiated sale at the best price obtainable.

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Notice FC-37

2 Statutory Changes and Implementation (Continued)

E

**Selling Inventory Property (Continued)**

- For suitable inventory property which has already been advertised for sale, the following procedures apply.

FOR...	THEN...
properties currently being advertised at the time this notice is received	immediately stop the advertisement process and cancel the sale. The property should be readvertised in accordance with the instructions provided within this notice.
properties advertised but the applicants were not yet placed into categories	<p>proceed with the sale by placing <b>all</b> eligible beginning farmers and ranchers into a group and randomly selecting a purchaser. (Remember: There is no super-priority for socially disadvantaged applicants who are beginning farmers or ranchers.) If the selected applicant does not provide a feasible plan and there are:</p> <ul style="list-style-type: none"> <li>• other qualified beginning farmers or rancher applicants to choose from, make a new selection</li> <li>• no qualified beginning farmers or ranchers who applied, then other applicants who applied should be notified that the sale will be cancelled and the property will be advertised for sale by either sealed bid or public auction process.</li> </ul>
properties advertised and a qualified beginning farmer or rancher was already selected	<p>proceed with the sale. If the selected applicant does not provide a feasible plan and there are:</p> <ul style="list-style-type: none"> <li>• other qualified beginning farmers or rancher applicants to choose from, make a new selection</li> <li>• no other qualified beginning farmers or ranchers to choose from, the sale should be cancelled and the property advertised for sale by either sealed bid or public auction.</li> </ul>

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2 Statutory Changes and Implementation (Continued)

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**E**  
**Selling Inventory**  
**Property**  
**(Continued)**

FOR...	THEN...
properties which have an applicant selected (beginning farmer or other) and they have a feasible plan of operation, but have not yet signed a sales contract, Form FmHA 1955-45	sell the property to the selected applicant.
properties which have an applicant selected and the sales contract has been signed	the sale should proceed to closing regardless of whether the applicant is a qualified beginning farmer or rancher.

**F**  
**Changes on**  
**Leasing**  
**Property**

The following statutory changes on leasing property are effective immediately.

- If the property was already under a lease agreement before the date of this notice, the following actions will be taken.
  - The lease will not be renewed.
  - No later than 60 days after the lease expires, the property will be offered for sale as outlined in subparagraph E.

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Notice FC-37

2 Statutory Changes and Implementation (Continued)

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**F**  
**Changes on**  
**Leasing**  
**Property**  
**(Continued)**

- FSA may enter into a lease with a beginning farmer or rancher who was selected to purchase an inventory property under the sales process outlined in subparagraph E. To lease, the following conditions must be met.
  - The selected purchaser must qualify for credit sale, direct farm ownership, or guaranteed loan assistance.
  - The lease cannot be longer than 18 months or the date that credit sale or farm ownership loan funds become available, whichever is earlier.

**Note:** The rental rate for properties leased to beginning farmers and ranchers shall be determined by considering the income-producing capability of the property during the term that the property is leased.

- For leaseback/buyback leases, see subparagraph A.
  - For homestead protection leases, see subparagraph B.
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**G**  
**Changes and**  
**Limitations for**  
**Conservation**  
**Easements on**  
**Inventory**  
**Property**

The following statutory changes and limitations for conservation easements on inventory property are effective immediately.

- Wetland conservation easements will not be placed on areas considered to be cropland (prior converted and frequently farmed wetlands) on the date the property entered into inventory or on areas that were farmed at any time during the period beginning on the date 5-years before the property entered into inventory and ending on the date the property entered into inventory.
  - FSA will still use the services of NRCS to determine what portions of an inventory property are considered wetlands. NRCS will continue to assist FSA in determining if wetlands located on inventory properties were used for farming.
  - FSA will still use the services of the U.S. Fish and Wildlife Service in determining the boundaries of a wetland conservation easement along with the associated buffer zone.
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## Notice FC-37

### 2 Statutory Changes and Implementation (Continued)

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#### **G** **Changes and** **Limitations for** **Conservation** **Easements on** **Inventory** **Property** **(Continued)**

- Conservation easements will still be placed on floodplains (including areas considered to be cropland or farmed in accordance with the provisions outlined in this subparagraph) and other important resources located on inventory properties as outlined in FmHA Instruction 1955-C, Section 1955.139.
  - The conservation easement document used for wetlands and conservation easement document used for floodplains will be sent shortly. For other important resources, such as endangered species or historical sites, one of these easement documents can serve as a general guide to develop a suitable easement document in consultation with the Regional OGC and the easement management authority.
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#### **H** **Changes for** **Transfers of** **Inventory** **Property for** **Conservation** **Purposes**

Effective immediately the following requirements will have to be met when a request is received from a Federal or State agency for the transfer of an inventory property for conservation purposes.

- At least 2 public notices must be given. These notices can be published in a local newspaper, which is widely circulated within the general area where the requested property is located.
  - If requested, at least 1 public meeting must be held. Both FSA and officials from the requesting agency should be present at the meeting to answer any questions.
  - The State Governor and at least 1 elected county official of the county where the property is located must be consulted.
  - SED should use any feedback provided in the meeting along with that provided by a county official and State Governor in deciding whether to submit the transfer request to the National Office for approval.
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## Notice FC-37

### 2 Statutory Changes and Implementation (Continued)

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#### I

#### Changes for Inventory Property Located Within an Indian Reservation

The following statutory changes for inventory property located within an Indian reservation are effective immediately.

- All leaseback/buyback rights for Native Americans as provided for in Section 1955.66(d)(1) are eliminated.
- FmHA Instruction 1955-B, Section 1955.66(d)(2) is amended to require that not later than 90 days after acquisition, the property shall be offered only for sale in accordance with the priorities established in section 1955.66(d)(2)(i)-(iii).
- FmHA Instruction 1955-A, Section 1955.9 is amended to require the following.
- If an Indian borrower-owner does not voluntarily convey the real property serving as security for their FSA loan, not later than 30 days before the foreclosure sale, FSA shall provide the Indian borrower-owner with the following options:
  - The Indian borrower-owner may require FSA (the Secretary of Agriculture) to assign the loan and security instruments to the Secretary of the Interior if the Secretary of the Interior agrees to an assignment releasing the Secretary of Agriculture from all further responsibility for collection of any amounts with regard to the loan secured by the real property.
  - The Indian borrower-owner may require FSA (the Secretary of Agriculture) to complete a transfer and assumption of the loan to the tribe having jurisdiction over the reservation in which the real property is located if the tribe agrees to the assumption.

**Note:** If the tribe assumes a loan, the following shall occur:

- FSA shall not foreclose the loan because of any default that occurred before the date of the assumption
- the assumed loan shall be for the lesser of the outstanding principal and interest of the loan or the fair market value of the property
- the assumed loan shall be treated as though it is a regular Indian Land Acquisition Loan made in accordance with FmHA Instruction 442.11.

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**2 Statutory Changes and Implementation (Continued)**

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**I  
Changes for  
Inventory  
Property  
Located Within  
an Indian  
Reservation  
(Continued)**

- If an Indian borrower-owner does not voluntarily convey their real property to FSA, not less than 30 days before a foreclosure sale of the property, FSA shall provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of the following.
    - the sale
    - the fair market value of the property
    - the ability of the Indian borrower-owner to require the assignment of the loan and security instruments either to the Secretary of the Interior or to the tribe (and the consequences of either action) as provided above.
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**J  
Implementation**

Effective immediately upon the receipt of this notice, all of the statutory changes and limitations outlined in this notice will become effective.

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**K  
Contacts**

State Offices should address questions regarding this notice to LSPMD, through the Area Office.

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