

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Direct Loan Servicing – Special
and Inventory Property Management
5-FLP**

Amendment 44

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraphs 2 A, 246 B, 247 B, 248 B, 249 B, 346 F, and 404 B have been amended to reference 32-AS instead of 25-AS.

Subparagraph 4 A has been amended to add administrative procedures of this handbook under exception authority.

Subparagraphs 4 C and 462 G have been added to delegate limited Administrator's Exception Authority to SED's.

Subparagraphs 41 A and 45 C have been amended to clarify that accounts with loans on deferral may not be considered for DSA.

Subparagraph 42 B has been amended to require that Exhibit 10 be issued within 15 calendar days after service center receives notification of the first disaster designation for a county during a fiscal year.

Subparagraph 43 B has been amended to require that records provided by the borrower be retained in the case file.

Subparagraph 45 A has been amended to require that DSA eligibility determination regarding insufficient income as a direct result of the disaster be fully explained in the credit presentation

Subparagraphs 66 A has been amended to provide an example for sending mandatory PLS notice after borrower promises to pay current.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 68 A has been amended to require that a copy of the FSA-2510 or FSA-2514 sent to the primary borrower be included and marked "Courtesy Copy." and that cosigners are considered borrowers and are liable for the debt.

Subparagraphs 131 A, 131 B, 145 A, 160 B, 197 C, 197 D, 246 B, 247 B, 248 C, 249 D, and 322 C have been amended to note that PLS transactions processed with the DLS Special Servicing system will be systematically created and sequenced and that manual user creation of these transactions is not required or authorized.

Subparagraph 226 A and Exhibit 1 have been amended to clarify approval authority for PLS when the borrower has already received PLS at least 2 times in the previous 5 years.

Subparagraph 230 B has been amended to correct CFR language.

Subparagraph 284 B has been amended to address manufactured and mobile homes.

Subparagraph 322 B has been amended to address CMV for distressed borrowers who become 90 days past due.

Subparagraph 344 C has been amended to clarify use of FSA-2525 if Shared Appreciation is not paid or amortized by the due date.

Subparagraph 421 H has been amended to reference 1-FLP Exhibit 17.

Subparagraph 462 A has been amended to address use of Administrator's Exception for real estate sales at auction.

Subparagraph 567 C has been amended to provide clarification on the use of Exhibit 60 including the use of Administrator's Exception authority.

Subparagraph 603 D has been added to provide direction regarding third party purchase of FSA's lien instruments.

Subparagraph 781 C has been amended to remove Pigford 1 Consent Decree processes.

Subparagraph 782 N has been amended to provide direction on handling deposits retained by FSA after purchaser fails to close.

Exhibit 2 has been amended to provide definition for "Cosigner" and "Security Value" and to clarify definitions for "Beginning Farmer" and "Operator".

Exhibit 4 has been amended to clarify monthly holding period.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Exhibit 17 has been amended to provide clarification for NP loans and CY 2018 constants previously issued in Notice FLP-793. State Offices must issue their annual eDALR\$ constants no later than December 31st of each year.

Exhibit 60 has been amended to reference location of electronic form which may be used by officials to complete calculations.

Page Control Chart		
TC	Text	Exhibit
	1-1, 1-2	1, pages 5, 6
	1-5 through 1-8	2, pages 3, 4
	2-1 through 2-8	pages 7, 8
	3-1, 3-2	pages 21, 22
	3-5 through 3-30	pages 25-28
	4-1, 4-2	4, pages 1, 2
	4-2.5, 4-2.6 (add)	17, pages 9, 10
	4-31, 4-32	pages 37-42
	4-51, 4-52	60, pages 1, 2
	5-23, 5-24	page 3
	6-31 through 6-36	page 4 (add)
	6-39, 6-40	
	6-61 through 6-66	
	7-5, 7-6	
	8-3	
	8-4 (add)	
	9-7, 9-8	
	9-11 through 9-16	
	11-7 through 11-10	
	11-51	
	13-1 through 13-4	
	16-31 through 16-34	
	17-3, 17-4	
	21-17, 21-18	
	21-18.5, 21-18.6 (remove)	
	21-21, 21-22	

Part 1 Introduction and Purpose

1 Purpose and Sources of Authority

A Handbook Purpose

This handbook is designed to assist FSA in understanding the following:

- regulations governing:
 - direct loan servicing – special
 - inventory property management
- roles and responsibilities in implementing those regulations and other responsibilities in direct loan servicing – special and inventory property management.

B Sources of Authority

The sources of authority for this handbook include the following:

* * *

- 7 CFR Part 766 for servicing borrowers who are financially distressed or delinquent
- 7 CFR Part 767 for managing, leasing, and selling inventory property
- various laws and statutes passed by Congress, including CONACT * * *.

C Regulation References

Text in this handbook that is published in the CFR is printed in **bold** text. The CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement in the CFR
- may be used to support adverse FSA decisions.

Note: Cross-references printed in bold are citing a CFR section. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found in is printed in nonbold text in parenthesis (within the bold text).

Example: Subparagraph 103 C provides “[7 CFR 766.105(b)] (1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) (subparagraph B) of this section.”

Note: The text “**paragraphs (a)(2) through (4) of this section**” refers to 7 CFR 766.105 (a)(2) through (4). The nonbold reference indicates that 7 CFR 766.105(a) is included in subparagraph 103 B.

2 Related References

A Related FSA Handbooks

The following FSA handbooks concern FLP.

IF the area of concern is about...	THEN see...
appeals and mediation	1-APP.
civil rights compliance and administration for FSA programs	18-AO.
common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX	1-CM.
debt collection and resolution	7-FLP.
direct loan making	3-FLP.
direct loan regular or routine servicing	4-FLP.
disaster designations	1-DIS.
employee development and training	6-PM.
environmental risk management	2-EQ.
general and administrative regulations governing FLP, and implementing NAD final determinations	1-FLP.
guaranteed loan making and servicing	2-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, Land Contract Guarantee Program, and servicing of minor loan programs	6-FLP.
personnel management, such as employee conflict of interest	3-PM.
policies and procedures for the acquisition of supplies, equipment, and services	42-AS.
procedures for collecting, maintaining, or disclosing data or information about an individual	3-INFO.
procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
processing collections and canceling loan checks and payments	3-FI.
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
--records management	32-AS.--

B Handbook Link

The Handbook Link web site at

<http://intranet.fsa.usda.gov/dam/handbooks/handbooks.asp> provides links to useful web sites.

3 FLP Forms (Continued)

E State-Modified National Forms

*--See 1-FLP, subparagraphs 3 E and 3 H.

F State-Created Forms

See 1-FLP, subparagraphs 3 F and 3 H.

G Other Sources of Forms

See 1-FLP, subparagraph 3 G.--*

4 Agency Exception Authority

A General

[7 CFR 766.401, 767.251] On an individual case basis, the Agency may consider
--granting an exception to any regulatory (or 5-FLP) requirement or policy of this part--
if:

(i) The exception is not inconsistent with the authorizing statute or other applicable law; and

(ii) 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.

Authority for granting approval of an exception is held only by the Administrator and DAFLP.

A decision as to whether an exception request will be submitted will be at FSA's discretion and is not appealable.

A request for an exception to program regulations should not be pursued under normal servicing conditions. FSA considers requests submitted under extraordinary circumstances only.

B Submitting Exception Requests

SED must submit an exception request by e-mail to DAFLP at **SM.FSA.DCWa2.AdminException** or **AdminException@wdc.usda.gov**. The e-mail subject should read "Administrator's Exception to (cite 5-FLP subparagraph) – (Borrower's Name and State)". An attachment must fully describe the status of the account including:

- a brief background on the case
- total outstanding FSA indebtedness, loan types, and amounts
- current status of the account

Note: If it is delinquent, where is it in Primary Loan Servicing?

- type of security (chattel or real estate) and estimated value
- prior liens
- proposed plan of action that warrants the exception request
- what procedure is to be waived

4 Agency Exception Authority (Continued)

B Submitting Exception Requests (Continued)

- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- discussion of graduation
- how the action is in the best financial interest of the Government
- additional information SED thinks is needed to review the case.

*--C Liquidation Appraisal Exception Authority Delegated to SED

See subparagraph 462 G.--*

5 Introduction to Direct Loan Servicing – Special and Inventory Property Management

A Direct Loan Servicing – Special

[7 CFR 766.1(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.**

[7 CFR 766.1(b)] The Agency services FLP direct 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 (paragraph 131) and deferral according to § 766.109 (paragraph 159)**

(2) The Agency does not service Non-program loans under this part except where noted.

[7 CFR 766.1(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.

**5 Introduction to Direct Loan Servicing – Special and Inventory Property Management
(Continued)**

B Inventory Property Management

[7 CFR 767.1(a)] 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.**

[7 CFR 767.1(b)] The Agency maintains, manages and sells inventory property as necessary to protect the Agency’s financial interest.

6-40 (Reserved)

Part 2 Disaster Set-Aside (DSA)**41 Purpose****A Intent of DSA**

[7 CFR 766.51] (a) DSA is available to borrowers with FLP 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) DSA will not be used to circumvent the servicing available under Parts 3 and 4.

***--Note:** Accounts with loans on full or partial deferral may not be considered for DSA.--*

(d) Non-program loans may be serviced under this subpart for borrowers who also have FLP program loans.

FLP loans that may be serviced under this part are FO, OL, CL, SW, EM, EE, ST, RL, and RHF. NP's may be serviced under this part for borrowers who also have any program loans as noted in this subparagraph.

Note: YL's are **not** eligible for servicing under this part.

DSA is only intended to relieve some of the borrower's immediate and temporary financial stress caused by a disaster. When the operation has demonstrated that it cannot make the payments due and requires restructure, primary loan servicing under Parts 3 and 4 will be used. DSA will not be used with PLS.

B Authority

Any authorized agency official may approve or reject all disaster set-aside transactions.

42 Notifying Borrowers of DSA**A When FSA Must Notify Borrowers**

When the President, the Secretary of Agriculture, or the Administrator designates a county as a disaster area, FSA will make the DSA program available to its borrowers.

FSA will notify a borrower of DSA availability only if both:

- the borrower was an FLP borrower at the time of the disaster
- the borrower actively operated a farm in a county designated a disaster area or a county contiguous to a designated county.

FSA will not notify borrowers whose FLP loans have been accelerated, restructured after the disaster, have only NP's or YL's, or are paying FSA under a debt settlement agreement.

B How FSA Notifies Borrowers

--Borrowers will be notified of DSA availability by sending out Exhibit 10 within 15 calendar days after the service center receives notification of the first disaster designation for a county during a calendar year. This will inform all eligible borrowers that the DSA program is-- available during disaster designations. The letter will list all outstanding disaster designations at the time.

43 DSA Applications**A Requests for DSA**

[7 CFR 766.54(a)] (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.

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

B Required Financial Information

[7 CFR 766.54(b)] (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.

The borrower must also provide any documentation required to support the farm operating plan as required in paragraph 45, such as 3 years of production, income and expense records.

--Records provided by the borrower will be retained in the case file.--

44 Application Tracking

A Tracking DSA Requests

The authorized agency official must date stamp the borrower's DSA request on the date FSA received it. The application will be inputted and tracked through to completion in DLS under Security Instruments Other Workflows.

The authorized agency official **must**, at a minimum, record the following in DLS:

- *--purpose type
- request date
- final disposition
- final disposition date
- disaster designation code
- set-aside addendum date
- installment date
- disaster set-aside amount
- amount approved.--*

45 DSA Eligibility and Limitations

A Borrower Eligibility

[7 CFR 766.52(a)] 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 (see operator definition in Exhibit 2). 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 must be fully explained in the FBP credit presentation). 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 official;**
 - (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 (1-CM).**
- (8) The borrower must not become 165 days past due before the appropriate Agency DSA documents are executed.**

The borrowers must remain eligible until FSA-2501 is executed.

45 DSA Eligibility and Limitations (Continued)**B Loan Eligibility**

[7 CFR 766.52(b)] (1) Any FLP loan to be considered for DSA must have been outstanding at the time the natural disaster occurred.

(2) All of the borrower's FLP program and Non-program loans must be current after the Agency completes a DSA of the scheduled installment.

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

(4) The Agency has not accelerated or applied any 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.

The loans must remain eligible until FSA-2501 is executed.

***--C Loans on Deferral**

[7CFR 766.51] (b) DSA is not intended to circumvent other servicing available under this part.

(c) DSA will not be used to circumvent the servicing available under Parts 3 and 4.

Accounts with loans on full or partial deferral may not be considered for DSA.--*

D Borrowers in Bankruptcy

A borrower paying FSA debts under a confirmed bankruptcy plan may be eligible to receive relief similar to DSA through the court by modifying the bankruptcy plan. See Part 11, Section 1.

E Borrowers Paying Under a Debt Settlement

A borrower paying FSA under a Debt Settlement Adjustment Agreement is not eligible for DSA.

45 DSA Eligibility and Limitations (Continued)

F Limitations

[7 CFR 766.53(a)] The DSA amount is limited to the lesser of:

(1) The first or second scheduled annual installment on the Agency loans due after the disaster occurred; or

(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.

[7 CFR 766.53(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.

[7 CFR 766.53(c)] Recoverable cost items may not be set aside.

46 DSA Approval

A Eligibility Determination

[7 CFR 766.55] Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.

--The authorized agency official must prepare a credit presentation in FBP as part of the eligibility determination. Borrowers will be notified of their eligibility by letter as soon as possible after the determination is made. The notification will detail each loan that is eligible for DSA, forms required for closing, and any applicable security requirements. This letter should be mailed or hand delivered.--

B Borrower Acceptance of DSA

[7 CFR 766.57] The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.

Subject to the 165-calendar-day limitation in subparagraph 45 A, the borrower must sign FSA-2501 within 45 calendar days (48 calendar days if the letter is sent by mail to allow *--3 calendar days for delivery) of the date of FSA's approval letter for each loan DSA. Any exception must be requested according to paragraph 4.

If the borrower does not execute all required agency documents within the required timeframe, the DSA request will be rejected and the authorized agency official will notify the borrower per 5-FLP, subparagraph 47 A.--*

C Required Forms

In closing a borrower's approved DSA request, the authorized agency official will:

- prepare an original and 2 copies of FSA-2501
- staple the signed original on top of the original promissory note or assumption agreement filed in the fire-proof safe
- staple 1 of the 2 copies of FSA-2501 to the copy of the promissory note or assumption agreement filed in position 2 of the borrower's case file
- give the second copy of FSA-2501 to the borrower.

D Modifying FSA-2501

FSA-2501 may need to be modified and issued as a State form to comply with individual State laws. If SED, with OGC concurrence, modifies the form, it must still contain the date of the set-aside and the original date of the installment.

Part 3 Loan Servicing – General Procedures

Section 1 Notifying Borrowers of Loan Servicing

66 Borrower Notification

A General Requirements

[7 CFR 766.101(a)] The Agency will provide servicing information under this section to borrowers who:

[7 CFR 766.101(a)] (1) Have a current farm operating plan that demonstrates the borrower is financially distressed;

[7 CFR 766.101(a)] (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;

The authorized agency official must provide a loan servicing notification package to a borrower before initiating liquidation, accelerating borrower loan accounts, or repossessing or foreclosing FSA security, unless the borrower was previously notified as 90 calendar days past due or nonmonetary default and is already being serviced according to this part.

Example: A borrower misses his January 1, 2006, payment and is properly notified when he becomes 90 calendar days past due. Processing is then delayed and while FSA continues PLS he makes the January 1, 2006, payment on January 15, 2007. At this point, he is less than 90 calendar days past due; however, since the delinquency was not cured at any point, FSA continues to process PLS. He is not renotified.

If a loan is past due, the far left-hand column of the 540 Report shows the number of days that the loan is past due. The code “PDD” (Past Due Days) is shown beside the number. The 540 Report should be printed and reviewed immediately by the authorized agency official once it becomes available. Both the “Borrowers with Loans 90 Days Past Due” and the “Borrowers with Loans Less Than 90 Days Past Due” should be reviewed to find all accounts that will need to be notified of primary loan servicing in the coming month.

The borrower will be notified within 15 calendar days of becoming 90 calendar days past due.

***--Example:** A borrower’s annual installment is due January 1. The borrower fails to make the payment and a local agency official contacts the borrower to discuss the missed payment. The borrower promises to sell steers on May 1st to make the annual installment. The agency official acknowledges the proposal, but reminds the borrower that PLS notices must be sent if the account becomes 90 days past due. The account is shown as 90 days past due on the April 540 Report, therefore, the local agency official must send the borrower the required servicing package and enters the PLS action in DLS Special Servicing.--*

66 Borrower Notification (Continued)**A General Requirements (Continued)****[7 CFR 766.101(a)] (3) Are in non-monetary default on any loan agreements;**

For further information about compliance with loan agreements, see 4-FLP, Part 6.

The borrower's noncompliance must be determined according to 4-FLP, subparagraph 100 before being provided with Primary Loan Servicing notifications.

[7 CFR 766.101(a)] (4) Have filed bankruptcy;

When FSA learns that a borrower has filed for bankruptcy, FSA will service the borrower's account according to Part 11.

[7 CFR 766.101(a)] (5) Request this information;

The authorized agency official will record a borrower's request for a loan servicing *--notification package in the borrower's FBP running record or place the written request in--* the borrower's file.

[7 CFR 766.101(a)] (6) Request voluntary conveyance of security;

The authorized agency official will send a loan servicing notification package to a borrower requesting full liquidation by voluntary conveyance, unless the borrower was previously notified and is already being serviced according to this part.

[7 CFR 766.101(a)] (7) Have only delinquent SA; or

FSA will notify delinquent NP borrowers who have only SA amortization agreements.

[7 CFR 766.101(a)] (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.

68 Other Loan Servicing Notification Requirements

A Notifying All Parties on a Note of Loan Servicing

--For PLS purposes, all parties who signed the promissory note, including cosigners, are-- considered borrowers and are liable for all the debt.

When a borrower subject to loan servicing notification is:

- an entity comprised of 2 or more individuals, the authorized agency official will provide a loan servicing notification package to the entity and each party who signed the promissory note or pledged security for the loan
- a married couple at the same address, the authorized agency official will provide them 1 loan servicing notification package that is addressed to both parties
- a married or divorced couple at different addresses, the authorized agency official will provide a loan servicing notification package to each person at their own address.

Note: A divorced spouse who has left an operation may seek a release of liability. See paragraph 84 for more information on releasing divorced spouses from liability.

All required subsequent notifications are sent in the same manner.

Third parties who pledged property as security will be sent Exhibit 13 whenever FSA-2510 *--or FSA-2514 are sent to the borrower. A copy of the FSA-2510 or FSA-2514 sent to the primary borrower will be included and marked "Courtesy Copy".--*

Borrowers with YL's will be sent Exhibit 14, with the appropriate PLS notification to explain the reason for the notification and their servicing options.

B Internal Administrative Offset Notification

The authorized agency official will send an offset notification according to 7-FLP, Part 3.

C TOP Referral

Delinquent loans will be referred to TOP according to 7-FLP, Part 4.

69-80 (Reserved)

Part 4 Primary Loan Servicing Programs**Section 1 Consolidation and Rescheduling****131 Eligibility and Loan Terms****A Loans Eligible for Consolidation**

[7 CFR 766.107(a)] The Agency may consolidate OL loans if:

- (1) The borrower meets loan servicing eligibility requirements in § 766.104 (paragraph 102);**
- (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 (see 6-CP);**
- (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 (Part 10) of this part; and**
- (9) The loan is not currently deferred, as described in § 766.109 (Section 3), or set-aside, as described in subpart B (Part 2) of this part. The Agency may consolidate loans upon cancellation of the deferral or DSA.**

Note: Stimulus bill loans will **not** be consolidated. Loans obligated with stimulus funds must retain their stimulus loan identifier. Stimulus loans are identified by TOA Codes 564 through 583. See DLS Customer Loan Information Section for TOA codes.

131 Eligibility and Loan Terms (Continued)**A Loans Eligible for Consolidation (Continued)**

eDALR\$ will be used to determine whether consolidation will be used and if a repayment plan can be developed.

When a restructure is processed, DLS transaction codes 5T – Cancel Disaster Set-Aside and 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Consolidation/Reschedule transaction in DLS Special Servicing.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

B Loans Eligible for Rescheduling

[7 CFR 766.107(b)] The Agency may reschedule loans made for chattel purposes, including OL, CL, SW, RL, EE, or EM if:

- (1) The borrower meets loan servicing eligibility requirements in §766.104 (paragraph 102);**
- (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 (Section 3), or set-aside, as described in subpart B (Part 2) of this part. The Agency may reschedule loans upon cancellation of the deferral or DSA.**

eDALR\$ will be used to determine whether a repayment plan can be developed.

When a restructure is processed, DLS transaction codes 5T – Cancel Disaster Set-Aside and 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Consolidation/Reschedule transaction in DLS Special Servicing.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

131 Eligibility and Loan Terms (Continued)

C Loan Terms

[7 CFR 766.107(c)] (1) The Agency determines the repayment schedule for consolidated and rescheduled loans according to the borrower's repayment ability.

(2) Except for CL and RL loans, the repayment period cannot exceed 15 years from the date of the consolidation and rescheduling.

(3) The repayment schedule for RL loans may not exceed 7 years from the date of rescheduling.

(4) The repayment schedule for CL loans may not exceed 20 years from the date of the original note or assumption agreement.

Section 2 Reamortization

145 Eligibility and Loan Terms

A Loans Eligible for Reamortization

[7 CFR 766.108(a)] The Agency may reamortize loans made for real estate purposes, including FO, SW, RL, SA, EE, RHF, CL and EM if:

- (1) The borrower meets the loan servicing eligibility requirements listed in § 766.104 (paragraph 102);**
- (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 (Section 3), or set-aside, as described in subpart B (Part 2) of this part. The Agency may reamortize loans upon cancellation of the deferral or DSA.**

eDALR\$ will be used to determine whether a repayment plan can be developed.

When a restructure is processed, DLS transaction codes 5T – Cancel Disaster Set-Aside and 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Reamortization transaction in DLS Special Servicing.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

145 Eligibility and Loan Terms (Continued)**B Loan Terms**

[7 CFR 766.108(b)] (1) Except as provided in paragraph (b)(2), the Agency will reamortize loans within the remaining term of the original loan or assumption agreement unless a feasible plan cannot be developed or debt forgiveness will be required to develop a feasible plan.

(2) If the Agency extends the loan term, the repayment period from the original loan date may not exceed the maximum number of years for the type of loan being reamortized as set forth below, or the useful life of the security, whichever is less.

(i) FO, SW, RL, EE real estate type, and EM loans made for real estate purposes may not exceed 40 years from the date of the original note or assumption agreement.

(ii) EE real estate-type loans secured by chattels only may not exceed 20 years from the date of the original note or assumption agreement.

(iii) RHF 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.

--(v) CLs may not exceed 20 years from the date of the original note or assumption agreement.--

Section 3 Deferrals**159 Conditions and Operating Plans****A Conditions for approving Deferrals**

[7 CFR 766.109(a)] The Agency will only consider deferral of loan payments if:

(1) The borrower meets the loan servicing eligibility requirements of §766.104 (paragraph 102);

(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.

FSA does not allow net cash reserves for capital purchases beyond those required to develop a feasible plan, as such purchases are not considered operating expenses.

(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.

--eDALR\$ will be used to determine whether a repayment plan can be developed.--

B First Year Plan

The plan developed according to subparagraph 81 H is the first year plan of the deferral.

C Post-Deferral Plan

A post-deferral plan is developed to project the borrower's operations for the year following the deferral period according to subparagraph 160 A.

160 Deferral Period and Associated Restructuring

A Deferral period

[7 CFR 766.109(b)] (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.

Deferrals are beneficial only if the cash available to service the borrower's FSA debt increases in the year after the deferral period ends.

In some cases, such as in a major reorganization of the operation, debt structure, or essential development, it may be necessary to develop and consider plans for multiple years. Justification for determining length of deferral must be well documented in the FBP.

FSA-2026 must identify debt as rescheduled or reamortized with deferral and include the addendum required by FSA-2026 instructions.

B Associated Loan Servicing

[7 CFR 766.109(d)] (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 (paragraphs 131, 145, and 172), as appropriate.

When a restructure is processed, the DLS transaction code 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Consolidation/Reschedule/Reamortization transaction in DLS Special Servicing.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

FSA-2026 rescheduled, reamortized or consolidated for the deferral will show “zero” as the installment due during the period of the deferral if the whole note is deferred. The authorized agency official will determine the amount of interest that will accrue during the deferral period and the installments using eDALR\$ and calculations provided in FSA-2026 instructions.

197 Handling Noncash Credit (Continued)**C Processing Noncash Credit for a Delinquent Borrower**

The authorized agency official will use FSA-2597 as the source document to complete the 3H – Conservation Contract transaction in DLS Special Servicing.

Before the 3H transaction can be processed in DLS, the authorized agency official must process a 1M transaction to reamortize or reschedule the loan with the same effective date as FSA-2535.

This process does **not** apply, however, to loans receiving both a conservation contract and a write-down with SAA. If any loan receives both a conservation contract and write-down with SAA, the authorized agency official must process a 1M transaction, 3H transaction, and 3R transaction in DLS, using the same effective date.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

D Processing Noncash Credit for a Current Borrower

The authorized agency official will use FSA-2597 as the source document to complete the 3H – Conservation Contract transaction in DLS Special Servicing.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

198 Rights and Responsibilities Under Conservation Contract**A Borrower's Rights Under Conservation Contract**

Unless explicitly prohibited by FSA-2535 or a conservation contract management plan, the borrower has the right to:

- prevent trespassing by the general public and control public access to the conservation contract property
- use the conservation contract property for recreational purposes, including hunting and fishing

198 Rights and Responsibilities Under Conservation Contract (Continued)**A Borrower's Rights Under Conservation Contract (Continued)**

- receive economic gain from the leasing of the conservation contract property for recreational use, including hunting and fishing, pursuant to applicable State and Federal hunting and fishing regulations
- retain oil, gas, minerals, and geothermal resources beneath the conservation contract property, provided that the extracting activities are established outside the conservation contract's boundaries and do not adversely affect the conservation contract property
- record title, along with the right to convey and transfer title.

B Borrower's Request for Government Authorization Under FSA-2535

If the borrower wants to pursue any action on the land covered by a conservation contract not explicitly allowed by the terms and conditions of FSA-2535, the borrower must obtain the Government's written authorization in advance. The borrower must make the request for authorization in writing.

To provide the borrower authorization, the authorized agency official must:

- determine that the proposed action does not violate a conservation contract's terms and conditions
- receive the written concurrence of the conservation contract management authority if the authority is outside FSA
- develop and approve a revised conservation contract management plan with the participation of the conservation contract review team.

The authorized agency official consults with SED and OGC as necessary.

C Responsibilities and Enforcement Under FSA-2535

Borrower responsibilities, FSA's rights, and contract enforcement will be according to the provisions of FSA-2535.

Section 2 FSA's Decision

226 Approval Authority**A Approval Authority for Servicing Actions**

Any authorized agency official has the authority to approve or reject PLS, except SED must approve all primary loan servicing actions:

- that result in debt forgiveness
- *--when the borrower (or any entity member) has already received primary loan servicing at least 2 times in the previous 5 years.--*

Note: This authority may only be delegated to the FLC.

Once PLS approval has been obtained, the authorized agency official may approve the credit action in FBP and complete the loan servicing action.

Note: Any new loans made in conjunction with PLS must be approved according to 1-FLP, subparagraphs 29 A-D, taking the restructured loan amounts into consideration.

227, 228 (Reserved)

230 Appraisals**A Overview of Options to Challenge Appraisals**

The borrower has 30 calendar days to request an appeal on the appraisal according to 1-APP.

FSA will maintain a list of State-certified appraisers. FSA must review any appraisal or review obtained to determine compliance with the requirements of 1-FLP, Part 6. A copy of the appraisal or review will be provided to FSA before any negotiation, reconsideration or appeal hearing.

B Challenging the Agency Appraisal

[7 CFR 766.115(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 USPAP compliant technical appraisal review prepared by a State Certified *--General Appraiser of the Agency's appraisal and provide it to the Agency prior to--* reconsideration or the appeal hearing;**
- (2) Obtain an independent appraisal completed in accordance with § 761.7 as part of the appeals process. The borrower must:**
 - (i) Pay for this appraisal;**
 - (ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is 5 percent or less.**

230 Appraisals (Continued)

--B Challenging the Agency Appraisal (Continued)--

[7 CFR 766.115(a)(3)] Negotiate the Agency's appraisal by obtaining a second appraisal.

Within 30 calendar days of submitting the request to negotiate the appraisal, the borrower may:

[7 CFR 766.115(a)(3)] (i) If the difference between the two appraisals is 5 percent or less, the borrower will choose the appraisal to be used in Agency calculations.

[7 CFR 766.115(a)(3)] (ii) If the difference between the two appraisals is greater than 5 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.

FSA, the borrower, and the appraiser will sign FSA-2529 to agree on paying for the third appraisal. The borrower will select the appraiser from a list provided by FSA. The list shall include at least 3 appraisers that did not conduct either of the 2 appraisals.

The authorized agency official will compare the 3 appraisals and average the 2 appraisals closest in value. This is the final appraised value. The borrower may not appeal the negotiated appraised value.

[7 CFR 766.115(a)(3)] (iii) A borrower may request a negotiated appraisal only once in connection with an application for primary loan servicing.

[7 CFR 766.115(a)(3)] (iv) The borrower may not appeal a negotiated appraisal.

C Continued Processing

[7 CFR 766.115(b)] If the appraised value of the borrower's assets change as a result of ~~*--the challenge, the Agency will reconsider its previous primary loan servicing decision--*~~ using the new appraisal value.

[7 CFR 766.115(c)] If the appeal process results in a determination that the borrower is eligible for primary loan servicing, the Agency will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the appeal decision letter.

Section 3 Closing**246 Closing Consolidated/Rescheduled Loans****A Introduction**

eDALR\$ adds the amount of accrued interest and any outstanding protective advances to the principal balance at the time of rescheduling according to Exhibit 17.

B Closing Rescheduled Loans

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- mark the existing promissory note or assumption agreement "rescheduled" and attach it to the new FSA-2026
- *--file the new FSA-2026 according to 32-AS--*
- file a copy of the new rescheduled FSA-2026 with the copy of the existing promissory note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new rescheduled FSA-2026 to the borrower at closing
- file the original eDALR\$ report in position 3.

A 1M – Loan Reschedule transaction will be processed in DLS Special Servicing to record the rescheduled loans.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

247 Closing Reamortized Loans**A Introduction to Reamortization**

eDALR\$ adds the accrued interest and any outstanding protective advances to the principal balance at the time of reamortization according to Exhibit 17.

B Closing Reamortized Loans

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- mark the existing promissory note or assumption agreement "reamortized" and attach it to the new FSA-2026
- *--file the new FSA-2026 according to 32-AS--*
- file a copy of the new reamortized FSA-2026 with the copy of the existing note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new reamortized FSA-2026 to the borrower at closing
- file the original eDALR\$ report in position 3.

A 1M – Loan Reamortization transaction will be processed in DLS Special Servicing to record the reamortized loans.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

SED will issue a State supplement ensuring that existing liens and title insurance or opinions are extended and preserved.

248 Closing Deferred Loans**A Introduction to Deferrals**

FSA will also reschedule or reamortize, as applicable, all loans deferred through primary loan servicing.

FSA may defer all or part of a loan according to eDALR\$.

B Closing Deferrals

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- complete the addendum to FSA-2026 addressing repayment of deferred interest according to FSA-2026 instructions
- complete box 9 of FSA-2026 to address all actions requiring the promissory note, including "deferral", according to FSA-2026 instructions
- mark the existing promissory note or assumption agreement "rescheduled/reamortized with full/partial deferral," as appropriate, and attach it to the new FSA-2026
- *--file the new deferred FSA-2026 according to 32-AS--*
- file a copy of the new note with the copy of the existing promissory note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new deferred FSA-2026 to the borrower at closing
- file the original eDALR\$ report in position 3.

1M and 5W – Record Loan Deferral transactions will be processed in DLS Special Servicing to record the deferred loans as well as record the "DEF" flag on the account. These transactions will be created and processed in the correct sequence by DLS Special Servicing.

248 Closing Deferred Loans (Continued)**C Ongoing Servicing of Deferrals**

Review the NFAOC quarterly status report to determine borrowers who have deferrals expiring.

Review the borrower's financial progress during the annual analysis according to paragraph 161.

Send the borrower a letter 6 months before the expiration of the deferral stating the amount and due date of the first payment.

After all deferrals on a borrower's account have expired, the "DEF" flag (Exhibit 11) will be converted to a "DEF3" flag by NFAOC, FaSB. This flag is not required to be removed--* and is used to indicate which accounts have previously been serviced with deferral servicing actions. If all deferrals on an account must be canceled before their expiration, the "DEF" flag must be removed from the account by completing FSA-2562 and processing a *--5H transaction. Deferral flags cancelled as part of PLS transactions will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--*

249 Closing Write-Downs

A Introduction

FLP loans can be fully or partially written down.

Loans that are partially written down must be fully restructured. FSA will also reschedule, reamortize, or defer, as applicable, all loans written down through primary loan servicing according to paragraphs 247, 248, and/or this paragraph.

B Closing Write-Down

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- mark the existing promissory note or assumption agreement "Satisfied by Approved Debt Writedown" if the loan is completely written down or "Restructured with Partial Debt Writedown" if the loan is partially written down, and attach it to the new FSA-2026
- attach the promissory note, if required, to the new FSA-2026
- *--file FSA-2026 according to 32-AS--*
- provide a copy of the new FSA-2026 to the borrower at closing
- file the original eDALR\$ report in Position 3.

C SAA Required

[7 CFR 766.201] (a) 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 section 766.111 (paragraph 172).

FSA requires FSA-2543 when debt is written down on a loan secured by real estate. If the specific loans that are to be written down are not secured by real estate before the current servicing action, FSA-2543 does not need to be completed even if other serviced loans are secured by real estate.

See Part 9, Section 1 for details on servicing SAA's.

A borrower will execute FSA-2543 and it will remain attached to the new FSA-2026. Copies of FSA-2543 will be attached to all copies of FSA-2026.

249 Closing Write-Downs (Continued)**D Processing Write-Down**

The authorized agency official will process a 3R – Shared Appreciation Writedown transaction in DLS Special Servicing to record the write-down and to establish an equity record for the debt written down. The equity record will establish an account for the amount of the SAA recapture that may come due.

The equity record will be for the total amount of debt written down on all loans, including those not secured by real estate. This total amount will be used when recording the DLS transactions and also used when completing FSA-2543.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

E Additional Security Required

The borrower must agree to additional liens on available security according to paragraph 211. FSA's real estate and chattel liens will be maintained by cross collateralization even if all real estate or chattel type loans are written off.

As noted in subparagraph 211 A, if additional real estate security is pledged, the filing information and appraised market value of this security will be included when completing FSA-2543. Any sales or conveyances of the additional real estate security will also be subject to recapture according to paragraph 342.

Example A: A borrower receives a write-down on a loan that is secured by real estate with an appraised value of \$65,000. As part of the servicing, the borrower will also be providing the agency with a lien of previously unencumbered security. This additional security is appraised and valued at \$45,000. When completing FSA-2543, the market value of all real property securing FSA notes will be \$110,000 and filing information for both properties will be included on the form.

284 Determining Applicant and Property Eligibility (Continued)

B Property Eligibility Requirements

[7 CFR 766.152(a)] (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.

(3) The proposed homestead protection site must meet all State and local requirements for division into a separate legal lot.

The property must comply with all environmental considerations described in 1-EQ and 2-EQ.

If the site cannot be approved by local officials because of local zoning regulations, homestead protection must be concluded and servicing will continue.

If necessary, FSA grants or retains reasonable easements for ingress, egress, utilities, and water rights for the benefit of the adjoining property.

***--Note:** Manufactured or mobile homes that were taken as FSA security or otherwise reside on FSA security may be eligible to be considered for Homestead Protection. A determination will be made after consultation with OGC and considering whether:

- the home is permanently affixed to the land
- local utilities such as electricity, water, and sewer are in use
- the home is subject to local or state real estate taxes
- the home was included in previous real estate appraisals
- United States Postal Service delivers mail to the address.--*

284 Determining Applicant and Property Eligibility (Continued)**C Negotiating Eligible Land and Buildings With the Borrower**

[7 CFR 766.152(a)(2)] The applicant may propose a homestead protection site. Any proposed site is subject to Agency approval.

If the authorized agency official does not agree with the proposed size or shape of the property, FSA negotiates the configuration with the borrower. If the borrower and the authorized agency official still cannot agree on the proposed shape and size of the property, the authorized agency official determines the property's configuration and provides appeal rights.

D Surveying Homestead Protection Property

When FSA and the borrower agree on the property's configuration and FSA finds the borrower eligible for homestead protection, the authorized agency official has:

- a licensed surveyor survey the property, if needed
- the property's legal description prepared
- the property lines marked with permanent markers.

The reasonable customary cost of these services will be paid by FSA.

E Appraising Homestead Protection Property

[7 CFR 766.154(e)] The Agency will use an appraisal obtained within 6 months from the date of the application for considering homestead protection. If a current appraisal does not exist, the applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official.

FSA pays for the appraisal according to 1-FLP, Part 6.

322 Processing a Buyout at Current Market Value**A Notifying Borrower of Buyout**

The authorized agency official will notify the borrower of the opportunity to buyout the FSA loans at current market value by sending the borrower a copy of the signed eDALR\$ Report, along with FSA-2521 and FSA-2522 or FSA-2523 and FSA-2524 showing the buyout amount by certified mail.

B Timeframe for Borrower to Pay Buyout Amount

[7 CFR 766.113(b)] 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.

If the borrower exercises the right to an independent appraisal, negotiation of appraisal, reconsideration, mediation, or appeal, the 90-calendar-day time limit will start on the day the borrower receives the final Agency and/or NAD decision.

--A distressed borrower notified of the buyout offer with FSA-2523 and FSA-2524 who subsequently becomes 90 days past due will be provided with servicing notifications in accordance with Part 3. The borrower may still accept the buyout offer by paying the amount due. If the borrower elects to reapply for servicing and provides a complete application, FSA will rescind the buyout offer provided with the FSA-2523 and FSA-2524.--

C Processing Buyout Payment

If the borrower accepts FSA's buyout offer, the borrower must pay the entire buyout amount according to 4-FLP, subparagraph 65 F. The buyout amount will be established by processing a 3Q – Market Value Buyout transaction in DLS Special Servicing after the payment has been processed. The payment will be submitted as “other collection” according to 3-FI. The borrower's security instruments will be released according to 4-FLP, subparagraph 65 F. The borrower's original promissory notes will be marked “satisfied at current market value” and returned to the borrower.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

322 Processing a Buyout at Current Market Value (Continued)

D Borrower Nonresponse or Inability to Pay Current Market Value

If the borrower does not accept FSA's buyout offer and FSA has a lien on the home of the borrower or any person that pledged their home as collateral, homestead protection will continue to be processed according to Part 7. If the borrower does not elect or is not eligible for homestead protection or does not pay the FLP account current, FSA will, after conclusion of all appeals, accelerate the borrower's account according to Part 15.

The borrower can also still apply for debt settlement according to 7-FLP, Part 12.

323-340 (Reserved)

344 Notifying Borrower That Shared Appreciation Is Due***--A FSA Review of Maturing SAA's--***

To allow for appraisals and consideration of capital improvements, the authorized agency official will begin determination of the SAA recapture amount due approximately 6 months before the maturity of SAA. The authorized agency official will contact the borrower with FSA-2544 to determine whether any improvements have been made that meet the required criteria. If there is any shared appreciation due according to paragraph 343, the borrower will be notified according to subparagraph B. If no SAA recapture is due, FLM or SFLO will wait until SAA has matured and complete the actions in subparagraph 343 E.

Use the DLS SI Other Shared Appreciation Amortization workflow to track and monitor the SAA processing to completion.

B Borrower Notification of Shared Appreciation Due

The authorized agency official will notify the borrower of any SAA recapture due at least 60 calendar days before the maturity date of the agreement or if any of the events described in paragraph 342 occur by use of FSA-2545. This notification will include:

- the amount of the SAA recapture due
- the date the SAA recapture is due, which is the latter of the maturity of SAA or 30 calendar days from the borrower's receipt of the letter
- how FSA calculates the amount due
- the borrower's options for repaying the shared appreciation amount, including:
 - FSA's offer to consider amortization of the amount due as NP if the borrower cannot pay the amount due
 - a list of items required for a complete application for amortization
 - the application due date
 - borrower's appeal rights.

After all appeal rights have been concluded, FSA will process a 3V – Equity Receivable transaction in DLS to establish the recapture due.

344 Notifying Borrower That Shared Appreciation Is Due (Continued)**C Complete Application for Shared Appreciation Amortization**

The borrower has 60 calendar days from the date of FSA-2545 to submit a complete application to amortize the shared appreciation amount according to paragraph 346. If the application is submitted while the borrower is disputing the recapture amount, the final decision on the application will not be made until all dispute resolution options are concluded.

For the application for shared appreciation amortization to be complete, the borrower must submit:

- FSA-2001
- records showing the borrower's actual income, production, and expenses, including income tax returns and supporting documents for the most recent 3-year period
- verifications of debts and nonfarm income according to 3-FLP, subparagraph 42 A
- proper fee for a credit report
- any other items determined by the authorized agency official as necessary for completing FBP.

At 30 calendar days, the authorized agency official will notify the borrower the following 1 time in writing:

- of all required items that the borrower has not submitted
- the final due date by which the borrower must submit all items
- *--that no further reminders will be sent and that the borrower will be sent FSA-2525--* if the amount is not paid or amortized.

D Borrower Does Not Pay Shared Appreciation Due

* * *

--The borrower will be sent FSA-2525 if the amount is not paid or amortized by the due date. Servicing will continue to liquidation if the recapture is not paid.--

346 Amortizing Shared Appreciation (Continued)**D Amortized Loan Interest Rate**

[7 CFR 766.205(a)] The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

E Amortized Loan Security

The Shared Appreciation Payment Agreement must retain the same security position of the original notes identified in SAA. SED will issue a State supplement on maintaining FSA's lien position. The authorized agency official will take the best obtainable lien on all assets according to subparagraph 211 A. The Shared Appreciation Payment Agreement does not have to be fully secured if the borrower meets all requirements in subparagraph A and the borrower provides the best lien obtainable on all assets.

The authorized agency official will close the Shared Appreciation Payment Agreement only after the equity recapture amount has been established by the processing of a 3 V - Equity Receivable transaction in DLS. The interest rate to be used for the amortization must be the SA rate in effect at the time of approval. The amortization will be closed according to the requirements listed in subparagraphs F through I and 3-FLP, Part 16. The amortization approval date shall not be before the date shared appreciation is due as described in subparagraph 342 A.

F Amortized Loan Processing

The authorized agency official will mark SAA "Amortized," attach it to the new FSA-2026, *--and file the original promissory note and its copies according to 32-AS. The copies of--* the new FSA-2026 and SAA will be filed in position 2 of the borrower case file.

If a Shared Appreciation Payment Agreement becomes due because of a partial sale of security and SAA has not yet matured, the authorized agency official will attach a copy of SAA to the new FSA-2026.

The authorized agency official will process a 3O – Equity Receivable Amortization transaction in the DLS SI Other Shared Appreciation Amortization workflow to record the Shared Appreciation Payment Agreement.

346 Amortizing Shared Appreciation (Continued)**G Amortized Loan Approval**

The authorized agency official will use FSA-2025 to notify the borrower of approval of shared appreciation agreement amortization. FSA-2026, with all covenants relating to graduation, credit elsewhere, restrictions on leasing, and FLP operating requirements removed, will be used as the loan agreement.

H Amortized Loan Application Denied

If amortization cannot be approved, the authorized agency official will deny the application to amortize the shared appreciation amount and servicing will continue according to Part 3 as the borrower is in nonmonetary default.

I Servicing SA

[7 CFR 766.204(b)] If the borrower later becomes delinquent or financially distressed, reamortization of the Shared Appreciation Payment Agreement can be considered under subpart C (Part 3) of this part.

If the borrower has other program loans, the Shared Appreciation Payment Agreement will be considered as a part of the overall restructure process, but can only be reamortized.

Borrowers who do not have any program loans will be notified according to subparagraph 67 A.

Shared Appreciation Payment Agreements cannot be consolidated, deferred, or written down.

--The DLS SI "Other Shared Appreciation (SA)" workflow shall be completed upon satisfaction of the SA amortization loan.--

347 (Reserved)

404 Adjustment of Debts When Borrowers Are in Bankruptcy (Continued)**B FSA Actions After Court Confirms Plan (Continued)**

NFAOC, FaSB will establish the borrower's account according to the reorganization plan and flag the account "SAA" (Exhibit 11) when it is applicable. The "SAA" flag will remain on the account until either the bankruptcy plan is completed and the case is closed, or the bankruptcy is dismissed.

The authorized agency official will file a copy of the plan, order of confirmation, and the *--original promissory notes according to 32-AS.--*

The authorized agency official must indicate that the borrower is paying under a reorganization plan in the borrower's case file and in DLS Special Servicing.

405 FSA Actions When Borrower Defaults on Reorganization Plan or Court Dismisses Bankruptcy While Under Court Jurisdiction**A Borrower Becomes 90 Calendar Days Past Due on a Chapter 11, 12, or 13 Reorganization Plan**

When a borrower becomes 90 calendar days past due on a Chapter 11, 12, or 13 reorganization plan while still under Bankruptcy Court jurisdiction, the authorized agency official will immediately notify the State Office of the facts of the case. The State Office will contact OGC for advice as required.

The authorized agency official will notify the borrower and the borrower's attorney of remaining primary loan servicing and Homestead Protection options not exhausted before filing for bankruptcy or during bankruptcy proceedings using Exhibit 34 and FSA-2510 and FSA-2511 unless either:

- OGC advises that notification is inconsistent with the confirmed reorganization plan and the Bankruptcy Code, 11 U.S.C. §101 et seq.
- FSA has referred the borrower's loan to DOJ
- FSA has previously accelerated the loan.

If all servicing options were exhausted before the bankruptcy filing or during bankruptcy, Exhibit 34 only will be prepared stating that no further servicing options remain.

A borrower operating under a confirmed plan applying and qualifying for loan servicing under Part 3 must comply with the Bankruptcy Code requirements regarding plan modification.

The authorized agency official may request updated information to decide on a previous request for loan servicing. The authorized agency official will send a copy of this notice to the Bankruptcy Trustee unless otherwise advised by OGC.

405 FSA Actions When Borrower Defaults on Reorganization Plan or Court Dismisses Bankruptcy While Under Court Jurisdiction (Continued)**B Servicing When the Bankruptcy Is Dismissed Without a Confirmed Plan and the Borrower Is in Default**

--If the Court dismisses a bankruptcy case and the borrower is in default on FLP loans, the-- authorized agency official will notify the borrower of any remaining servicing options unless:

- OGC advises that notification is inconsistent with the Bankruptcy Code, 11 U.S.C. §101 et seq.
- FSA has referred the borrower's loan to DOJ
- FSA has previously accelerated the loan.

If the borrower is in default and all loan servicing options are exhausted, FSA will proceed to liquidate the security according to Part 15.

If FSA previously accelerated the account, all of the borrower's servicing rights are exhausted and FSA liquidates the account.

C Servicing a Borrower When a Bankruptcy Is Dismissed After a Confirmed Plan

If the borrower makes at least 1 full payment to FSA on the confirmed plan before the bankruptcy is dismissed, the authorized agency official will send the borrower a new servicing notification package.

If the borrower does not make at least 1 full payment to FSA, the authorized agency official will send notification of the remaining servicing options based on the previous notification. If the borrower is in default and all loan servicing options are exhausted, FSA will proceed to liquidate the security according to Part 15.

406 Servicing Chapter 11, 12, and 13 Cases After the Bankruptcy Case Is Closed**A Removing the “SAA” Flag and Writing Off Discharged Debt**

Upon receipt of the discharge order from the Bankruptcy Court, the authorized agency official will review the borrower records to determine whether FSA will cancel any discharged debt.

If all liable parties are discharged and the bankruptcy is closed, the authorized agency official will debt settle the remaining discharged debt according to 7-FLP, Part 12.

The State Office will forward the approved FSA-2731, with a copy of the discharge, to *--NFAOC, FaSB for processing the debt cancellation.

NFAOC, FaSB will remove the “SAA” flag and process the necessary transactions to--* write off any portion of the debt.

B Servicing Remaining Liable Parties

If some, but not all, of the liable parties were discharged of the debt, the authorized agency official will:

- consult with the regional OGC to determine what, if any, collection action can be taken against nondischarged individuals, entities, etc., and any remaining security
- take all allowable collection actions in a timely manner, including collection of unsecured account balances through offset and referral to Treasury as set forth in 7-FLP
- determine whether a partial cancellation of the debt, such as canceling the discharged debt amount that is still owed by the nondischarged individuals, would be appropriate and/or financially beneficial to the Government

Note: See paragraph 409.

- monitor these accounts closely to ensure timely resolution.

406 Servicing Chapter 11, 12, and 13 Cases After the Bankruptcy Case Is Closed (Continued)**C Returning to Regular Servicing**

After the bankruptcy case is closed, the authorized agency official will service bankruptcy loans according to 4-FLP, subject to the confirmed reorganization plan.

D Servicing if the Borrower Defaults on the Confirmed Reorganization Plan

If a borrower becomes 90 calendar days past due or is in nonmonetary default after the court issued a discharge order and after the case is closed under Chapter 11, 12, or 13 of the Bankruptcy Code, the authorized agency official will notify the borrower of loan servicing options according to Part 3, unless servicing actions would be inconsistent with the confirmed bankruptcy plan or the Bankruptcy Code or FSA has referred the account to DOJ.

If the account is in nonmonetary default, OGC concurrence will be obtained before acceleration.

407 Liquidation During Bankruptcy**A Automatic Stay Requirements**

FSA must receive relief from the automatic stay from the Court before liquidating the borrower's security. If the Court allows, and all servicing requirements are met, FSA may liquidate the security before the discharge of debt or as otherwise addressed by OGC.

B Chapter 7 Cases After Discharge

In Chapter 7 cases after discharge, FSA will liquidate the account as authorized by OGC if both of the following are true:

- the borrower has not reaffirmed the debt
- an Abandonment Order for the FSA security has been issued by the court or the bankruptcy case is closed.

In cases when 1 or more borrowers have received a discharge, but at least 1 borrower remains liable:

- DLS must be updated with either a 4A or 4D transaction to list the account in the name of any remaining liable debtors
- related entity status of the discharged individuals or entities should be updated in the DLS Customer Profile Related Entity function to reflect they are no longer a co-borrower/cosigner/guarantor
- the Chapter 7 discharge order must be maintained in the case file.

421 Handling Civil and Criminal Cases (Continued)

H Establishing Deficiency Judgement on NFAOC Records

NFAOC, FaSB will establish deficiency judgements when requested by the State Office. Before requesting FaSB to process a deficiency judgement, the State Office must ensure that collections through foreclosure (when applicable) have been credited to the account. With the written request for a deficiency judgement, the State Office will provide FaSB with a copy of the court approved deficiency judgement, a list of the loans covered by the judgement, a list of the loans covered by the judgement and the judgement interest rate.

Deficiency judgements will be serviced under 7-FLP, Part 11.

***--Note:** See 1-FLP, Exhibit 17 for the current Treasury Judgement Rate.--*

422-430 (Reserved)

Section 3 (Withdrawn--Amend. 34)

431-434 (Withdrawn--Amend. 34)

435-440 (Reserved)

Part 13 Voluntary Liquidation**461 General Requirements****A Voluntary Sale of Property**

[7 CFR 766.352(a)] A borrower may voluntarily sell real property or chattel security to repay Agency 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 (4-FLP, Part 7) of this chapter.

(1) The borrower must sell all real property and chattel that secure Agency debt until the debt is paid in full or until all security has been liquidated.

There are several types of voluntary liquidation including sale, transfer, and conveyance of security. This part addresses voluntary sale of real property and chattel security. Voluntary conveyance is discussed in detail in Part 14 and transfers in 4-FLP, Part 9.

B Notifying the Borrower

With Agency approval, a current borrower may initiate voluntary liquidation at any time.

For a borrower in monetary or nonmonetary default, FSA will notify the borrower of the default according to Part 3. The authorized agency official will work with a borrower in default to voluntarily liquidate security; however, the authorized agency official will not delay FSA's required servicing, acceleration, and involuntary liquidation to accommodate the borrower's liquidation efforts.

462 Voluntary Liquidation of Real Property

A Approval Request

[7 CFR 766.352(a)(2)] The Agency must approve the sale and approve the use of proceeds.

The borrower must:

- complete and sign FSA-2060 with the assistance of the authorized agency official
- provide a sales contract for the property indicating the price and terms of the sale
- sell the property for not less than the market value unless FSA is being paid in full.

*--Borrower requests to sell real estate at public auction may only be approved through an Administrator's Exception. In addition to information required under subparagraph 4 B, the request will also address:

- auctioneer's experience with selling real estate
- auctioneer's plan for advertising auction including where advertisements will be placed and how long they will run
- how the auction will maximize FSA's recovery over a traditional sale through a realtor
- FSA's estimated recovery from forced liquidation (Exhibit 60).--*

B Title Search

The authorized agency official will conduct a new lien search if adequate title information is not available in the borrower's case file. The purpose of the search is to:

- determine the liens of other parties on the property and their effect on liquidation
- ensure proper distribution of sale proceeds.

The borrower pays the cost of all title searches or it will be charged to the borrower's account if they are unable to pay. The authorized agency official will obtain a title search according to the procedures used in the State where the property is located. SED will issue a State supplement as appropriate.

C Appraisal and Disposition of Collateral Proceeds

FSA will appraise the property according to 1-FLP, Part 6 to determine the property's market value only after receipt of a sales contract. Any sale proceeds received by the borrower over and above the FSA-determined market value must be applied to the borrower's FSA debt until the FSA loans secured by the collateral are paid in full. The authorized agency official will apply sale proceeds according to 4-FLP, Part 5.

462 Voluntary Liquidation of Real Property (Continued)**D Sales That Do Not Satisfy the Borrower's Debt**

[7 CFR 766.352(a)] (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.

If the borrower submits a debt settlement application with the sale request, the authorized agency official will forward the file to SED with the required debt settlement information as required by 7-FLP, Part 12.

E Approving the Sale

After the authorized approval official signs FSA-2060 approving the borrower's request for sale of real property, FSA will provide a copy of the signed form to the borrower.

The authorized agency official may, but is not required to, attend the closing of the sale. If necessary, the authorized agency official may contact the borrower's closing agent to ensure proper distribution of the sale proceeds.

F Rejecting the Sale Request

If the request for sale is not approved, the authorized agency official will notify the borrower in writing of the reasons for not approving the sale and offer appeal rights. See 1-APP for explanation of borrower's appeal rights.

***--G SED Exception Authority**

On an individual case basis, the SED may approve the sale for less than appraised value under this paragraph when:

- the offer is within ten percent (10%) of the appraised value and not less than NRV as projected on a completed Exhibit 60
- the property has been professionally and extensively marketed
- the offer represents the best recovery to FSA.

Administrator's Exception authority may not be further redelegated.

FLM and SFLO's may submit requests for exception under this subparagraph directly to the Farm Loan Chief. Requests must address the requirements of subparagraph 4 B as well as the issues noted in this subparagraph.--*

463 Closing the Sale of Real Property**A Processing the Sale Proceeds**

After the sale, the authorized agency official will record the transaction and credit the borrower's account.

[7 CFR 766.352(a)(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:

[7 CFR 766.352(a)(3)] (i) The costs are reasonable in amount;

Any costs beyond those believed reasonable by the authorized agency official must be supported by the borrower as being typical for similar transactions in the area.

[7 CFR 766.352(a)(3)] (ii) The borrower is unable to pay the costs from personal funds or have the purchaser pay;

[7 CFR 766.352(a)(3)] (iii) The costs must be paid to complete the sale;

Only costs essential for the actual sale will be released. Capital gains taxes are not considered essential for completing an actual sale and are not FSA's responsibility.

[7 CFR 766.352(a)(3)] (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.

Examples of customary costs may include the following:

- real estate taxes that must be paid to complete the transaction
- title examination
- surveys
- abstracts
- title insurance
- reasonable attorney's fees
- real estate broker's commissions
- judgment liens.

The borrower's closing agent will distribute sale proceeds according to lien priority, as specified on FSA-2060.

The authorized agency official will apply the proceeds from the sale to the borrower's FSA loan account according to 4-FLP, Part 5.

The authorized agency official will record the sale through appropriate issuance, distribution, and filing to FSA records of the appropriate deeds and settlement documents.

Section 2 Real Property**566 Proceeding With Foreclosure After Acceleration****A Failure to Satisfy FSA**

If the borrower fails to pay the FSA debt in full before the acceleration deadline expires according to Part 15, FSA moves to involuntarily liquidate all of the borrower's FSA loan security.

B National Historic Preservation Act

If the property may fall under the National Historic Preservation Act because of any of the criteria in 1-EQ, SED will note this in the State Office file on advice from the authorized agency official and DD to help eliminate any delays in selling the property after acquisition.

C Initiating Foreclosure

SED may forward the case file with all relevant information and documentation to OGC for required assistance in proceeding with foreclosure. If the borrower has leased the FSA real estate security, the authorized agency official must report the existence and conditions of the lease and report the name of the lessee to OGC.

SED may keep the borrower's file in the State Office. In this case, SED is responsible for initiating and processing the foreclosure process.

D Following State Law and Practices

SED, in consultation with OGC, will issue a State supplement providing guidance and instructions on processing a foreclosure. The authorized agency official, DD, SED, and OGC should maintain communication during the foreclosure process so all parties are aware of the status of the proceedings.

567 Foreclosure Sale

A “FAP” Flag

In judicial foreclosures, the account is flagged “FAP” using FSA-2562 at the time the account is referred to OGC for foreclosure. In nonjudicial foreclosures, the account is flagged “FAP” when the sale has been scheduled.

FAP flag (Exhibit 11) must be removed from the account if any of the following occur:

- foreclosure action is concluded on all available FSA security
- all FSA security is voluntary liquidated
- the account is paid in full
- any other action taken that result in foreclosure actions no longer being pursued on the account.

B Establishing a Judgment Account

In judicial foreclosure States only, SED establishes a judgment account after a judgment has been ordered by the court. To establish this account, the authorized agency official processes a 3B transaction in ADPS based on a completed FSA-2576.

C Calculating FSA’s Bid

If there is not a current appraisal in the borrower’s file, FSA will obtain a current appraisal before the sale. The authorized agency official completes Exhibit 60 to calculate FSA’s bid. Exhibit 60 calculates the net recovery value and FSA’s debt plus prior liens. FSA usually bids whichever amount is less, but State supplements can be issued to address differing State laws, and to justify longer holding periods used in bid calculations.

[7 CFR 766.357(b)(1)] The Agency will charge the borrower’s account for all recoverable costs incurred in connection with the foreclosure and sale of the property in accordance with § 765.203 (4-FLP, Part 6).

*--Before providing concurrence on Exhibit 60, SED shall ensure that the figures used to calculate the bid are well documented. A state supplement to Exhibit 60 is required in order to address redemption periods required to complete Exhibit 60.

On a case-by-case basis, SED may request an Administrator’s Exception to the requirement of Exhibit 60 and associated paragraphs when the exception meets the requirements of paragraph 4. Examples of exceptions submitted in the past for Exhibit 60 include high risk of no recovery to the government and use of appraisals greater than 12 months old, assignment of lien to junior lien holder and assignment of lien to borrower’s relative.--*

567 Foreclosure Sale (Continued)**D Bidding at the Foreclosure Sale**

SED determines the authorized bid amount according to subparagraph C and provides other instructions to the authorized agency official on attending and bidding at the foreclosure sale. When RD is the senior lienholder, only 1 bid will be entered, and that will be for the amount authorized by SED.

As authorized by SED, the authorized agency official usually enters FSA's bid when no other party makes a bid or the last bid would result in the property being sold for less than FSA's authorized bid. However, when FSA is not the senior lienholder and OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, SED may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, SED's instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

E Reporting on the Foreclosure Sale

After the foreclosure sale, the authorized agency official writes a report on the sale for SED. The report should contain, at a minimum:

- name of the successful bidder
- amount of the successful bid
- recommendation on any further actions required of FSA after the sale.

SED will forward this report to OGC and/or the U.S. Attorney, as appropriate.

568 FSA Actions After Foreclosure**A When FSA Acquires the Property**

Within 10 workdays of the date FSA acquires the property, the authorized agency official will send, by certified mail, FSA-2540 to inform the borrower of homestead protection rights if a residence is on the property. The acquisition date for real estate is the date FSA records the deed. For chattels, the date of acquisition is the date the Bill of Sale or title is executed transferring ownership to FSA.

If FSA acquires the property at the foreclosure sale, the authorized agency official completes FSA-2587 and FSA-2588 and records the information in ADPS by completing a 3E transaction for acquired property and a 5L transaction for acquired property maintenance. For property subject to redemption rights, the authorized agency official waits until the redemption period expires to record the deed and complete the ADPS transaction. The authorized agency official prepares an inventory file according to paragraph 721 when FSA records the deed. State supplements may be issued as required to comply with State law.

568 FSA Actions After Foreclosure (Continued)**B Establishing an Inventory Account**

NFAOC, FaSB will establish an inventory account for all acquired property under the assigned property identification number. The value of the property is the market value of the property on the date of the foreclosure sale.

C Existing Leases

If FSA's foreclosure effort did not extinguish existing leases and if FSA acquires property while under lease, the authorized agency official:

- obtains and places a copy of the lease in the case file
- attempts to convert existing oral leases to writing on FSA-2591
- *--establishes a lease account in NFAOC with a 1S transaction in ADPS--*
- notifies the lessee in writing that the Government has acquired the property and where the lessee must send lease payments
- applies payments received by FSA that were due and payable before the date of FSA acquisition to any unsatisfied balance, and returns any surplus to the former borrower
- applies payments that are due and payable after the acquisition date to the lease account.

FSA does not extend the lease term and prefers not to sell property subject to a lease. FSA may discuss with the lessee the possibility of shortening or canceling the lease.

D Crediting the Borrower's Account

[7 CFR 766.357(b)(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.

Accounts with real property security located within a federally recognized Indian Reservation will be credited according to paragraph 569.

602 Involuntary Liquidation by a Prior Lienholder (Continued)**C Contacting the Prior Lienholder**

The authorized agency official may contact the prior lienholder as necessary to protect FSA's security interest. FSA may pay off the prior lien if:

- paying off the prior lien is clearly in FSA's best interest according to Exhibit 60
- SED approves the pay-off to the prior lienholder.

D Bidding at a Liquidation Sale

The policies and procedures for bidding at a real estate foreclosure sale by a prior lienholder are similar to the bidding process described in paragraph 567.

At the sale of chattel property by a prior lienholder, FSA normally does not bid but may bid when the chattel property under the prior lien has a market value that is significantly more than the prior lien. If FSA holds a junior lien on several items, the authorized agency official should seek SED's advice on whether to enter a bid.

If FSA will not enter a bid at a foreclosure sale, SED will determine whether an authorized agency official will attend the sale and write a narrative report outlining the results of the sale and plans for future servicing of the borrower's account.

E Sale by Prior Lienholder Without FSA's Knowledge

If FSA learns that a prior lienholder has repossessed and intends to sell or has already sold property on which FSA has a lien, the authorized agency official immediately notifies the prior lienholder that FSA:

- has a lien on the property
- requires receipt of sale proceeds that exceed the prior lienholder's debt.

The authorized agency official also obtains guidance on the sale of security by a prior lienholder from SED and, as necessary, OGC.

603 Involuntary Liquidation by a Junior Lienholder**A Junior Lienholder Initiates Liquidation**

The authorized agency official will write a letter informing the lienholder that FSA holds a prior lien. The letter should state that, if the lienholder holds a sale, FSA will announce at the sale that:

- FSA has a prior lien on the property, specifying each item and the lien amount, including principal and interest
- any property sold continues to be subject to FSA's lien and the purchaser will need to contact FSA to determine the conditions for the release of the lien. FSA should be paid within 30 to 60 calendar days.

The authorized agency official must maintain close communication with SED during this process. The authorized agency official must consult with SED on how to proceed after sending the initial letter.

If the junior lienholder does not recognize FSA's lien, the authorized agency official must forward the file to SED so that OGC can initiate legal action against the junior lienholder.

B Bidding on Property

FSA does not bid on property at any sale conducted by a junior lienholder.

C Contacting the Purchaser

If a buyer purchases FSA security property from a junior lienholder, the authorized agency official will contact the purchaser, and inform them of FSA's lien on the property and ask about the purchaser's intentions for settling the remaining FSA debt applicable to the security items.

If the authorized agency official cannot reach an acceptable resolution with the purchaser, the authorized agency official refers the case to SED for guidance and, normally, liquidation.

***--D Assignment of Lien Instruments**

If a third party asks to purchase FSA's lien instruments and FSA-2580 has been completed and reviewed, and with OGC concurrence, SED may request an Administrator's Exception under paragraph 4.--*

781 Advertising Property**A Authority**

When FSA sells property in a manner that requires FSA to advertise the property, the authorized agency official is responsible for ensuring adequate advertising to achieve a timely sale.

B General Requirements

The authorized agency official must ensure that all advertising meets these general requirements.

- The advertisement must describe the property being sold. Real property must have a legal description unless a lengthy legal description is cost prohibitive. Then a general legal description will suffice provided purchasers can understand where the property is located. The advertisement shall then disclose that the actual legal description is available.
- The advertisement must be in a least 2 newspapers or other appropriate publications that are widely circulated in the area where the potential purchasers will reside.
- The advertisement must run at least once per week for 2 successive weeks.
- The advertisement for real property must describe any use restrictions or easements on the property.
- The advertisement must include a statement that the property is being sold “as is.”
- The advertisement must state that the Government reserves the right to cancel the sale at any time during the sale process and also reserves the right to reject any or all applications or bids.
- The advertisement may list the market value of the property or a minimum acceptable price.
- The advertisement shall indicate whether FSA financing is available to purchase the property. The advertisement will also indicate where to obtain an application or submit a bid, how to receive more information, and the deadline for submitting applications or bids.

781 Advertising Property (Continued)**B General Requirements (Continued)**

The authorized agency official must use other appropriate forms of advertising to maximize publicity, including posting Exhibit 70. The authorized agency official posts these advertisements in the local Field Office, adjoining Field Offices, the Farms for Sale Web Site, and other appropriate locations as necessary to ensure that the sale receives adequate exposure to the market.

C Advertising and Selling to Beginning and Socially Disadvantaged Farmers

All inventory property will continue to be advertised for sale to beginning and socially disadvantaged farmers unless it meets the criteria identified in subparagraph 776 A. Advertising must meet the general advertising requirements in subparagraph B and additionally must state:

- that beginning farmers or socially disadvantaged farmers may lease the property for up to 18 months if FSA loan funds are not available at the time of the scheduled sale
- that the lease of property may be subject to environmental use restrictions
- where to obtain an application, how to receive more information, and the deadline for submitting applications
- the market value of the property.

* * *

The initial paragraph in the advertisement must state the following:

“The property is being offered for sale to those individuals whom the Farm Service Agency (FSA) considers qualified beginning and/or socially disadvantaged farmers or ranchers. * * * Qualified beginning and socially disadvantaged farmers or ranchers must be in need of FSA credit assistance either in the form of direct FSA financing or an FSA guaranteed loan. For other requirements and information on how to qualify as a beginning and/or socially disadvantaged farmer or rancher, you may contact your local FSA office.”

* * *

--Priority consideration will be given to beginning farmers and/or socially disadvantaged farmers.--

* * *

782 Sealed Bid Sales (Continued)**J Handling Equal Bids**

If there are equal bids, the authorized agency officials determine the successful bidder by random selection. The random selection is held in public and is not appealable.

K Credit Bids Exceeding Market Value

If FSA receives a bid requesting credit that exceeds the market value of the property or exceeds acceptable FSA terms, the authorized agency official gives the bidder the opportunity to:

- make a cash down payment
- reduce the credit request with no accompanying change in the offer price
- reduce the terms with no accompanying change in the offer price.

L Handling Bid Deposits

The authorized agency official returns the deposits of all unsuccessful bidders * * *. If there are no acceptable bids, the authorized agency official returns all deposits and informs the bidders of any anticipated negotiations for the sale of the property. The authorized agency official deposits the successful bidder's deposit according to 3-FI.

M Disqualifying Bids

The authorized agency official disqualifies any bids that do not comply with the terms of the FSA notice. The authorized agency official may waive minor deviations and defects in an offer.

N Failing to Close the Sale

If a successful bidder fails to close the sale under the terms of the offer, FSA retains the entire deposit. However, if the failure to close is FSA's fault or FSA rejects the credit application, the authorized agency official returns the entire deposit according to 3-FI. When the authorized agency official determines that the successful bidder will not close, SED will authorize another sealed bid sale, auction, or direct negotiations with the next highest bidder, all unsuccessful bidders, or other interested parties.

***--Note:** In the event FSA retains the deposit on an unsuccessful sale, the deposit will be applied to the inventory property with a 2E transaction using the miscellaneous collection code of 10.--*

783 Auctions**A General Policy**

FSA sells chattel and real property “as is” and does not guarantee its condition.

SED may determine the minimum acceptable sale price. However, in most cases, determining a minimum bid is not necessary with a public auction. If SED sets a minimum bid, FSA should not publicize the minimum bid amount.

B Auction of Chattel

FSA acts to protect its interests if it suspects collusion or efforts to undermine the open, fair, and competitive nature of a chattel auction. The authorized agency official must work closely with the auctioneer, as necessary, to ensure that property sells for the highest obtainable price.

The successful bidder for chattel must make full cash payment at the auction to complete the sale.

Sold chattel property remains subject to FSA’s lien until FSA receives the sale proceeds.

C Auction of Real Property

Details of the terms and conditions of the sale of real property are included in the contract with the auctioneer and the sales contract.

When possible, FSA should auction a group of properties. FSA may subdivide properties to promote a sale when necessary.

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
IRS Form 1099-C	Cancellation of Debt		409
NRCS-CPA-026 NRCS-CPA-026E	Highly Erodible Land and Wetland Conservation Determination		81, 801
Official Form 410	Proof of Claim		403
Official Form 410A	Proof of Claim Attachment		403
RD 3550-28	Authorization Agreement for Preauthorized Payments		50

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ACL	Accelerated	534, Ex. 11
BAP	Bankruptcy Action Pending	401, Ex. 11
CAP	Court Action Pending	421, Ex. 11
CL	Conservation Loan	41, 131, 145, Ex. 2, 17
CONACT	Consolidated Farm and Rural Development Act	1, 193, 537, Ex. 2
DEF	Deferral	248, Ex. 11
eDALR\$	electronic Debt and Loan Restructuring System	Text, Ex. 17
FAP	Foreclosure Action Pending	567, Ex. 11
FaSB	Farm Service Branch	Text, Exhibit 80
FLMAC	Farm Land Market Advisory Committee	Ex. 17
HML	high, medium, low	901
ISA	installment set-aside	46, 48, 131
ITLAP	Indian Tribal Land Acquisition Program	2, 537
LR	limited resource	132, 146
NFAOC	National Financial and Accounting Operations Center	Text, Ex. 11, 80
NP	nonprogram loan	Text
NRBRA	Net Recovery Buyout Recapture Agreement	321, 361, 363, 365
NRV	net recovery value	102, 321, 462
PLS	primary loan servicing	67, 68, 401, Ex. 11
PRB	Program Reports Branch	708
RH	rural housing	Ex. 79

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM (Continued)

Approved Abbreviation	Term	Reference
SA	shared appreciation loan	66, 67, 102, 145, 146, 191, 346
SAA	shared appreciation agreement Note: When reference is made to a signed agreement as a condition of receiving debt writedown.	197, 249, 343, 344, 346, 403, Ex. 2, 4, 25, 26
SAA	subject to approved adjustment Note: When reference is made to the financial “flag”/designation for an account where FSA has approved a borrower’s debt settlement offer as documented on FSA-2732.	172, 249, 343, 404, 406, Ex. 11
SCRRG	State Civil Rights Review Group	533
SEC	State Environmental Coordinator	802, 821, 837, 839
SI	Security Instrument	344, 346
SOL	Statute of Limitations	533, Ex. 47
ST	softwood timber loan	41
TOA	type of assistance	131
TPJ	third party judgment	421, Ex. 11
YL	youth loan	41, 42, 68, 132

Redelegations of Authority

SED may redelegate to FLC authority to approve PLS where the borrower (or any entity *--member) has already received PLS at least 2 times in the previous 5 years.--*

SED may redelegate to FLC, FLS, and/or DD the authority to waive real estate and/or non-essential asset appraisals for current market value buyout when the chattel appraisal shows that chattel security value exceeds the debt, and security has been cross-collateralized.

Definitions of Terms Used in This Handbook (Continued)

Bankruptcy Trustee

A Bankruptcy Trustee is a court-appointed person who oversees execution of the confirmed bankruptcy plan. A Trustee is less frequently used in Chapter 7 and Chapter 11 bankruptcies than in Chapter 12 and 13 bankruptcies.

Basic Security

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

Beginning farmer is an individual or entity who:

- (1) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, as applicable;**
- (2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;**

***--Note:** Experience obtained through agriculture education programs when the applicant was not the primary owner or operator of the farm or ranch is not included when calculating the 10 year period.--*

- (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;**

Definitions of Terms Used in This Handbook (Continued)

Beginning Farmer (Continued)

- (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 median 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.

Borrower (or Debtor)

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

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.

Ceases to Farm

Ceases to farm refers to a borrower who is considered to have "ceased farming" if the borrower is no longer receiving income produced by the farm, if the borrower is no longer operating the farm, and/or if the borrower has leased the farm for more than 3 years or the lease has an option to purchase.

Definitions of Terms Used in This Handbook (Continued)**CONACT or CONACT Property**

CONACT or CONACT property is property that secures a loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 USC 1921 et seq.). It also includes property that secures other FLP loans.

Confirmed Plan of Reorganization

A confirmed plan of reorganization involves a bankruptcy court approved plan, which outlines the debtor's security interest, repayment schedules and terms of performance.

Conservation Contract

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

Conservation Contract Review Team

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

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.

***--Cosigner**

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 entity applicant, the cosigner cannot be a member of the entity.--*

Credit Sale

Credit sale is a sale of FLP inventory property for which FSA provides financing to the purchaser.

Definitions of Terms Used in This Handbook (Continued)**Criminal Action**

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. Such violations may include, but are not limited to unauthorized sale of security; purchase of security with intent to defraud and without payment of the purchase price to the Agency; falsification of assets or liabilities in loan applications; application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose; using funds for an unauthorized purpose and then making false statements regarding their use; by scheme, trick, or other device, covering up or concealing misuse of funds or unauthorized disposition of security or other illegal actions; or any other false statements or representations relating to Agency benefits.

* * *

Current Market Value Buyout

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

Custodial Property

Custodial property is property and improvements owned by a borrower that serve as security for an Agency loan that the borrower has abandoned, and that the Agency takes into its control to protect the Government's interest.

Debt Forgiveness

Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency.

(1) Debt forgiveness may be through:

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

Definitions of Terms Used in This Handbook (Continued)

Note

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

Notification of Meeting of Creditors

A Notification of Meeting of Creditors is usually the first notice to a creditor that a bankruptcy has been filed. It allows opportunity for creditors to establish their claims against the debtor and preserve their interest in security, as applicable. It provides the date by which the claim must be filed.

Office of the General Counsel (OGC)

Office of the General Counsel (OGC) is the OGC of the U.S. Department of Agriculture. Unless otherwise indicated, OGC refers to the Regional Attorney or Attorney-in-Charge in an OGC Field Office.

Operator

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. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.

Note: Operators include borrowers who obtained individual loans and later formed an operating only entity with a relative. If the member with the individual loan owns at least 50 percent of the operating entity, the individual meets the definition of operator
--for loan servicing purposes.--

Example: An individual obtains an FO and later forms an operating-only entity with a relative and obtains an OL for the same operation. The individual then needs servicing for the individual FO. In these cases, if the individual owns at least 50 percent of the operating entity, the definition of operator is met.

Borrowers who obtained individual loans and later formed an operating-only entity with a non-relative must have the entity assume the debt to be eligible for loan servicing, as provided in 4-FLP, subparagraph 248 C. However, transfer of the collateral to the entity is not required.

In either of these circumstances the operating entity must have their own unique tax ID number.

Definitions of Terms Used in This Handbook (Continued)**Participation**

Participation is a loan arrangement where a primary or lead lender is typically the lender of record but the loan funds may be provided by 1 or more other lenders due to loan size or other factors. Typically, participating lenders share in the interest income or profit on the loan based on the relative amount of the loan funds provided after deducting the servicing fees of the primary or lead lender.

Past Due

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

Petition in Bankruptcy

A petition in bankruptcy is a document filed in Bankruptcy Court that formally begins the bankruptcy process. The filing of the petition in bankruptcy invokes the automatic stay.

Plan of Reorganization

A plan of reorganization is a plan submitted by the debtor that outlines how the debtor intends to preserve security interests and plans to repay creditors and terms of performance. This process may be repeated until agreement of the parties is reached.

Post-Acquisition Homestead Protection

Post-acquisition homestead protection is when a borrower applies for homestead protection after FSA obtains title to the real estate security for the borrower's loan.

Post-Deferral Plan

A Post-Deferral Plan is a plan projecting the borrower's operations for the year following the deferral period.

Potential Liquidation Value

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.

Pre-Acquisition Homestead Protection

Pre-acquisition homestead protection is when a delinquent borrower applies for homestead protection and it appears that a feasible plan to address the delinquency cannot be developed through primary loan servicing. The Authorized Agency Official begins processing the borrower's request but does not approve homestead protection until FSA obtains title to the property.

Definitions of Terms Used in This Handbook (Continued)**Redemption Right**

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 an involuntary sale plus accrued interest and costs.

Related by Blood or Marriage

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

***--Relative**

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, halfbrother, halfsister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.--*

Reposessed Property

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

Rescheduling

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

Restructuring

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

Right-of-Way

A **right-of-way** is a legal right of passage over another person or entity's land.

Sealed Bid Sale

A **sealed bid sale** is a public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

Security

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."

Definitions of Terms Used in This Handbook (Continued)**Security Instrument**

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

***--Security Value**

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

A **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 secured by real estate 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 or Farmer

A **socially disadvantaged applicant or farmer** is an individual or entity who is a member of a socially disadvantaged group. For an entity, 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

A **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.

Special Hazard Area

Special Hazard Area is a mudslide hazard area, a special flood area, or an earthquake area.

Subordination

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority to another party providing the other party with a priority lien on the collateral.

Definitions of Terms Used in This Handbook (Continued)**Subsequent Loan**

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.

Termination Date

A termination date is the date specified in a disaster declaration, determination, or notification that establishes the final date after which Emergency Loan applications can no longer be accepted. For both physical and production losses, the termination date is 8 months from the date of the disaster declaration, determination, or notification.

Transfer and Assumption

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.

Tools of the Trade

Tools of the trade are assets that are exempt from collection efforts because they are essential to the operation of a business.

Treasury Offset Program (TOP)

TOP is the centralized offset of payments to collect delinquent, nontax debts owed to Federal agencies and States (including past-due child support), according to:

- 7 CFR Part 3, Subpart D
- 31 CFR Part 285, Subpart A
- 31 CFR 901.3(b).

Typical Plan

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

Definitions of Terms Used in This Handbook (Continued)**Unauthorized Assistance**

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.

Unauthorized Loan

An **unauthorized loan** is any loan, a portion of a loan, interest rate, or interest subsidy that the borrower was not eligible to receive, that was not made according to all Agency procedures and requirements or which the Agency obligated from the wrong appropriation or fund.

Unauthorized Loan Servicing Action

An **unauthorized loan servicing action** is any loan servicing action not made according to all Agency procedures and requirements or that the borrower was not eligible to receive.

Voluntary Conveyance

Voluntary conveyance is a method of voluntary liquidation by which the borrower transfers title of security property to the lender.

Wetlands

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. * * * Wetlands generally may be those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs and similar areas, such as sloughs, potholes, wet meadows, mudflats and natural ponds.

State Supplements

The following table lists required State supplements.

Subparagraph	Required State Supplement
3 C	Guidance on Notary Acknowledgement
3 D	Guidance on Signature Requirements
3 F	Using State-Specific and State-Created Forms
104 A	Obtaining PLS Appraisals
196 B	Filing of Conservation Contracts
229 B	State-Certified Mediation Requirements
247 B	Closing Reamortized Loans
302 A	Homestead Protection According to State Laws
343 B	Real Estate Appraisals for Determination of SAA Recapture
345 C	Satisfying Shared Appreciation Agreements (SAA) According to State Laws
346 E	Maintaining Lien Position When Amortizing SAA Recapture
401 E	State Policies and Procedures for Bankruptcy
402 F	Reaffirmation of Debt
--421 C--	State Policies and Procedures for Civil and Criminal Actions
443 C	Managing the Liquidation Process
462 B	Title Searches
464 B	Lien Searches
498 A	Convergence of Rights With Real Property
531 A	Loan Acceleration
533 A	Case File Preparation for Acceleration
533 E	Determination of Property Value Prior to Acceleration
534 E	Notification of Prior Lienholders After Acceleration
535 C	Partial Payments After Acceleration
551 A	General Involuntary Liquidation
566 D	Real Property Foreclosures
567 C	Bidding at Foreclosure Sales
568 A	Acquisition of Inventory Property
568 E	Addressing Outstanding Loan Balances After Real Estate Foreclosure
551 D	Calculating Amount To Be Reported to DOJ
601 A	Third-Party Foreclosures
601 C	Contract Forfeiture
602 A	Prior Lienholder Liquidation
604 E	Redemption Rights

State Supplements (Continued)

Subparagraph	Required State Supplement
705 C	Custodial Property
707 F	Removal of Abandoned Vehicles From Inventory Property
724 A	Taxes on Inventory Real Property
776 D	Advertisement of Inventory Property for Sale
776 F	Contracting With Real Estate Brokers to Sell Inventory Property
778 E	Sale of Inventory Property
Exhibit 17, subparagraph 5 F	<ul style="list-style-type: none"> • Estimated Cost and Average Holding Period • Factors to Use When Adjusting Market Value.
Exhibit 60, Page 1	*--Holding Period of Less Than 165 Days (.45 years; 5.5 months).--* Redemption Period Established Under State Law.

Instructions for Using eDALR\$ (Continued)

2 eDALR\$ User Guide (Continued)

F Order of eDALR\$ Calculations

eDALR\$ performs calculations in the following order.

Order of eDALR\$ Calculations

1. Basic eligibility criteria for Debt Restructure or Buyout.
2. Servicing requirements for new loan limits/payments.
3. eDALR\$ considers conservation contracts, if requested.
4. eDALR\$ calculates net recovery value.
5. eDALR\$ verifies that net recovery value of nonessential assets is less than total delinquency for FSA program loans.
6. eDALR\$ tries to reschedule or reamortize delinquent loans and nondelinquent loans that the authorized agency official designated for servicing at the maximum term allowed in the following order:
 - delinquent program loans
 - limited resource program loans
 - unequal payment program loans.
7. eDALR\$ considers consolidation for all eligible program loans.
8. eDALR\$ considers program loan deferral.
- 9.*--eDALR\$ considers a delinquent Non-Program loan only account for rescheduling or--* reamortization with approval of the Administrator unless it is a * * * Shared Appreciation Recapture Debt.
10. eDALR\$ considers writedown of FSA program debt.
11. eDALR\$ considers combinations of the above servicing programs, except consolidation, with writedown.
12. eDALR\$ considers the market value buyout amount when a feasible plan cannot be developed.
13. eDALR\$ determines the amount of cash improvement needed to develop a feasible plan, if a feasible plan cannot be develop based on existing budget data.

--Non-program loans will also be included in servicing calculations using the above order if the account also includes FSA program loans. Details about non-program rates and terms used can be found in the eDALR\$ system user guide.--

***--Instructions for Using eDALR\$ (Continued)**

2 eDALR\$ User Guide (Continued)

G eDALR\$ and Debt Service Margin

During the first phase of the calculations, eDALR\$ attempts to restructure the borrower's debt using all necessary combinations of loan servicing options, excluding writedown (steps 9 and 10), and providing a 10 percent debt service margin. If a feasible plan cannot be developed after considering the appropriate combinations of loan servicing, eDALR\$ reduces the debt service margin by 1 percent until a feasible plan is developed or the debt service margin falls to zero. At a zero percent debt service margin, after considering all combinations of loan servicing, eDALR\$ considers writedown or a combination of writedown and other servicing action to develop a feasible plan.

H eDALR\$ Outputs

eDALR\$ prints a report that shows the results of its calculations and eligibility determination and provides a feasible plan with the supporting new loan information. If eDALR\$ determines that a feasible plan cannot be developed or the borrower is not eligible for servicing (for example, failed to act in good faith) eDALR\$ offers buyout or recommends offering debt settlement.

The authorized agency official may request either a summary report or a detailed report from eDALR\$. A summary report does not include any of the calculation tables, whereas the detailed report does include all the calculation tables and input data.

The conditions for certain outcome summaries associated with the eDALR\$ calculations--* are described in the following table. The table describes the conditions of the borrower's account, the outcome code and outcome that occur as a result of the conditions, and what FSA will offer to the borrower.

Conditions	Outcome Code	Outcome Description	Offer to Borrower
Feasible plan found for first year; or Feasible plan found for post-deferral year, if applicable.	1	Feasible plan found.	FSA offers the borrower primary loan servicing to realize the feasible plan.

***--Instructions for Using eDALR\$ (Continued)**

4 eDALR\$ Formulas (Continued)--*

J Debt Writedown and Buyout Limitation

eDALR\$ attempts to develop a feasible plan with a 10 percent debt service margin. All program loan servicing, excluding writedown, is considered before reducing the debt service margin. eDALR\$ will consider writedown only if all of the following conditions are met.

- The borrowers have not received the lifetime limitation for writedown or writeoff with buyout.
- At least 1 program loan is delinquent.
- The debt service margin is at zero percent.

If a feasible plan is found with writedown, eDALR\$ determines the amount of writedown necessary for the borrower to have a positive cash flow.

- If the amount of the writedown is less than or equal to \$300,000, a feasible plan has been found.
- If the amount of writedown is greater than \$300,000 and the debt service margin equals 1.00, or a feasible plan cannot be developed, eDALR\$ determines the amount of--* writeoff, with buyout at the current market value.
- If the amount of writeoff, with buyout at the current market value, is less than or equal to \$300,000, the borrower is offered buyout.
- If the amount of writeoff, with buyout at the current market value, is greater than \$300,000, the borrower is not eligible for loan servicing or buyout and the borrower is offered debt settlement.

Instructions for Using eDALRS (Continued)

5 Periodic Data

A Administrative Liquidation Costs

The administrative liquidation costs for each loan type are provided in the following table.

Loan Type	Calculation	Cost
OL	*-- $(3063 \div 60 = 51.05) \times \$25.43 =$	\$1,298
FO/SW/CL	$(3063 \div 60 = 51.05) \times \$25.43 =$	\$1,298
EM/EE	$(3063 \div 60 = 51.05) \times \$25.43 =$	\$1,298
RH (Used for RHF loans only.)	$(3063 \div 60 = 51.05) \times \$25.43 =$	\$1,298--*

Note: Costs were calculated using the most recently available Delphi study for the average number of hours spent on a liquidation activity by FSA employees, and used the *--2018 GS-11/1 hourly pay rate. The Delphi study is a nationwide survey and--* forecasting tool that records averages of times and actions on FSA accounts.

B Legal Liquidation Costs

Legal liquidation costs will be determined for real estate and chattel foreclosures, as well as chattel-only foreclosures. These costs estimate liquidation costs for Government attorney time for foreclosure cases in both judicial and nonjudicial foreclosure States and will vary by State. Legal liquidation cost estimates should be determined based on the costs that have been incurred during past liquidations in that State. U.S. Attorney Office costs should only be included in States where judicial foreclosures are required.

C Determining Chattel Costs

Chattel costs are determined based on the following:

- “Months Held in Inventory” - FSA rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless the Administrator approves chattel acquisitions and determines that chattels do have a holding period.

Note: If significant acquisitions occur and a chattel holding period becomes necessary, States will contact the National Office for guidance and provide detailed information about the acquisition and planned disposal of the chattel property.

- “Sales Commission Rate” - Authorized agency official will conduct a survey of auctioneers to determine the average commission rate for chattel sales in the area.
- “Other Sales Costs” - These are miscellaneous costs typically incurred when selling acquired chattels. County Offices should request State Office guidance in unusual cases.
- “Rate of Change in Value” - This is a yearly percentage decrease or increase in the value of the property. The normal rate of change in value for chattels will be zero as FSA rarely acquires chattel property.

Instructions for Using eDALRS (Continued)

5 Periodic Data (Continued)

D Real Estate Costs

The analysis for liquidation and disposition costs should, as a minimum, address the following items and considerations.

- “Months Held in Inventory” - The average holding period will be .45 years
--(165 days; 5.5 months).--
- “Sales Commission Rate” - A study will be conducted to determine the typical method for disposition of FSA inventory farms in the state. The findings will be used to determine whether FSA normally disposes of inventory farms without the assistance of brokers or auctioneers. If a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will always be included at the rate specified on the listing agreements or contracts in effect for the County Office.
- “Cost Per Advertisement” - Authorized agency official will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with paragraph 781.
- “Rate of Change in Value” - Yearly percentage decrease or increase in value is the rate of change in value. To provide a fair assessment of projected trends in farm land values, SED will utilize FLMAC.

Note: See subparagraph E for FLMAC composition and purpose.

- “Management Charges” - In situations where state or district-wide contracts for management of inventory farms are in effect, the SED will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no area-wide contract rates for some or all counties, State Office guidance should be given on how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

Instructions for Using eDALRS (Continued)

5 Periodic Data (Continued)

E FLMAC

FLMAC will consist of the following members or representatives:

- FSA, SED
- NRCS, State Conservationist
- Extension Specialist from a land grant university, if available, or the National Institute for Food and Agriculture employee with knowledge of the farm real estate market.

Data obtained from EIP-51R and FSA-326 may be useful to FLMAC in determining the annual percentage of decrease or increase in land values.

FLMAC will meet at least annually, and will consider the following information:

- The actual change in farm land values in the state during the previous year, as indicated in the most recent “Agricultural Land Values and Market Situation Outlook Report” issued by the USDA Economic Research Service.
- Current conditions in the state and national agricultural economics.
- Availability and cost of credit to purchase farm land.
- The amount of repossessed farm land held by FSA, the Farm Credit System, and other private sector lenders.
- Any special conditions which would affect farm land values in the state.
- Any studies or research conducted by the state agricultural university or similar scholarly source.

If the state has agricultural regions with discernable differences, FLMAC should, if possible, determine anticipated value changes on a regional basis. FLMAC’s meetings and decisions, including the basis for those decisions, will be documented, retained in the State Office as part of the State supplement file and provided to interested parties upon request. Prior to providing the FLMAC determinations to FSA field offices, SED will contact SED’s in surrounding states to determine if FLMAC’s findings are fairly consistent with those of surrounding states. If there are significant differences, SED may reconvene FLMAC to reconsider its findings.

Instructions for Using eDALRS (Continued)

5 Periodic Data (Continued)

F State Supplement

SED's will issue a state supplement to:

- address the estimated costs and average holding period to be used in making calculations of net recovery value
- provide the factors to use in adjusting market value.

***--Note:** The State supplement shall be issued after completing the cost analysis and no later than December 31st of each year.--*

Instructions for Using eDALRS (Continued)

5 Periodic Data (Continued)

G Determining Property Management Costs

Property Management Cost is the administrative cost of managing a property while the property is being held in FSA inventory. The cost will be deducted in cases involving real property. The following worksheet is used to calculate the property management costs. Delphi data standards are used and average actions per month per the national average from the Delphi Study for required actions per property are also put into the formula. Complete the worksheet by using the average holding period of inventory property determined according to subparagraph C. An example has been completed based on national average data with an average holding period of 5.5 months.

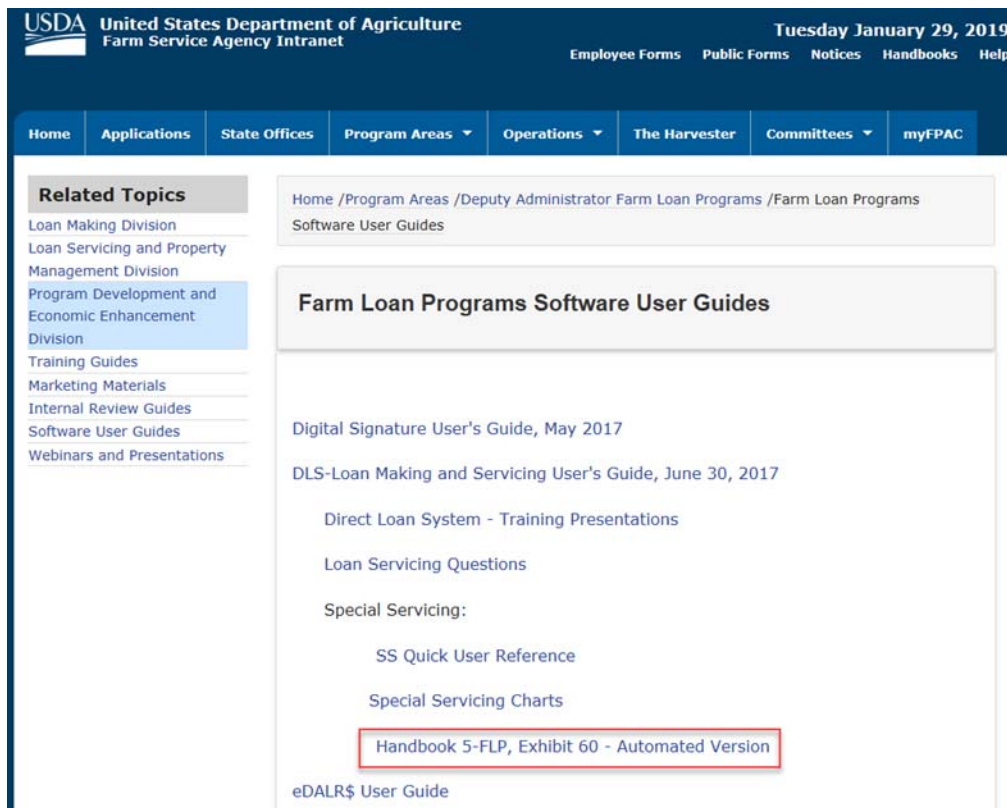
Determining Property Management Costs

Step	Action		
1	(<u>.215</u> X <u>5.5</u> = <u>1.1825</u>)	Average Actions Per Property/Month	Average Holding Period
2	(<u>180</u> ÷ <u>60</u> = <u>3</u>)	Delphi Data for Real Estate Loans	
--3	(<u>1.1825</u> X <u>3</u> X <u>25.43</u> = <u>90.21</u>)--	Amount from Step 1	Amount from Step 2 2018 GS 11/1 Hourly Pay
4	(<u>648</u> ÷ <u>60</u> = <u>10.8</u>)	Delphi Data for Inventory Actions	
*--5	(<u>10.8</u> X <u>25.43</u> = <u>274.64</u>)	Amount from Step 4	2018 GS 11/1 Hourly Pay
6	(<u>90.21</u> + <u>274.64</u> = <u>365.00</u>)--*	Amount from Step 3	Amount From Step 5 Administrative Costs for Inventory Property (Rounded to nearest \$)

Note: Exhibit 60 is available in a fillable format at <https://intranet.fsa.usda.gov/dam/ffasforms/currentforms.asp>, in the “Forms Number” block type “5-FLP Exhibit 60” and CLICK “Submit”.

Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property

*--An automated version of 5 FLP Exhibit 60 has been posted in FLP Systems under Manuals and Farm Loan Programs Software User Guides. It is a spreadsheet in Excel format that will make the calculations automatically. The automated version of 5 FLP Exhibit 60 can be accessed directly at https://inside.fsa.usda.gov/Assets/USDA-FSA-Intranet/intranetfiles/program-areas/daflp/docs/5FLP_Exhibit_60.xlsx.



The use of this automated version is not mandatory, however it is a user friendly tool that will assist users in their calculations for involuntary liquidations.--*

**Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property
(Continued)**

5-FLP, Exhibit 60

Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property

(present owner/borrower)

See data published according to Exhibit 17, subparagraph 2 B for guidance in estimating the incomes and expenses to be used in this exhibit. The holding period to be used is 165 days (.45 years) or less if it can be justified by the actual State average holding period. A longer period may be used only if a redemption period is established under State law; the holding period would be the redemption period plus 165 days (or less as noted above). State supplements will be issued as required and will address how income and expenses for the property will be calculated during the redemption period. If an individual property requires a longer holding period because of deed restrictions, legal issues, etc., and Administrator's Exception request may be requested to use a different holding period.

1. MARKET VALUE OF PROPERTY \$ _____
Date of Appraisal _____
ESTIMATED HOLDING PERIOD IN YEARS: = _____
Statutory Holding Period 0.45 years + State Holding Period _____ years
 2. INCOME
 - a. Annual Rent _____ x Holding Period _____ = _____
 - b. Annual Royalties _____ x Holding Period _____ = _____
 - c. Other Annual Income _____ x Holding Period _____ = _____
 - d. Annual % Land Appreciation _____ x Holding Period _____ = _____
 - e. Value gained due to restrictions that are placed on the farm such
as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____
 - f. Other (describe) _____ x Holding Period _____ = _____
- TOTAL ADDITIONS = \$ _____

Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property
(Continued)

5-FLP, Exhibit 60

3. EXPENSES

- a. Total Prior Lienholder Indebtedness (P and I) = _____
- b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, junior liens, etc.) List:
_____ = _____
- c. Annual Taxes and Assessment _____ x Holding Period _____ = _____
- d. Annual Building Depreciation _____ x Holding Period _____ = _____
- e. Annual Management Costs _____ x Holding Period _____ = _____
- f. Total Essential Repairs to Secure and Resell = _____
- g. Annual % Decrease In
Land Value (if applicable) _____ x Holding Period _____ = _____
- h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____
- i. Total Interest Cost:

\$ _____ x _____ x _____ = _____
MKT Value Regular OL Rate Holding Period
- j. Value loss because of restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____
- k. Hazardous Waste Clean-up Costs = _____
- TOTAL DEDUCTIONS (ITEMS A THROUGH K) = _____

4. CALCULATION OF FSA'S NRV

5. BID WILL BE THE **LESSER OF** a or b:

$$\text{b. } 1. \frac{\text{Unpaid FSA Balance on Secured Debt}}{\text{}} + 2. \frac{\text{*Prior Lienholder}}{\text{}} = \frac{\text{Maximum Bid}}{\text{}}$$

Concurrence by: _____
State Executive Director _____ Date _____