

For: State and County Offices

Processing Accelerations and Other Actions Before Liquidation of Loans to Native Americans

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

As a result of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act), revisions regarding Native Americans were made to RD Instruction 1955-A. These revisions relate to additional rights and notification actions before liquidation of real estate. These actions apply to Native American borrowers whose real estate security is 1 of the following:

- located within a Federally Recognized Indian Reservation
- trust or restricted land located within the boundaries of a former reservation of a Federally Recognized Indian Tribe in Oklahoma
- on 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.

The 1996 Act amended the Consolidated Farm and Rural Development Act to provide that this group of borrowers be notified that they can request FSA to assign notes and security instruments either to the Secretary of the Interior or to the Tribe with jurisdiction over the Reservation in which the property is located, or voluntarily convey the security to FSA. The notification of these additional rights will only take place under either of the following conditions:

- in conjunction with an acceleration of a loan issued according to this notice
- after an acceleration of a loan if the acceleration was issued before the date of this notice.

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Disposal Date	Distribution
January 1, 2001	State Offices; State Offices relay to County Offices

Notice FLP-62

1 Overview (Continued)

A

Background (Continued)

This additional effort will require not only borrower notification but third party notification as well. It requires that FSA advise the Tribe where the property is located that FSA may foreclose on land owned by an Indian borrower within the Reservation. Indian borrowers are to be advised of their right to require FSA to assign the loan to the Secretary of the Interior, if they are willing to accept it, or to the Tribe, if the Tribe is agreeable to accepting the loan.

B

Purpose

This notice provides consistent nationwide formats for notifying Native American FSA borrowers and their Tribes of additional borrower rights to implement RD Instruction 1955.9(c)(2).

Exhibit 1 provides the Guide Letter format to notify the borrower when the loan has already been accelerated by previous acceleration notice.

Exhibit 2 provides the Guide Letter format to accelerate the account and to notify the borrower of rights. After the date of this notice, this Guide Letter format will be used for the acceleration of all loans of Native American borrowers which are secured by land located within a Native American Reservation as described in this notice.

Exhibit 3 provides the Guide Letter format for notification of the Tribe.

Exhibit 4 provides more specific information on borrower rights under the 1996 Act and must be attached to each Exhibit 1 and Exhibit 2 letter sent pursuant to this notice.

Notice FLP-62

2 Action

A

Responsibilities

The Farm Loan Manager responsible for servicing these accounts must:

- ensure that all loan servicing actions and any appeals have been concluded or exhausted before sending a Native American borrower either an Exhibit 1 or Exhibit 2 letter
 - notify the borrowers affected by this notice by using either of the following:
 - for borrowers whose loans have already been accelerated, the Guide Letter in Exhibit 1 **and** Exhibit 4
 - for borrowers whose loans have **not** previously been accelerated, the Guide Letter in Exhibit 2 (signed by DD) **and** Exhibit 4
 - notify the Tribe using the Guide Letter in Exhibit 3 of any Exhibit 1 or 2 letters issued to borrowers who have pledged as collateral Reservation land within such Tribe's jurisdiction
 - refer to Notice FLP-63 for processing borrower requests for an assignment of a loan to the Tribe or the Secretary of the Interior.
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B

Contact

Refer questions about this notice to Robert Zimmerman, LSPMD at 202-690-4011.

C

Obsolete Material

Notice FLP-18 is obsolete.

Guide Letter Format to Notify the Borrower with an Accelerated Loan Account of the Borrower's Rights

Borrower
Address of Borrower

Dear (Borrower):

We have reviewed your account and have determined that your loan account was accelerated on (Date) after all primary and preservation servicing options under the Consolidated Farm and Rural Development Act (CONACT) were addressed.

Under section 335 of the CONACT (7 U.S.C. 1985), additional options are available for the liquidation or settlement of your account with the Farm Service Agency (FSA).

You must inform this office in writing within 60 calendar days from the date of this notice of your decision to elect one of the following options:

Option A You may pay your FSA indebtedness in full.

Option B You may request the Tribe, having jurisdiction over the reservation in which the real property is located, be assigned the loan from FSA. FSA will forward your assignment request along with all other applicable loan information for Tribal consideration and determination.

If the Tribe agrees to accept the assignment within 30 calendar days after our notification to the Tribe of your request, the following will occur:

1. FSA will not foreclose the loan because of any default that occurred before the date of assignment.
2. The Tribe will pay FSA the lesser of the amount owed on the debt or the fair market value of the collateral that secures the loan in exchange for the assignment of your loan to the Tribe.

Option C You may voluntarily convey the security to FSA.

Subject to hazardous substance review, we would credit your account with the value of the property or the total debt, whichever is greater.

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Guide Letter Format to Notify the Borrower with an Accelerated Loan Account of the Borrower's Rights (Continued)

Option D You may request FSA assign the loans and security instruments to the Secretary of the Interior.

If you request this option, FSA will send your loan information to the Secretary of the Interior for review of your request. If the Secretary of the Interior agrees to accept the assignment of your loan, your loan will be assigned to the Secretary of the Interior, and FSA will no longer be responsible for the collection or servicing of your loan. The Secretary of the Interior does not have to accept your request for the assignment of your loan.

Option E You may sell the property to a purchaser of your choice.

1. You can sell your property to a buyer of your choice for cash at a price not less than present market value of the property.
2. You can sell the property to a buyer of your choice by "transfer and assumption" if the buyer qualifies for loan transfer under FSA regulations, and if the property is sold for not less than its present market value.
3. Your chosen property purchaser must have the financial ability to accomplish the property purchase within a reasonable period of time, i.e., within 90 calendar days of your notification to FSA of your selection of this option.

A copy of this notice and FSA's determination of the value of the real estate security is being provided to the Tribe that has jurisdiction over the Reservation in which the real estate security is located.

We are also enclosing a more detailed explanation of the options which are available to you.

WARNING: Your response must be in writing and received at this office within 60 calendar days from the date of this letter. Failure to respond to this letter will result in immediate referral for foreclosure action.

Sincerely,

cc: Tribe
Area Office, BIA
SED/FLC
DD

Guide Letter Format to Accelerate FLP Accounts Held by a Native American Borrower and Secured by Real Estate Located within a Recognized Reservation and to Notify the Borrower of Its Rights

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Borrower
Address of Borrower

Subject: NOTICE OF ACCELERATION OF YOUR DEBT TO THE FARM SERVICE AGENCY, DEMAND FOR PAYMENT, AND NOTICE OF ADDITIONAL RIGHTS PRIOR TO FORECLOSURE

Dear (Borrower):

The entire indebtedness due Farm Service Agency (FSA) pursuant to the promissory notes and assumption agreements described below is now declared immediately due and payable. Such promissory notes and assumption agreements are described as follows:

<u>Type of Instrument</u>	<u>Date of Instrument</u>	<u>Amount</u>
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The promissory notes and assumption agreements are secured by real estate mortgages, deeds of trust, security agreements, financing statements, etc. described as follows:

<u>Type of Instrument</u>	<u>Date of Instrument</u>	<u>Place of Recordation (Filing)</u>
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<u>Recorded In:</u>	<u>Book No.</u>	<u>Record under Document No.</u>
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This acceleration of your indebtedness is made in accordance with the authority granted in the above-described instruments.

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Guide Letter Format to Accelerate FLP Accounts Held by a Native American Borrower and Secured by Real Estate Located within a Recognized Reservation and to Notify the Borrower of Its Rights (Continued)

The reason for the acceleration of your indebtedness is as follows:

(If the borrower is in monetary default, list this as one reason for accelerating. If the borrower is not in monetary default, see §1955.15(d)(2)(ii).)

The indebtedness due is \$ _____ unpaid principal, and \$ _____ unpaid interest, as of _____, _____, plus additional interest accruing at the rate of \$ _____ per day thereafter, plus any advances made by FSA for the protection of its security and interest accruing on any such advances. Unless full payment of your indebtedness is received, made by one of the methods described below, within 60 calendar days from the date of this letter, FSA will foreclose the above described security instruments and to pursue any other available remedies.

Under section 335(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985(e)), additional options are available for the liquidation or settlement of your account with FSA.

You must inform this office in writing within 60 calendar days from the date of this notice of your decision to elect one of the following options:

Option A You may pay your FSA indebtedness in full.

Option B You may request the Tribe, having jurisdiction over the reservation in which the real property is located, be assigned the loan from FSA. FSA will forward your assignment request along with all other applicable loan information for Tribal consideration and determination.

If the Tribe agrees to accept the assignment within 30 calendar days after our notification to the Tribe of your request, the following will occur:

1. FSA will not foreclose the loan because of any default that occurred before the date of assignment.
2. The Tribe will pay FSA the lesser of the amount owed on the debt or the fair market value of the collateral that secures the loan in exchange for the assignment of your loan to the Tribe.
3. The Tribe may pay for the purchase of the loan assignment over time under the terms and conditions of the Indian Tribal Land Acquisition Program (ITLAP).

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Guide Letter Format to Accelerate FLP Accounts Held by a Native American Borrower and Secured by Real Estate Located within a Recognized Reservation and to Notify the Borrower of Its Rights (Continued)

Option C You may voluntarily convey the security to FSA.

Subject to hazardous substance review, we would credit your account with the value of the property or the total debt, whichever is greater.

Option D You may request FSA assign the loans and security instruments to the Secretary of the Interior.

If you request this option, FSA will send your loan information to the Secretary of the Interior for review of your request. If the Secretary of the Interior, within 60 calendar days of our forwarding of your request, agrees to accept the assignment of your loan, FSA will no longer be responsible for the collection or servicing of your loan. The Secretary of the Interior does not have to accept your request for the assignment of your loan.

Option E You may sell the property to a purchaser of your choice.

1. You can sell your property to a buyer of your choice for cash at a price not less than present market value of the property.
2. You can sell the property to a buyer of your choice by “transfer and assumption” if the buyer qualifies for loan transfer under FSA regulations, and if the property is sold for not less than its present market value.
3. Your chosen property purchaser must have the financial ability to accomplish the property purchase within 90 calendar days of your notification to FSA of your selection of this option.

If you have not been advised of your rights to request deferral of payments or other servicing options, you should contact the Farm Loan Manager at the above mentioned address within 15 days of the receipt of this notice. (**Note: Omit this paragraph when accelerating accounts for failure to graduate or accelerating accounts of Non-Program Loan debtors.)

You do not have any right to appeal this decision to accelerate your FSA debt to any official of the U. S. Department of Agriculture.

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Guide Letter Format to Accelerate FLP Accounts Held by a Native American Borrower and Secured by Real Estate Located within a Recognized Reservation and to Notify the Borrower of Its Rights (Continued)

A copy of this notice and FSA's determination of the value of the real estate security is being provided to the Tribe that has jurisdiction over the Reservation in which the real estate security is located.

We are also enclosing a more detailed explanation of the options which are available to you.

WARNING: Your response must be in writing and received at this office within 60 calendar days from the date of this letter. Failure to respond to this letter will result in immediate referral for foreclosure action.

Sincerely,

District Director

cc: Tribe
Area Office, BIA
SED/FLC
DD

Guide Letter Format for Notification of the Tribe

(Tribe)
(Address)

SUBJECT: (Borrower's Name)

Dear Sir:

This letter concerns (borrower's name) Farm Service Agency (FSA) real estate, and if applicable chattel security, and the options available in lieu of foreclosure on (number) acres with a market value of (amount).

Attached is a copy of the notice (with all attachments) which was sent to the borrower who has debt obligations with FSA that are in serious default. The borrower has pledged real estate security for this debt and that security lies within the jurisdiction of your Tribe's Reservation.

Under section 335(e) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1985(e)), one of the liquidation options offered the borrower is the assignment of the borrower's FSA loans to the Tribe. The Tribe would purchase the assigned loan at the lesser of the market value of the property securing the loan or the outstanding principal and interest due under the loan.

The Tribe may pay the value of the assigned loan under terms and conditions similar to an Indian Tribal Land Acquisition Program (ITLAP) loan. All ITLAP servicing options may be applied to such loans, except any writedown servicing options are not available for such loans.

We encourage you to contact the borrower to discuss these options and contact FSA for information on requirements necessary to complete the transaction.

A copy of our letter to the borrower is enclosed. If the borrower has not responded to our notice in writing within 60 calendar days of the date of this letter, the matter will be referred for collection and foreclosure.

Sincerely,

Attachments

cc: Borrower
SED/FLC
DD
Area Office, BIA

Information on Borrower Rights Under the 1996 Act

EXPLANATION AND APPLICABILITY OF OPTIONS OFFERED TO NATIVE AMERICAN BORROWERS AND INDIAN TRIBES WITH RESPECT TO REAL PROPERTY SECURING FARM SERVICE AGENCY LOANS WHICH IS LOCATED WITHIN THE BOUNDARIES OF A FEDERALLY RECOGNIZED INDIAN RESERVATION**I. INDIAN RESERVATION**

The term "Indian Reservation" means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized 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 Tribe.

II. BORROWER CONSULTATION WITH TRIBE

Borrowers may consult with the Tribe that has jurisdiction over the Reservation in which the real property is located to determine if State or Tribal law provides rights and protections that are more beneficial than those provided the borrower under the Consolidated Farm and Rural Development Act. After such consultation, you may advise us of your findings (citing applicable authorities) and we will consider such findings for possible application in your loan.

III. BORROWER RIGHT TO VOLUNTARILY CONVEY REAL ESTATE TO FARM SERVICE AGENCY

A Native American borrower whose loan is secured by real property located within the boundaries of an Indian Reservation may voluntarily convey the real property to the Farm Service Agency, and, in the absence of hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Farm Service Agency (FSA) will agree to accept that voluntary conveyance. Real property so conveyed will be placed in the inventory of FSA.

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Information on Borrower Rights Under the 1996 Act (Continued)

IV. GOVERNMENT ACTIONS IF THE REAL PROPERTY IS NOT CONVEYED OR THE DEBT OWED FSA IS NOT OTHERWISE RESOLVED

If, after notification of, and consideration of, delinquent borrower servicing rights, the borrower does not voluntarily convey the real property to FSA or otherwise resolve the outstanding debt owed to FSA:

- 1) FSA may foreclose on the property;
- 2) in the event of foreclosure, the property will be offered for sale;
- 3) FSA must offer a bid for the property at the foreclosure sale that is equal to the fair market value of the property, or the outstanding principal and interest of the loan, whichever is higher;
- 4) the property may be purchased through the foreclosure sale by another party; and
- 5) if the property is purchased by another party at the foreclosure sale, the property will not be placed in the inventory of FSA and the borrower will forfeit, and will not have access to, the rights and protections provided under the Consolidated Farm and Rural Development Act.

V. PRIORITY ESTABLISHMENT FOR SALE OF INVENTORY REAL ESTATE

Not later than 90 calendar days after FSA acquires ownership of real property, whether such ownership was gained through voluntary conveyance by the borrower, or through a successful bid by the FSA at a foreclosure sale, FSA will afford an opportunity to purchase the real property in accordance with the order of priority established by the Tribe having jurisdiction over the Indian Reservation within which the real property is located. If no order of priority is established by the Tribe, the real property will be sold in the following order: (1) to a member of the Tribe that has jurisdiction over the Reservation within which the real property is located; (2) to an Indian corporate entity; or (3) to the Tribe.

The governing body of the Indian Tribe having jurisdiction over an Indian Reservation may revise, or re-arrange, the order of priority stated above, and may restrict the eligibility for purchase to: (1) persons who are members of the Tribe; (2) Indian corporate entities that are authorized by the Tribe to purchase lands within the boundaries of such Reservation; or (3) the Tribe itself.

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Information on Borrower Rights Under the 1996 Act (Continued)

VI. TRANSFER OF INVENTORY LAND FROM THE SECRETARY OF AGRICULTURE TO THE SECRETARY OF INTERIOR

If real property, which FSA obtained from the borrower, is not purchased under paragraph V above, and the Tribe having jurisdiction over the reservation where the real property is located is unable to purchase the real property, FSA will transfer the real property to the Secretary of the Interior who will administer the real property as if the real property were held in trust by the United States for the benefit of the Tribe.

From the income generated from the property, the Secretary of the Interior will pay those State, county, municipal, or other local taxes to which the real property was subject at the time of acquisition by FSA until the earlier of: (1) the expiration of the 4-year period beginning on the date on which the real property was transferred; or (2) such time as the lands are transferred into trust.

When real property is transferred to the Secretary of the Interior, FSA will have no further responsibility for collection of any amounts with regard to the farm program loan which had been secured by real property, nor with regard to any lien arising out of the loan transaction, nor for repayment of any amount with regard to the loan transactions or liens to the Treasury of the United States.

The Secretary of the Interior will succeed to all rights, title and interest of FSA in the real estate, including the obligation to remit to the Treasury of the United States, amounts in repayment of the original loan. Repayment will occur in that after the payment of required taxes, all income generated from the property will be deposited as miscellaneous receipts in the Treasury of the United States until the amount deposited is equal to the lessor of: (1) the amount of the outstanding lien of the United States, as of the date the property was acquired by FSA; (2) the fair market value of the real property, as of the date of the transfer to the Secretary of the Interior; or (3) the capitalized value of the property, as of the date of transfer to the Secretary of the Interior.

When the total amount that is required to be deposited with respect to any real property has been deposited into the Treasury of the United States, title to the real property will be held in trust by the United States for the benefit of the Tribe having jurisdiction over the Indian Reservation within which the real property is located.

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Information on Borrower Rights Under the 1996 Act (Continued)

Notwithstanding any other provision, the Tribe having jurisdiction over the Indian Reservation within which the real property is located may, at any time after the real property has been transferred to the Secretary of the Interior, offer to pay the remaining amount of the lien, or the fair market value of the real property, whichever is less. Upon payment of such amount, title to such real property will be held by the United States in trust for the Tribe and such trust or restricted lands that have been acquired by FSA foreclosure or voluntary transfer, and transferred to an Indian person, entity, or Tribe, will be deemed to have never lost trust or restricted status.

VII. FARM SERVICE AGENCY FORECLOSURE SALE BIDDING REQUIREMENTS

At a foreclosure sale of real property described in this Exhibit, FSA will offer a bid for the property being foreclosed that is equal to the higher of: (1) the fair market value of the property; or (2) the outstanding principal and interest of the loan.

If a hazardous substance is located on the property and FSA takes remedial action to protect human health or the environment if the property is taken into inventory, FSA bid at the higher of the fair market value or the outstanding debt balance will apply only if FSA determines that it is in the best interest of the Federal Government to offer such bid.