



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1927 (1940)

May 16, 1989

SUBJECT: Coordination of Highly Erodible Land and Wetland
Conservation Requirements with the Soil
Conservation Service and the Agricultural
Stabilization and Conservation Service for
Farmer Programs

TO: State Directors, District Directors and County
Supervisors

ATTENTION: State Environmental Coordinators and Farmer
Programs Chiefs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to continue to emphasize to field offices the procedures that Agricultural Stabilization and Conservation Service (ASCS) and Soil Conservation Service (SCS) are using to provide Farmers Home Administration (FmHA) applicants with the information necessary to implement Exhibit M of FmHA Instruction 1940-G, Environmental Program. The intended outcome of this AN is to insure that the FmHA County Supervisors inform affected applicants, guaranteed lenders and borrowers of these procedures. It is of utmost importance that Farmer Programs loan dockets contain the essential documentation to assure that the requirements of Exhibit M of FmHA Instruction 1940-G are fully implemented for both loan making and servicing.

COMPARISON WITH PREVIOUS AN:

This AN replaces FmHA AN No. 1893 (1940) dated March 31, 1989, to number the pages and revise the third paragraph in Item D and the first paragraph on page 6 for clarification.

IMPLEMENTATION RESPONSIBILITIES:

A. COORDINATION WITH ASCS AND SCS

For guidance in the procedures to be followed in processing Form AD-1026, "Highly Erodible Land and Wetland Conservation

EXPIRATION DATE: March 31, 1990

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1940-G



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Certification," and Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," see the attached chart given in Exhibit A.

All new insured and guaranteed loan applications will be processed, in accordance with Exhibit M, Paragraph 5a of FmHA Instruction 1940-G, which requires that an applicant for either an insured or guaranteed Farm Operating Loan, Farm Ownership Loan, Emergency Loan, or Soil and Water Loan must include as part of a completed application a Form SCS-CPA-26 and if highly erodible lands, wetlands, or converted wetland is present, a Form AD-1026. Once an applicant has provided FmHA with information from SCS, on the presence of any highly erodible land, wetland, or converted wetland, this information need not be provided again for a subsequent loan or applicable servicing action, unless there is either a change in the property upon which FmHA loan proceeds will be applied or change in the previous information. To determine if there has been a change in the use of the property or if new property is involved the applicant or borrower must at a minimum initiate the processing of Form AD-1026 with ASCS. This will be the basis for determining any property changes.

The County Supervisor will advise (or, in the case of a guaranteed loan, inform the lender to advise) the applicant or borrower to contact the local ASCS office to complete Form AD-1026. This form will be completed in the ASCS office and not in the FmHA County Office. The County Supervisor will advise (or, in the case of a guaranteed loan, inform the lender to advise) the applicant or borrower to notify the ASCS office when requesting completion of Form AD-1026, that the applicant intends to apply for an FmHA insured or guaranteed loan covered by the highly erodible land or wetland conservation requirements. ASCS will note this fact in block number 14, "Remarks," of the Form. Without this notation, the form will not receive priority processing.

The applicant or borrower does not need to go directly to SCS. Once the applicant goes to ASCS, the relevant farm numbers and photocopies will be provided to SCS by ASCS, regardless of the applicant's or borrower's number of farms or their locations. ASCS will not hold Form AD-1026 in its office, but after processing will forward it as quickly as possible to SCS. The completed Form SCS-CPA-26 will be sent by SCS to both ASCS and the applicant or borrower. It will be the applicant's or borrower's responsibility to provide a copy of the form to FmHA, before the application for a loan or servicing action is complete.

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Those borrowers whose loans were approved (insured/guaranteed) on or after June 24, 1986, and whose files do not contain Form AD-1026, must contact their local ASCS office to initiate completion of the form regardless, if they are applying or not applying for further FmHA assistance. Attachment 1, or 2, as applicable, of the unnumbered letter dated November 6, 1987, titled "Processing Farmers Home Administration Loans Under the Highly Erodible Land and Wetland Conservation Provisions" will be used in notifying insured loan borrowers/guaranteed lenders, as applicable, of this requirement. Exhibit B of this AN is a copy of the unnumbered letter dated November 6, 1987.

In those counties in which SCS has not completed a soil survey, the following actions will be taken:

1. SCS will return Form SCS-CPA-26, indicating that a soil survey is not available.
2. No matter how the FmHA (insured/guaranteed) applicant or borrower completes questions 7 and 8 on Form AD-1026, regarding wetland, the SCS will make a determination, whether there are any existing wetlands on the cropland that the applicant or borrower will be farming.
3. If the FmHA (insured/guaranteed) applicant or borrower indicates on Form AD-1026, that an agricultural commodity will be produced on fields that were not used in the production of any agricultural commodity in any of the crop years 1981-1985, SCS will make a highly erodible land determination. If the applicant or borrower indicates that no new land will be placed in production to produce agricultural commodities, the loan approval official will discuss this with the applicant or borrower (and lender if a guaranteed loan is involved) and determine by reviewing the Farm and Home Plan or similar plans if any new land will be placed in production. In those cases in which the loan approval official questions the applicant's or borrower's intent regarding the use of new land, FmHA will request SCS to make a highly erodible and wetland determination on the new land. For any applicant or borrower where a soil survey has not been completed by SCS and who is not planning to bring new land into agricultural commodity production, the applicant or borrower will be advised by the County Supervisor/lender that if at a later date the applicant or borrower plans to bring new land into production, the applicant or borrower must first consult with the County Supervisor (or lender in the case of a guaranteed loan.) The discussion with the applicant or borrower/lender will be documented in the County Office case file.

B. SUBSTANTIVE REQUIREMENTS FOR APPLICANTS/BORROWERS WHO MUST IMMEDIATELY COMPLY WITH THE "HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION PROVISIONS."

Applicants or borrowers who either propose to convert wetlands or plan to plant on wetlands converted after December 23, 1985, or highly erodible land that was not planted on any year between 1981 to 1985, face immediate substantive compliance requirements. These requirements and FmHA's associated responsibilities are found in FmHA's Instruction 1940-G, Exhibit M, Paragraph 6.

C. SUBSTANTIVE REQUIREMENTS FOR APPLICANTS/BORROWERS EXEMPT UNTIL JANUARY 1, 1990.

All borrowers unaffected by the conservation compliance requirements until 1990 and who received (insured/guaranteed) loans that were approved on or after June 24, 1986, and have repayment periods that run beyond January 1, 1990, must be actively applying a conservation plan by January 1, 1990, if they plan to continue to cultivate highly erodible land and remain in compliance with FmHA's loan requirements. A person is considered to be actively applying a conservation plan if the plan is being applied according to the schedule specified in the plan and the applied practices are properly operated and maintained.

For new loans (insured/guaranteed) with terms which will exceed January 1, 1990, and result in producing an agricultural commodity on highly erodible land, it will be the County Supervisor's/lender's responsibility to determine in accordance with FmHA Instruction 1940-G, Exhibit M, Paragraph 6c(2)(c)(i), if: (1) It is financially feasible for the applicant to actively apply a conservation plan on the highly erodible cropland by January 1, 1990, (SCS defines actively applying a plan as one that is being applied according to the schedule specified in the plan and the applied practices are properly operated and maintained) and (2) A typical plan of operation showing a positive cash-flow can be realized at the time the conservation plan is fully implemented. In determining financial feasibility, SCS has advised that it can provide at the County Office level approximate costs per acre for implementing a conservation plan. These approximate costs are based upon SCS's experience in that county given the particular soils and site conditions of the farm property under review. Of course, if the conservation plan could be provided at the same time as the cost projections it would be to everyone's benefit. However, it must be understood that a plan is not immediately required and if provided need not be actively applied by the borrower until January 1, 1990. If a positive cash-flow cannot be developed to show repayment after implementation of the conservation plan, the applicant's loan request will be denied.

D. THE REQUIREMENTS FOR LOAN SERVICING.

As indicated in Exhibit M of FmHA Instruction 1940-G its requirements fully apply to transfers, assumptions and subordinations.

All borrowers requesting the servicing actions covered by FmHA Instruction 1951-S must provide Form AD-1026 and Form SCS-CPA-26, except those borrowers who have already submitted the forms and are farming the same land. If the completed Form SCS-CPA-26 states there is highly erodible land on the borrower's property, the borrower must submit a conservation plan as part of a completed application for loan servicing if: (1) the borrower is not in compliance with a present requirement of its loan(s) for a conservation plan, i.e., the borrower is cultivating highly erodible land that does not qualify for the 1990 exemption; or (2) the borrower's development plan calls for the cultivation of highly erodible land that does not qualify for the 1990 exemption and the borrower needs a USDA benefit program in order to have a feasible farm plan.

If a conservation plan is not immediately required but Form SCS-CPA-26 states there is highly erodible land on the borrower's property, the County Supervisor should factor the cost implications of this information into the determination of a feasible plan. Sometime in 1989 and prior to January 1, 1990, the borrower must be actively applying a conservation plan to the highly erodible land. These are estimated costs which should be based upon consultation with SCS. This cost analysis is necessary if either (1) the borrower has an existing FmHA loan that was approved on or after the effective date of Exhibit M of FmHA Instruction 1940-G, which was June 24, 1986, or (2) the borrower plans to obtain, as evidenced by the farm plan of operation, USDA benefits subject to highly erodible land or wetland conservation requirements.

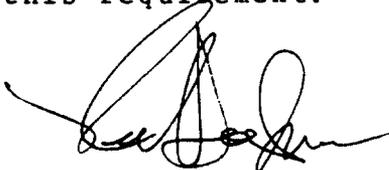
For the servicing actions covered by FmHA Instruction 1951-S, as explained above, the highly erodible land and wetland conservation provisions will be a factor in determining the borrower's ability to develop a feasible plan of operation. If, as a result, no feasible plan of operation can be developed, then the loan servicing action will be denied. This would not preclude the borrower from buying out at net recovery value. If, on the other hand, a feasible plan of operation can be developed, even after considering the highly erodible land and wetland factor, then the loan servicing action may be approved provided the borrower meets the other eligibility requirements.

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Finally, if the borrower only has loans that were approved prior to June 24, 1986, and the servicing action requires the completion of a new Form FmHA 1940-17, "Promissory Note," the following addendum will be added to the note for the borrower to sign:

All the Government funds evidenced by this note were approved prior to June 24, 1986. Therefore, the "Highly Erodible Land and Wetland Conservation Agreement" provision of this note does not apply.

A Forms Manual Insert (FMI) for Form 1940-17 will be issued with this requirement.

A handwritten signature in black ink, appearing to read 'Neal Sox Johnson', written over a horizontal line.

NEAL SOX JOHNSON
Acting Administrator

Attachments

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Exhibit A

STEPS IN OBTAINING A COMPLETED SCS-CPA-26, HIGHLY ERODIBLE
LAND AND WETLAND CONSERVATION DETERMINATION

- Step 1. Applicant requests loan application from FmHA.
- Step 2. FmHA explains requirements and sends applicant to ASCS to initiate the process.
- Step 3. Applicant goes to ASCS and requests initiation of AD-1026 and sends above material to SCS.
- Step 4. ASCS pulls applicant's aerial photos and farm numbers and has applicant complete Part A of Form AD-1026 and sends above material to SCS.
- Step 5. SCS completes Form SCS-CPA-26 and returns a copy to ASCS and two copies to applicant.
- Step 6. Applicant receives two copies of Form SCS-CPA-26 from SCS.
- Step 7. Applicant files FmHA application including a copy of AD-1026 and SCS-CPA-26.
- Step 8. FmHA reviews application materials and implements requirements of Exhibit M of FmHA Instruction 1940-G, as necessary.

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Exhibit B



United States
Department of
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Farmers
Home
Administration

Washington
D.C.
20250

November 6, 1987

SUBJECT: Processing Farmers Home Administration Loans Under The Highly Erodible Land and Wetland Conservation Provisions

TO: All State, District, and County Offices of the Agricultural Stabilization and Conservation Service, the Farmers Home Administration, and the Soil Conservation Service

As you are aware, in completing the processing requirements associated with the highly erodible and and wetland conservation provisions of the Food Security Act, the Department's operating procedures call for priority to be given to requests from applicants for Farmers Home Administration's (FmHA) insured and guaranteed loans. The purpose of this memorandum is to establish a system of coordinated interagency procedures that will allow FmHA to respond to loan applications in a timely manner during Fiscal Year 1988. Consequently, the following actions are to be taken as expeditiously as possible.

A. Agricultural Stabilization and Conservation Service (ASCS) State Executive Directors, FmHA State Directors, and Soil Conservation Service (SCS) State Conservationists.

No later than ten working days from receipt of this memorandum the above officials will meet to coordinate and implement the actions required by this memorandum. Further meetings or discussions will be held, as necessary, to resolve any identified implementation problems. Additionally, if not already planned, training programs on the contents of the Department's final rule on highly erodible land and wetland conservation should be conducted as soon as possible at the County Office level on an interagency basis.

B. ASCS County Executive Directors, FmHA County Supervisors, and SCS District Conservationists.

Step 1 - FmHA.

FmHA County Supervisors will review their insured and guaranteed loan dockets for all loans approved after June 23, 1986 and determine if (1) the borrower completed Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification" (hereafter AD-1026); (2) SCS completed Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination" (hereafter CPA-26); and (3) for loans whose term exceeds January 1, 1990, borrowers with previously cultivated highly erodible land have conservation plans. FmHA County Offices will then provide to their counterpart ASCS offices the following two lists: List 1 - a list of FmHA borrowers that do not have AD-1026's in their files and List 2 - a list of FmHA borrowers having, AD-1026's, but no CPA-26's. These lists should be provided to ASCS within five working days from the State Office's meeting referenced in paragraph A above.



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Step 2 -ASCS and FmHA

ASCS County Offices will review List 1 to determine if any FmHA borrowers initiated an AD-1026 for ASCS or other USDA financial assistance programs. ASCS will advise FmHA of those borrowers that have not filed an AD-1026 within five working days from receipt of FmHA's List 1. To these borrowers with insured loans, FmHA will immediately send the letter contained in Attachment 1 to this memorandum. For those borrowers with guaranteed loans, FmHA will immediately send to their respective lenders the letter contained in Attachment 2 to this memorandum.

Step 3 - ASCS

ASCS County Offices will also review the records of those borrowers on List 2 and those on List 1 that have filed AD-1026's with them and check-off those borrowers whose AD-1026's have been forwarded to SCS for completion of CPA-26's. This checked list will be provided to SCS within five working days from receipt of the FmHA lists. Those AD-1026's for FmHA borrowers that have not been forwarded to SCS will be processed and so forwarded within 10 working days from receipt of the FmHA lists. Each AD-1026 will be clearly noted in the remarks block as being that of an FmHA borrower.

Step 4 - SCS

SCS County Offices will give priority to processing the CPA-26's for the FmHA borrowers that it presently has AD-1026's for and then to those it will receive from ASCS. These should all be processed within forty-five working days of receipt from the ASCS office or earlier if seasonally inclement weather will make required field visits impossible. As CPA-26's are completed, the borrowers will be provided copies and, as an exception during this period of reducing the backlog, so will the FmHA County Office.

Step 5 - FmHA

FmHA County Offices will review the results of the CPA-26 in making any new loan making decisions and in monitoring past loans subject to the highly erodible land and wetland conservation provisions. For any existing borrower having an insured loan that matures after January 1, 1990 and who needs a conservation plan by that date, the FmHA County Supervisor will send the borrower the letter contained in Attachment 3 to this memorandum. Similarly, for any existing borrower having a guaranteed loan that matures after January 1, 1990 and who needs a conservation plan by that date, the FmHA County Supervisor will send the respective lender the letter contained in Attachment 4 to this memorandum.

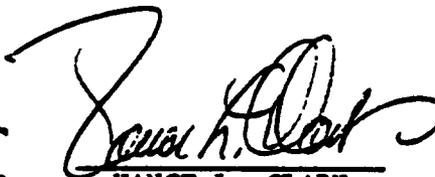
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Step 6 - ASCS, FmHA, SCS

New applicants for FmHA insured and guaranteed loans will be sent by FmHA or their respective lenders to the ASCS County Office to initiate the AD-1026 process. The AD-1026 will no longer be completed in the FmHA Office. As indicated in field procedures, FmHA borrowers' AD-1026's and CPA-26's will continue to be given priority by ASCS and SCS.

We believe that your strong commitment to implementing the above procedures will place the Department in the best possible position to respond to those members of the farming community whose continued operations may depend upon a responsive credit decision by Department officials. Thank you for your continued assistance in this matter.


MILTON HERTZ
Administrator
Agricultural Stabilization
and Conservation Service


VANCE L. CLARK
Administrator
Farmers Home
Administration


WILSON SCALING
Chief
Soil Conservation
Service



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Attachment 1

United States Department of Agriculture
Farmers Home Administration
(Location)

Dear _____,

Our records show that you presently have an insured loan with the Farmers Home Administration (FmHA) that was approved after June 23, 1986. This date is important because for all loans approved after it, the applicant must have completed a Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification." Your application for your present loan does not contain this completed form.

Please contact your local Agricultural Stabilization and Conservation Service (ASCS) office as soon as possible to initiate completion of the form. ASCS will explain the process to you as well as the role of the Soil Conservation Service, who will complete a related form for your farm property, Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination". Upon your receipt of these completed forms, please provide copies to this office.

If you have questions regarding the need for these forms, please contact this office. The specific requirements regarding the completion of these forms are contained in Exhibit M of Subpart G of Part 1940 of Title 7 of the Code of Federal Regulations. This information has been reprinted in FmHA Instruction 1940-G which is available in this office.

Thank you for your immediate response to this matter.

Sincerely,

County Supervisor



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Department of
Agriculture

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Attachment 2

United States Department of Agriculture
Farmers Home Administration
(Location)

Dear _____,

Our records show that the attached list of your borrowers presently have a guaranteed loan with the Farmers Home Administration (FmHA) that was approved after June 23, 1986. This date is important because for all loans approved after it, the applicant must have completed a Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification." The listed borrowers' applications for their present loans do not contain this completed form.

We strongly recommend that you make a written request to these borrowers to contact their local Agricultural Stabilization and Conservation Service (ASCS) office as soon as possible in order to initiate completion of the form. ASCS will explain the process to them as well as the role of the Soil Conservation Service, who will complete a related form for their farm property, Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination". Upon a borrower's receipt of these completed forms, copies should be provided to you. Also, please provide copies to this office. Attached is a sample letter that you may want to use to notify the listed borrowers.

If you have questions regarding the need for these forms, please contact this office. The specific requirements regarding the completion of these forms are contained in Exhibit M of Subpart G of Part 1940 of Title 7 of the Code of Federal Regulations. This information has been reprinted in FmHA Instruction 1940-G which is available in this office.

Thank you for your immediate response to this matter.

Sincerely,

County Supervisor

Attachments



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Sample Letter

Dear _____,

Our records show that you presently have a loan with us that was approved after June 23, 1986 and that is guaranteed by the Farmers Home Administration (FmHA). This date is important because for all loans guaranteed by FmHA after it, the applicant must have completed a Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification." Your application for your present loan does not contain this completed form.

Please contact your local Agricultural Stabilization and Conservation Service (ASCS) office as soon as possible to initiate completion of the form. ASCS will explain the process to you as well as the role of the Soil Conservation Service, who will complete a related form for your farm property, Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination". Upon your receipt of these completed forms, please provide copies to this office.

If you have questions regarding the need for these forms, please contact this office. The specific requirements regarding the completion of these forms are contained in Exhibit M of Subpart G of Part 1940 of Title 7 of the Code of Federal Regulations. This information has been reprinted in FmHA Instruction 1940-G which is available in this office.

Thank you for your immediate response to this matter.

Sincerely,

1927(1940)



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

Attachment 3

United States Department of Agriculture
Farmers Home Administration
(Location)

Dear _____,

Our records show that you have an insured loan with the Farmers Home Administration that was approved after June 23, 1986 and has a repayment period that runs beyond January 1, 1990. Our records also show that the Soil Conservation Service (SCS) has completed for your farm property a Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination." A copy of this completed form should have previously been provided to you by the local SCS office.

Based upon SCS's determination, your farm property contains highly erodible land to which you must actively apply a conservation plan by January 1, 1990 if you desire to continue to cultivate that land and remain in compliance with your present loan requirements. As you would expect, many farmers in this area will need conservation plans prior to 1990. If you wait until sometime in 1989 to request a plan from SCS, there may not be sufficient time left for SCS to respond or for you to actively apply the plan by January 1, 1990.

Your failure to act promptly could result in your being in noncompliance with these requirements. Noncompliance would jeopardize your present loan as well as make you ineligible for a future loan and other U.S. Department of Agriculture financial assistance programs.

Consequently, we urge you to contact your local SCS office at your earliest opportunity and have a conservation plan developed for your farm property. In accordance with the schedule in the plan, you should begin actively applying the plan to your farm property prior to January 1, 1990.

Please contact this office if you have any questions regarding the requirements of your present FmHA loan. Questions regarding conservation plans should be directed to the local SCS office.

Sincerely,

County Supervisor



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Sample Letter

Dear _____,

Our records show that you have a loan with us that was approved after June 23, 1986, has a repayment period that runs beyond January 1, 1990, and is guaranteed by the Farmers Home Administration (FmHA). Our records also show that the Soil Conservation Service (SCS) has completed for your farm property a Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination." A copy of this completed form should have previously been provided to you by the local SCS office.

Based upon SCS's determination, your farm property contains highly erodible land to which you must actively apply a conservation plan by January 1, 1990 if you desire to continue to cultivate that land and remain in compliance with your present loan requirements. As you would expect, many farmers in this area will need conservation plans prior to 1990. If you wait until sometime in 1989 to request a plan from SCS, there may not be sufficient time left for SCS to respond or for you to actively apply the plan by January 1, 1990.

Your failure to act promptly could result in your being in noncompliance with these requirements. Noncompliance would jeopardize your present loan as well as make you ineligible for a future insured or guaranteed loan with FmHA and other U.S. Department of Agriculture financial assistance programs.

Consequently, we urge you to contact your local SCS office at your earliest opportunity and have a conservation plan developed for your farm property. In accordance with the schedule in the plan, you should begin actively applying the plan to your farm property prior to January 1, 1990.

Please contact this office if you have any questions regarding the requirements of your present loan. Questions regarding conservation plans should be directed to the local SCS office.

Sincerely,



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Attachment 4

United States Department of Agriculture
Farmers Home Administration
(Location)

Dear _____,

Our records show that the attached list of your borrowers have guaranteed loans with the Farmers Home Administration that were approved after June 23, 1986 and have repayment periods that run beyond January 1, 1990. Our records also show that the Soil Conservation Service (SCS) has completed for these borrowers' farm properties a Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination." A copy of this completed form should have previously been provided to the borrowers by the local SCS office.

Based upon SCS's determination, these borrowers' farm properties contain highly erodible land to which they must actively apply a conservation plan by January 1, 1990 if they desire to continue to cultivate that land and remain in compliance with their present guaranteed loan requirements. As you would expect, many farmers in this area will need conservation plans prior to 1990. If borrowers wait until sometime in 1989 to request a plan from SCS, there may not be sufficient time left for SCS to respond or for the borrowers to actively apply the plan by January 1, 1990.

These borrowers' failure to act promptly could result in their being in noncompliance with these requirements. Noncompliance may jeopardize your present FmHA loan guarantee, should there be a loss claim, as well as make the borrowers ineligible for a future FmHA insured or guaranteed loan and other U.S. Department of Agriculture financial assistance programs.

Consequently, we strongly recommend that you send a letter to these borrowers urging them to contact their local SCS office at their earliest opportunity and have a conservation plan developed for their farm property. In accordance with the schedule in the plan, they should begin actively applying the plan to their farm property prior to January 1, 1990. Attached is a sample letter that you may want to use to notify the listed borrowers.

Please contact this office if you have any questions regarding the requirements of the borrowers' present FmHA loan guarantee. Questions regarding conservation plans should be directed to the local SCS office.

Sincerely,

County Supervisor

Attachments



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