

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Oregon State Office
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Tualatin, OR 97062-8121

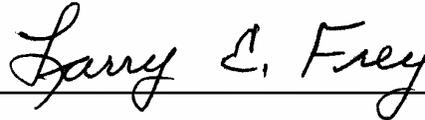
**Oregon Notice
FLP-138**

For: County Offices

Preparation of Form FSA 460-2, "Subordination By The Government"

Approved By: State Executive Director

LEF:LEV:lv



1 Overview

A Background

Page 2 of Procedure Notice No. 162 announced the issuance of a new Form FSA 460-2, "Subordination by the Government," bearing a revision date of 03-19-03. This new Form FSA 460-2 replaces earlier versions of Forms RD 460-2 and FmHA 460-2, and obsoletes them for FSA's use. The new 03-19-03 version of Form FSA 460-2 is electronically accessible on the FFAS Employee Forms Website at <http://intranet.fsa.usda.gov> for use.

In preparing Form FSA 460-2 for issuance to a lender, FSA's policy and administrative guidance has steadfastly required that the amount of subordination be limited to a specifically stated total dollar amount. A space is contained at the end of numbered paragraph 1 on the first page of Form FSA 460-2 for entry of a description and dollar amount of the lender's loan purposes, and a space is contained at the end of numbered paragraph 3 on the second page for entry of a specific maximum dollar limitation. The Forms Manual Insert (FMI) for Form FSA 460-2 identifies the space at the end of numbered paragraph 3 as the "Amount of Subordination," and the FMI instructions for the amount to be entered specifically states "[c]onsult with Regional Attorney for guidance on calculating amount to be entered."

B Purpose

The purpose of this Oregon Notice is to:

- provide language for use in describing the lender's loan purposes and amounts, including specific additional language for use when a Line of Credit (LOC) is involved
- provide guidance for calculating the maximum dollar amount of FSA's subordination
- provide specific language recommended by the Regional Attorney for insertion in the space following numbered paragraph 3 on the second page of Form FSA 460-2 to express the total dollar limitation of FSA's subordination.

FILING: Preceding FSA Handbook 3-FLP, and FmHA Instructions 1962-A and 1965-A

Disposal	Distribution
October 1, 2004	STO, DD, COR, COC, COF - Including Farm Loan Programs

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2 Action

A Description of Loan Purposes and Amounts

The space at the end of numbered paragraph 1 on Page 1 of Form FSA 460-2 must contain an accurate description of both the authorized loan purposes and dollar amounts that FSA is agreeing to subordinate it's lien position for.

Note: Example language of such a description for a lender's proposed \$541,440 loan (not a line of credit) for annual operating purposes, is as follows:

<i>2004 Annual Operating Exp.</i>	<i>\$454,129.00</i>	<i>Term Debt Installments</i>	<i>\$44,925.00</i>
<i>2004 Operating Interest</i>	<i>14,636.00</i>	<i>Equipment Lease Installments</i>	<i>27,750.00</i>

In Line of Credit (LOC) situations, the amount of the lender's proposed loan (as may be stated in the lender's debt instrument) may be different than the peak exposure, projected maximum outstanding balance, or LOC ceiling amount represented to FSA in the lender's monthly cash flow statement or operating budget submitted with the subordination request. Some lenders, for example, calculate the amount of their loan in LOC cases as the sum of the projected principal advances shown in their monthly cash flow statements or operating budgets. In circumstances such as this, simply stating the amount the lender has agreed to loan for authorized loan purposes in the space provided on Form FSA 440-2, without also stating the peak exposure or projected maximum outstanding balance represented to FSA in the subordination request, will subject FSA to unwarranted levels of risk exposure.

To assure that FSA is not subjected to excessive and unacceptable levels of risk in LOC cases, additional language must be inserted at the end of the description of loan purposes and amounts to properly reflect that FSA is limiting it's net risk exposure to the peak exposure or projected maximum outstanding balance represented by the lender. In Line of Credit cases, therefore, the following language needs to be inserted after the description of authorized loan purposes and amounts at the end of numbered paragraph 1 on Page 1 of Form FSA 460-2:

under a Line of Credit with a projected Maximum Outstanding Balance not to exceed \$_____.

The amount to be entered in the blank space in the text above is the peak exposure, projected maximum outstanding balance, or LOC ceiling amount for projected LOC advances made for authorized purposes.

Note: Example language providing a description of both the authorized loan purposes and dollar amounts for a lender's proposed \$541,440 LOC loan for annual operating purposes, having a peak exposure or projected maximum outstanding balance of \$371,680.00, is as follows:

<i>2004 Annual Operating Exp.</i>	<i>\$454,129.00</i>	<i>Term Debt Installments</i>	<i>\$44,925.00</i>
<i>2004 Operating Interest</i>	<i>14,636.00</i>	<i>Equipment Lease Installments</i>	<i>27,750.00</i>

under a Line of Credit with a projected Maximum Outstanding Balance not to exceed \$371,680.00.

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2 Action (Continued)

B Calculation of Maximum Dollar Amount of Subordination

Section 1962.30 (b)(4) of FmHA Instruction 1962-A states that FSA's subordination will be limited to a specific dollar amount. It is therefore required that FSA specifically calculate the dollar amount of this limitation and express it in the form of a monetary amount.

As indicated in Subparagraph 2 A of this Oregon Notice, amounts the lender proposes to loan for authorized purposes should be specifically itemized by purposes and amount in the space provided at the end of numbered paragraph 1 on Page 1 of Form FSA 460-2. The sum of these advances (or the LOC ceiling amount calculated based on authorized advances) plus the interest estimated to accrue during the planning period on these authorized advances, will need to be calculated in order to determine FSA's total limitation. In order to provide the lender with some room in the event of liquidation, continuing interest accrual for up to 18 months and an additional sum of up to \$5,000 for other foreclosure costs, may also be included, *if appropriate*. In calculating the dollar amount of this limitation, however, these additions must be reasonable in relation to the lender's risk and the size of loan involved.

Note: The following is an example specific dollar limitation calculation for a lender's proposed \$541,440 LOC loan at 7.6 % interest for annual operating purposes, having a peak exposure or projected maximum outstanding balance of \$371,680.00:

Calculation Description	Dollar Amount
Maximum Outstanding Balance (MOB) projected in Lender's 10-14-2003 Agricultural Budget and Estimated Loan Balance worksheet, (which includes \$14,636.00 of projected interest accrual on the proposed 2004 LOC)	\$371,680.00
Continuing interest accrual on \$371,680 MOB at 7.6% for 18 additional months after the 2004 planning period: [(\$371,680 x 7.6 %) ÷ 12 mo.] x 18 mo.	\$42,375.00
Estimated liquidation, attorney, and foreclosure costs in the event that liquidation or foreclosure becomes necessary	\$3,745.00
Total Maximum Dollar Limitation	\$417,800.00

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2 Action (Continued)

C Required Language for Stating Maximum Dollar Amount of FSA's Subordination

Section 1962.30 (b)(2) of FmHA Instruction 1962-A states that FSA's subordination will be limited to a specific amount. It is therefore required that FSA specifically state the dollar amount of this limitation in the space provided at the end of numbered paragraph 3 on Page 2 of Form FSA 460-2, and state that limitation in the form of a specific dollar amount.

To accomplish this, the following text will be inserted in the space after the colon (:) at the end of numbered paragraph 3 on Page 2 of Form FSA 460-2:

and in any event, is subject to a maximum total subordination limitation not to exceed \$_____.

The specific dollar limitation (monetary amount), calculated in accordance with the guidance provided in Subparagraph 2 B of this Oregon Notice, needs to be entered in the blank space in the text above. It is not permissible to enter the words "plus interest" or any other words after the specific dollar limitation amount entered in the required text above.

D Monitoring Subordinations

As part of issuing a subordination, appropriate entries should also be made in the Security Servicing portion of the MAC system. The subordination information should be entered, and the transaction should be tracked from beginning to end to assure that appropriate follow-ups are generated. At a minimum, follow-ups need to be planned, carried out, and then documented in the running record of the borrower's case file for the following actions:

- Borrowers for which a subordination is approved should be monitored to ensure that the loan for which the subordination was granted is being repaid satisfactorily.
- Follow up should be carried out at the projected maturity date of the lender's loan for which the subordination was granted to assure that Form FSA 460-2 is marked Paid in Full and returned to FSA upon satisfaction of the lender's debt.

3 Example and Contact

A Example Completed Form FSA 460-2

An example of a properly completed Form FSA 460-2, based on a lender's proposed \$541,440 LOC loan at 7.6 % interest for annual operating purposes, having a peak exposure or projected maximum outstanding balance of \$371,680.00, is attached as Exhibit 1.

C Contact

Direct questions concerning this Oregon Notice to Lynn Voigt in the State Office.

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(03-19-03)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

SUBORDINATION BY THE GOVERNMENT

Position 1 (Chattel Security)
Position 5 (Real Estate Security)

1. The United States of America acting through the United States Department of Agriculture (called the "Government") is the owner and holder of the following-described instruments executed by (a) JACK E. FARMER and JILL E. FARMER of (b) Carson County, State of (c) OREGON :

<i>Title of Instrument</i>	<i>Date of Instrument</i>	<i>Date Filed</i>	<i>Office Filed</i>	<i>Document File or Book No.</i>	<i>Page No.</i>
(d)	(e)	(f)	(g)	(h)	(i)
UCC-1	04-25-2000	04-25-2000	OR Sec of State	656369	
EFS-1	04-25-2000	04-25-2000	OR Sec of State	656370	

AND, (j) SAGE NATIONAL BANK (called the "Lender") has agreed to loan (k) \$ 541,440.00 to (l) JACK E. FARMER and JILL E. FARMER (called the "Borrower") for the following purposes: (m)

2004 Annual Operating Expenses	\$454,129.00	Term Debt Installments	\$44,925.00
2004 Operating Interest	14,636.00	Equipment Lease Installments	27,750.00

under a Line of Credit with a projected Maximum Outstanding Balance not to exceed \$371,680.00.

2. THEREFORE, in consideration the Lender's agreement to make such loan to Borrower, the Government (1) consents to the Borrower obtaining the loan from the Lender for such purposes, and (2) agrees to and does subordinate in favor of the Lender and its successors and assigns its liens of security interests created or evidenced by the above-described instruments insofar as they cover the following-described property and provided the Lender perfects a lien on that property:

Accounts receivable from 2003 crops and crop production,
2004 crops and crop proceeds,
2004 FSA Farm Program payments, and
1989 John Deere Model 4755 Tractor (Serial No. 2058).

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3. This subordination is limited to (1) the amount actually loaned by the Lender to the Borrower (principal and accrued interest) for the foregoing purposes, (2) future advances for taxes, insurance, and payments on liens prior to the Lender's lien, and (3) the amount actually advanced for foreclosure costs made by the Lender. Any amount in excess of such amount will not be covered by this subordination unless prior written consent was obtained from the Government for incurring the expenditure in question:

and in any event, is subject to a maximum total subordination limitation not to exceed \$417,800.00.

4. The Lender must incorporate into the Borrower's note a statement that the loan will be in default should any proceeds of the loan funds obtained as a result of this subordination be used (1) for a purpose that will contribute to the excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as provided by 7 C.F.R. part 1940, subpart G or any successor regulation, or (2) for any purpose not provided for above.

5. *(NOTE TO LENDER: You are advised to obtain a perfected security interest on the above property. When the indebtedness has been satisfied, please mark this form "PAID IN FULL" and return it to the Department of Agriculture at the following address:

Carson County FSA Office
1234 NW Kit Avenue, Suite B
Banner City, OR 97999

6. IN WITNESS WHEREOF, The United States of America has caused this subordination to be signed on the (a) 15th day of (b) October, 2003.

UNITED STATES OF AMERICA,

WITNESS: (c) (d)

BY (e) WILLY KETCHUM
TITLE (f) Farm Loan Chief

7. ACKNOWLEDGMENT

STATE OF (a) OREGON
COUNTY OF (b) CARSON } ss.

On this (c) 15th day of (d) October, 2003, before me, personally appeared (e) WILLY KETCHUM, to be

known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged that he/she signed and delivered the instrument as his/hers free and voluntary act, for the uses and purposes set forth.

My commission expires:

(f) 09-16-2004

(g) JAMIE PREMONT
NOTARY PUBLIC

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