

# **FSA**

## **HANDBOOK**

---

### Regular Direct Loan Servicing

---

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

4-FLP

UNITED STATES DEPARTMENT OF AGRICULTURE  
Farm Service Agency  
Washington, DC 20250

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

**Regular Direct Loan Servicing  
4-FLP**

**Amendment 41**

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



**Amendment Transmittal**

**A Reasons for Amendment**

Paragraph 6 has been added to provide ECOA requirements when real estate appraisals are obtained in connection with servicing actions authorized by this handbook.

Page Control Chart		
TC	Text	Exhibit
1, 2	1-9, 1-10	

**UNITED STATES DEPARTMENT OF AGRICULTURE**

New York State Farm Service Agency  
441 So. Salina St., Suite 536  
Syracuse, NY 13202-2455

**4--FLP**

**New York  
Amendment 2**

**Approved by:** Clark A. Putman, State Executive Director



**Amendment Transmittal**

**A Reasons for Amendment**

61-D – Amend how payment from the sale of basic security are applied when the sale take place as part of a Bankruptcy action.

**Amendment Transmittal**

Page Control Chart		
TC	Text	Exhibit
NY TC Page 1	NY Page 5-2	

## Table of Contents

### Page No.

#### Part 1 Introduction and Purpose

1	Purpose and Sources of Authority .....	1-1
2	Related References.....	1-2
3	FLP Forms .....	1-4
4	FSA Exception Authority .....	1-7
5	Introduction to Direct Loan Servicing (Regular).....	1-9
6	ECOA Requirements for Actions Involving Real Estate Security .....	1-10
7-15	(Reserved)	

#### Part 2 Operational Reviews

16	Reviewing a Borrower's Account.....	2-1
17	Updating the Assessment.....	2-3
18	Updating Account Classification .....	2-5
19	Graduation Review .....	2-5
20	Agreement for Using Proceeds .....	2-9
21	Limited Resource Review.....	2-10
22	Year-End Analysis .....	2-14
23	Summary of Operational Review.....	2-15
24-30	(Reserved)	

#### Part 3 (Withdrawn--Amend. 35)

31-33	(Withdrawn--Amend. 35)	
34-45	(Reserved)	

#### Part 4 (Withdrawn--Amend. 35)

46-48	(Withdrawn--Amend. 35)	
49-60	(Reserved)	

#### Part 5 Borrower Payments

61	General.....	5-1
62	Regular Payments .....	5-4
63	Extra Payments .....	5-5
64	Distributing Payments to Loans.....	5-5
65	Final Payments.....	5-7
66	Preauthorized Debit (PAD).....	5-10
67	Managing PAD .....	5-12
68	Completing IRS W-9 .....	5-15
69-95	(Reserved)	

## Table of Contents

### Page No.

#### **Part 1                    Introduction and Purpose**

3                    FLP Forms.....NY 1-5

#### **Part 5                    Borrower Payments**

61                    Identifying Regular and Extra Payments.....NY 5-2

65                    Final Payments.....NY 5-9

## Table of Contents (Continued)

Page No.

### Part 6        Protecting FSA's Security Interests

#### Section 1        General Security Preservation and Lien Protection

96	Servicing Policy .....	6-1
97	Maintaining Debt Instruments .....	6-3
98	Maintaining Security Instruments.....	6-6
99	Borrower Responsibilities for Complying With Loan Instruments.....	6-9
100	(Withdrawn--Amend. 37)	
101	Making Protective Advances .....	6-15
102	Notifying Potential Purchasers .....	6-17
103	FSA Responsibilities Under Third Party Actions .....	6-18
104-115	(Reserved)	

#### Section 2        Subordinations

116	Requesting Subordinations .....	6-31
117	Conditions for Real Estate Subordinations .....	6-32.6
118	Conditions for Chattel Subordinations.....	6-35
119	Appraisal Requirements.....	6-36
120	Approving or Denying Subordination Requests .....	6-37
121-125	(Reserved)	

#### Section 3        Junior Liens

126	General Conditions for Junior Liens.....	6-47
127-135	(Reserved)	

#### Section 4        Severance Agreements

136	Conditions for Severance Agreements.....	6-61
137-145	(Reserved)	

#### Section 5        Release of Real Estate and Chattel Security Liens Without Monetary Consideration

146	Release Without Monetary Consideration .....	6-71
147	Releasing Valueless Liens .....	6-74
148-160	(Reserved)	

## Table of Contents

### **Part 6                      Protecting FSA’s Security Interest**

#### **Section 1              General Security Preservation and Lien Protection**

98	Maintaining Security Instruments.....	NY 6-6
101	Making Protective Advances.....	NY 6-16

#### **Section 2              Subordinations**

116	Requesting Subordination.....	NY 6-31
120	Approving or Denying Subordination Requests.....	NY 6-37

#### **Section 4              Severance Agreements**

136	Conditions for Servance Agreements.....	NY 6-61
-----	---	---------

## Table of Contents (Continued)

Page No.

### Part 7      **Disposition of Security**

#### **Section 1      Disposition of Normal Income and Basic Chattel Security**

161	General Requirements.....	7-1
162	Agreement for Disposition of Normal Income and Basic Chattel Security.....	7-4
163	Using Proceeds From Chattel Security .....	7-7
164	Multiple Releases for Farm Operating Expenses Within the Term of an Annual OL .....	7-8
165	(Reserved)	
166	Releasing Security Interest .....	7-11
167-180	(Reserved)	

#### **Section 2      Unapproved Disposition of Security**

181	Initial FSA Actions Upon Discovery .....	7-31
182	Post-Approval of Chattel Security Disposition.....	7-33
183	Requirements for Handling Borrower Non-compliance.....	7-34
184-195	(Reserved)	

#### **Section 3      Real Estate Security Releases, Exchanges or other Disposition of Portion or Interest**

196	Requirements .....	7-44.5
197	Allowable Use of Proceeds From the Release of Real Estate Security .....	7-48
198	Appraisals .....	7-51
199	Approving or Denying Partial Releases or Exchanges .....	7-52
200-210	(Reserved)	

#### **Section 4      (Withdrawn--Amend. 28)**

211, 212	(Withdrawn--Amend. 28)	
213-230	(Reserved)	

### Part 8      **Withdrawing Existing Party**

231	Withdrawal Requirements .....	8-1
232-245	(Reserved)	



## Table of Contents

### **Part 7                      Disposition of Security**

#### **Section 3        Real Estate Security Partial Releases**

196	Requirements.....	NY 7-45
47	Approval Process for SEL.....	NY 4-4

## Table of Contents (Continued)

### Page No.

#### Part 9 Transfer of Real Estate and Chattel Security

246	Transfer of Security and Assumption of Debt .....	9-1
247	Types of Transfers and Assumptions.....	9-3
248	Assumption Terms .....	9-7
249	Reviewing Transfer Request.....	9-12
250	Closing the Transfer.....	9-13
251	Determining Transferor Liability After Closing.....	9-14
252-265	(Reserved)	

#### Part 10 Deceased Borrowers

266	General.....	10-1
267	Servicing Options for Program Loan Accounts.....	10-3
268	Servicing Options for NP Accounts.....	10-4
269-280	(Reserved)	

#### Part 11 Borrowers Entering the Armed Forces

281	General.....	11-1
282	Servicemembers Civil Relief Act of 2003 .....	11-2
283	Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 .....	11-6
284-290	(Reserved)	

#### Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities

291	Procedures and Servicing Responsibility.....	12-1
292-300	(Reserved)	

#### Part 13 (Withdrawn--Amend. 38)

301	(Withdrawn--Amend. 38)	
-----	------------------------	--

## Table of Contents

### **Part 9                      Transfer of Real Estate and Chattel Security**

246	General.....	NY 9-1
250	Closing the Transfer.....	NY 9-13

### **Part 10                    Deceased Borrowers**

266	General.....	NY 10-1
-----	--------------	---------

### **Part 11                   Transfer Borrowers Entering the Armed Forces**

281	General.....	NY 11-1
282	Power of Attorney.....	NY 11-3

### **Part 12                   Transferring Borrower Records, Security and Servicing Responsibilities**

291	General.....	NY 12-1
-----	--------------	---------

## Table of Contents (Continued)

### Exhibits

1	Reports, Forms, Abbreviations, and Redelegations of Authority
2	Definitions of Terms Used in This Handbook (7 CFR 761.2(b))
3	(Reserved)
4	State Supplements
5-19	(Reserved)
20	Request for Operational Review Information
21	(Withdrawn--Amend. 20)
22	Lender Agricultural Loan Underwriting Standards
23	Borrower Prospectus
24	Notice to Borrower to Refinance FSA Indebtedness
25	Notice of Change in Interest Rate
25.4	Example of 60-Day Annual Installment and Payment Due Reminder Letter
25.5	IRS Forms, Corrections, and Reports
26	Notification of Payoff Amount
27	Notice of Termination of Security Interests in Farm Products
27.5	Notice for Preauthorized Debit
28	Request for Continuation Statement Filing Fee
28.4	Request for Continuation Statement Filing Fee (Bankruptcy Borrower)
28.5	(Withdrawn--Amend. 37)
29	Notification Letter to Potential Purchasers
30	Change in List of FSA Borrowers
31	Notification of Unauthorized Use of Proceeds
31.5	Notification of Unauthorized Use of Proceeds (Bankruptcy Borrower)
32	Initial Notification of Third-Party Purchaser
33	SED Notification of Third-Party Purchaser
34	(Withdrawn--Amend. 30)
35	Denial of Non-Program Assistance
36-50	(Reserved)
51	Service Members Civil Relief
52	Borrowers Entering Active Duty
53	Borrowers Leaving Active Duty

## **Table of Contents**

### **Exhibits**

- 1 Forms

### **NY Exhibits**

- 1 Sample Subordination Letter
- 2 Sample Partial Release Letter

## Part 1 Introduction and Purpose

### 1 Purpose and Sources of Authority

#### A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- regulations governing direct loan regular or routine servicing
- roles and responsibilities in implementing regulations and other responsibilities in direct loan regular or routine servicing.

#### B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 765 and other regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress, including CONACT.

#### C Regulation References

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

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

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

**Example:** Subparagraph 118 A provides “[**7 CFR 765.205(c)**] (1) **For loans secured by chattel, the subordination must meet conditions contained in paragraphs \*(b)(3)(i) through (b)(3)(xiii) of this section** (subparagraph 117 A).”

The text “**paragraphs (b)(1)(i) through (b)(3)(xiii) of this section**” refers to 7 CFR 765.205 (b)(3). The nonbold reference indicates that 7 CFR 765.205(b) is included in subparagraph 117 A.--\*

## 2 Related References

### A Related FSA Handbooks

The following FSA handbooks concern FLP.

<b>IF the area of concern is about...</b>	<b>THEN see...</b>
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.
*--highly erodible land conservation and wetland conservation provisions	6-CP
debt collection and resolution	7-FLP.
direct loan making	3-FLP.
direct loan special servicing and inventory property management	5-FLP.
disaster designations	1-DIS.
employee development and training	6-PM.
environmental requirements	1-EQ.
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	27-AS.
procedures for collecting, maintaining, or disclosing data or information concerning 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	*--64-FI.--*
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
State and county records management	*--32-AS.--*

### B Helpful Links

The Handbook Link web site at

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

**2 Related References (Continued)**

**C State Supplements**

See Exhibit 4 for State supplements required by this handbook. SED's are authorized to issue State supplements to this handbook in addition to State supplements listed in Exhibit 4, \*--according to 1-FLP, subparagraph 2 C.--\*

\* \* \*



### 3 FLP Forms

#### A Form References

\*--Except as provided in this paragraph, this handbook references forms according to the forms numbering system that became effective December 31, 2007. Forms executed before December 31, 2007, may have a number different from that referenced. See 1-FLP, Exhibit 5 for a comparison of form numbers before and after December 31, 2007.--\*

**Note:** See Exhibit 1 for titles of forms referenced in this handbook.

With the exception of FSA-2510, FSA-2512, and FSA-2514, form numbers are not referenced in CFR (**bold**) text. CFR refers to forms by either:

- the common name of the form

**Example:** CFR may state, “a promissory note”, instead of stating, “FSA-2026”.

- purpose or the information collected.

**Example:** CFR may state, “a shared appreciation agreement”, instead of stating, “FSA-2543”.

This handbook may refer to the following forms by title and/or form number.

<b>Form Number</b>	<b>Form Title</b>
FSA-2026	Promissory Note
FSA-2029	Mortgage/Deed of Trust
FSA-2543	Shared Appreciation Agreement

### 3 FLP Forms (Continued)

#### B FSA-2029

All references to FSA-2029 within this handbook are intended as a reference to the applicable State-specific Mortgage or Deed of Trust. State-specific Mortgages or Deeds of Trust are available on the FFAS Employee Forms/Publications Online Website at <http://intranet.fsa.usda.gov/dam/ffasforms/forms.html> and are numbered FSA-2029 “ST”.

**Notes:** “ST” represents the appropriate State acronym.

SED is not required to issue a State supplement for the State-specific version of FSA-2029.

#### C Notary Acknowledgement

\*--See 1-FLP, subparagraph 3 C.

#### D Applicant and Borrower Signatures

See 1-FLP, subparagraph 3 D.

#### E State-Modified National Forms

See 1-FLP, subparagraphs 3 E and H.

#### F State-Created Forms

See 1-FLP, subparagraphs 3 F and H.

#### G Other Sources of Forms

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

**3 FLP Forms**

**C Notary Acknowledgement**

Refer to Par 3 of NY 1-FLP for guidance on the proper notary acknowledgement to use.

**D Applicant Signatures**

Applications from an entity must be signed by the authorized individual for the entity and by each member of the entity.

## 4 FSA Exception Authority

### A General

**[7 CFR 765.501] On an individual case basis, the Agency may consider granting an exception to any regulatory (or 4-FLP handbook) 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 the Agency's financial interest.**

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 to DAFLP by e-mail to **SM.FSA.DCWa2.AdmException** or **adminexception@wdc.usda.gov**. The e-mail subject should read "Administrator's Exception to (cite 4-FLP subparagraph) – (Borrower's Name \*--and State)." STO FLP staff must be involved in the development of the Exception Request. 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; if it is delinquent, where it is 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

**4 FSA Exception Authority (Continued)**

**B Submitting Exception Requests (Continued)**

- what procedure is to be waived
- 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 that SED thinks will be needed to review the case
- a Farm Business Plan credit action pertaining to the requested exception, including but not limited to:
  - updated farm assessment
  - appropriate environmental review, if needed
  - credit presentation demonstrating all other feasibility, eligibility, and security requirements are met for the request.--\*

## **5 Introduction to Direct Loan Servicing (Regular)**

### **A Purpose**

**[7 CFR 765.1(a)] This part describes the policies for servicing FLP direct loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.**

### **B Servicing Actions**

**[7 CFR 765.1(b)] Servicing actions described in this part include:**

- (1) Limited resource reviews;**
- (2) Graduation to commercial credit;**
- (3) Application of payments;**
- (4) Maintaining and disposing of security;**
- (5) Transfer of security and assumption of debt; and**
- (6) Servicing accounts of deceased borrowers.**

### **C Loans Covered**

**[7 CFR 765.1(c)] The Agency services FLP direct loans under the policies contained in this part. This part is not applicable to Non-program loans, except where noted.**

This handbook discusses the regular servicing of the following types of FSA loans:

- |   |       |
|---|-------|
| • EE  | • RHF |
| • EM  | • RL  |
| • FO (including beginning farmer downpayment) | • ST  |
| • NP (where specifically addressed)           | • SW  |
| • OL (including youth)                        | • CL. |

**\*--6 ECOA Requirements for Actions Involving Real Estate Security**

**A Release of Real Estate Appraisals**

Equal Credit Opportunity Act (ECOA) requires the Agency to provide a copy of a written real estate appraisal or valuation performed on any real estate that is pledged as security as part of an application for FSA assistance. For servicing actions authorized by this handbook that involve FSA completing any real estate valuation, local offices will comply with the requirements of 1-FLP paragraph 148 to provide a copy of the valuation to the borrower, when applicable.--\*

**7-15 (Reserved)**

**\*--Part 2 Operational Reviews****16 Reviewing a Borrower's Account****A Overview**

Full operational reviews will be completed at least every 2 years on each account except as noted in subparagraph B. More frequent operational reviews may be completed at the agency official's discretion or in conjunction with year-end analyses according to 1-FLP, subparagraph 263 A.

An operational review is performed to:

- update the:
  - assessment review every other year
  - account classification
- complete:
  - the graduation review
  - FSA-2040 (if debt secured by crops, livestock, equipment, or machinery).
  - the limited resource review (if applicable)
  - year-end analysis (if applicable).

The biennial operational review will be tracked and monitored within DLS and documented in FBP by completing a D-Loan/Class/LR/YEA Only credit action; if no loan making or special servicing credit action is applicable. If a loan making action is being completed, select that credit action to document the operational review.--\*



## 16 Reviewing a Borrower's Account (Continued)

**B Requesting Information**

**[7 CFR 761.102(b)] A borrower also must agree in writing to:**

**(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents**

**(2) Submit financial information and an updated farm operating plan when requested by the Agency**

**(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.**

**[7 CFR 765.101(c)] The borrower must submit all information that the Agency requests in conjunction with the review of the borrower's financial condition.**

At least every 2 years, each borrower will be sent Exhibit 20 requesting information to assist the Agency in completing the operational review.

**Note:** Exceptions to requesting information is for borrowers with only Y-OL's, CL's, NP's, judgment, CNC's, or whose accounts are flagged "BAP", "ACL", "FAP", "CAP", or otherwise determined by OGC.

\*--County Offices shall add the "OGC" flag (5-FLP, Exhibit 11) in DLS to indicate OGC has determined FSA should suspend certain routine servicing. This flag will only be used when specific written correspondence from OGC is provided, advising to suspend certain routine loan servicing actions. For example, a borrower might have pending litigation against the Agency and OGC determines FSA should suspend an Operational Review and other routine servicing actions.

The "OGC" flag shall be removed when the suspension is no longer applicable. The "OGC" flag is available from the Manage Flags section of Customer Management. This is a DLS only flag, meaning that it will not process a transaction to ADPS. The flag will only be visible in DLS. Refer to the DLS User Guide for instructions to add and remove the flag.--\*

Exhibit 20 will be sent twice in a 30-day period if the borrower does not supply the required information. The first time Exhibit 20 is sent, the borrower will be given 30 calendar days to supply the required information. The second Exhibit 20 will be sent on day 15, only if the required information has not been submitted and will give the borrower 15 calendar days to submit the required information.

Borrowers who fail to respond will be serviced according to subparagraph 19 H, for graduation review, or 21 D, if subject to limited resource interest rates.

## \*--16 Reviewing a Borrower's Account (Continued)

### C Developing Farm Operating Plan

The agency official will use the financial information provided by the borrower as requested by Exhibit 20 for the most recent operating cycle to develop a farm operating plan according to 1-FLP, Part 8, Section 3. This farm operating plan will be used to complete the components of the operational reviews described in this part.

## 17 Updating the Assessment

### A Objective of Annual Review

**[7 CFR 761.103(e)] The Agency reviews the assessment to determine a borrower's progress at least annually, combining any required classification and graduation reviews as part of the review. For streamlined CLs, the borrower must provide a current balance sheet and income tax records. Any negative trends noted between the previous years' and the current years' information must be evaluated and addressed in the assessment of the streamlined CL borrower.**

**[7 CFR 761.103(f)] If a CL borrower becomes financially distressed, delinquent, or receives any servicing options available under part 766 of this chapter (5-FLP), all elements of the assessment in paragraph (b) of this section (1-FLP, paragraph 222) must be addressed.**

The annual assessment review monitors the borrower's progress towards the operation's goals including progression to commercial credit.

**Note:** 1-FLP, subparagraph 263 B requires that an assessment update be prepared for each subsequent loan. The assessment update will constitute the annual assessment review.--\*

**\*--17 Updating the Assessment (Continued)****B Scope of Annual Review**

During the biennial operational review, information obtained from Exhibit 20 will be used to update the annual assessment.

The review must address any significant changes to the borrower's farming operation, expenses, or financial condition that have occurred since the most recent assessment update. The authorized agency official must pay particular attention to the following:

- changes in operations or goals
- status of progress toward goals, including progression to commercial credit
- need for additional borrower training
- term limits
- remind borrower to review farm transition and estate planning documents.

**Note:** The assessment update will not address the actual contents nor include the actual documents of the farm transition and estate planning.

During the non-operational review year, the annual review may be completed in the form of an office visit, field visit, letter, or phone conversation and documented in FBP.

**Note:** During a time of limited staffing resources the authorized agency official may prioritize the completion of the annual review during the non-operational review year according to current agency directives.

**C Documentation**

If significant changes have occurred, the authorized agency official must document the nature of each change and the reason for the change.

The documentation must address only new or changed information.--\*

**\*--18 Updating Account Classification****A Action**

The FBP completed in subparagraph 16 C will be used to update the account classification according to 1-FLP, Part 8, Section 4.

The classification review will be documented with the biennial DLS full operational review.

**19 Graduation Review****A General**

Direct FLP is a temporary source of credit. Graduation reviews are completed as part of the biennial operational review to assess the borrower's ability to graduate to commercial credit.

**B Graduation Criteria**

**[7 CFR 765.101(g)] CLs are not subject to graduation requirements under this part.**

The requirements of this part apply only to program borrowers, except CL-only borrowers. NP loans and borrowers with only youth loans are also not subject to graduation requirements.

**[7 CFR 765.101(a)] In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:**

- (1) The borrower has the ability to obtain credit from other sources; and**
- (2) Adequate credit is available from other sources at reasonable rates and terms.**

**[7 CFR 765.101(b)] The Agency may require partial or full graduation.**

**(1) In a partial graduation, all FLP loans of one type (i.e. all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.**

**(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.**

**(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.**

**Note:** Promissory notes for certain soil and water loans may not include graduation requirements. FSA will review provisions of individual promissory notes for loan type SW to determine if graduation language is included.--\*

**\*--19 Graduation Review (Continued)****C Obtaining Underwriting Criteria from Local Lenders**

Each October, the authorized agency official will contact local lenders to obtain their underwriting criteria for making agricultural loans. Information gathered from these contacts will be summarized on Exhibit 22, with any additional comments in narrative form, and placed in the county operational files FLPF-4-B “Graduation,” according to 32-AS. At a minimum, the narrative for each lender will contain the following:

- lender’s interest in refinancing FSA borrowers, including interest in receiving the graduation prospectus described in subparagraph E
- lender’s rates, terms, fee, loan conditions, and policies for annual operating, term operating and real estate loans.

**D Screening Borrowers**

**Note:** Exceptions to consideration for graduation include borrowers with only Y-OL’s, CL’s, NP’s, judgment, CNC’s, or whose accounts are flagged “BAP”, “ACL”, “FAP”, “CAP”, or otherwise determined by OGC.

The FBP completed in subparagraph 16 C and updated account classification completed in paragraph 18 will be used to determine if the borrower’s financial condition has improved to where they can refinance their FSA debt in full or in part with commercial credit.

If the financial information provided indicates that the borrower cannot meet local underwriting criteria, the authorized agency official will document why the borrower, despite being classified a “1” or “2,” is unlikely to graduate. The authorized agency official will record this in the applicable FBP Credit Presentation and in the Operational Review workflow in DLS.

If the borrower’s financial information indicates that the borrower meets local underwriting criteria and graduation is possible, the borrower’s prospectus will be forwarded according to subparagraph E.--\*

**\*--19 Graduation Review (Continued)****E Sending Prospectus**

**[7 CFR 765.101(d)] The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan. The Agency will notify the borrower when the borrower's prospectus is provided to one or more lenders.**

If the borrower's financial information indicates they meet local underwriting criteria, the authorized agency official will:

- include the borrower's name, loan type, balance sheet, and projected cash flow on Exhibit 23
- send Exhibit 23 to commercial lenders.

Exhibit 23 asks lenders to indicate an interest in further review of borrowers listed. The lenders review will determine if they would be willing to refinance FSA.

When an authorized agency official includes a borrower's information on Exhibit 23 and sends it to a lender, a copy of Exhibit 23 will be sent to the borrower with a cover letter with language similar to: "Enclosed, please find Exhibit 23. This exhibit has been sent to several lenders in the area so they could review your financial information and consider refinancing your FSA account."

**F Applying for Commercial Credit**

**[7 CFR 765.101(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:**

- (1) Apply for a loan from the interested lender within 30 days of notice; or**
- (2) Seek guaranteed loan assistance under the market placement program in accordance with section 762.110(g) of this chapter (2-FLP, paragraph 72).**

An authorized agency official will assist the borrower with completion of an application for guaranteed loan, if a lender expresses an interest in providing assistance with a guarantee.

See 2-FLP for information on guaranteed loans.--\*

## 19 Graduation Review (Continued)

**F Applying for Commercial Credit (Continued)**

If any lenders are interested in refinancing FSA, the authorized agency official will send the borrower a letter similar to Exhibit 24 listing lenders that are interested in refinancing the borrower's FSA loans.

The borrower must contact the lenders listed in the letter and complete an application for commercial credit within 30 calendar days.

If the borrower finds a creditor who will make a loan to refinance FSA at reasonable rates and terms, the borrower must graduate.

**[7 CFR 765.101(f)] The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.**

If a commercial lender rejects the borrower, the borrower must obtain from the lender written evidence that specifies the reasons for rejection. The borrower must submit these documents to FSA.

**G Transfer and Assignment of FSA Liens**

**[7 CFR 765.103] The Agency may assign its lien to the new lender when the borrower is graduating and all FLP debt will be paid in full.**

Promissory notes and lien instruments for graduating borrowers may be assigned to the new lender by SED with the concurrence and as directed by Regional OGC.

**Note:** Transfer and assignment of FSA liens as part of liquidation under 5-FLP, subparagraph 603 D requires an Administrator's Exception.

**\*--H Borrower Non-compliance with Graduation Requirements**

**[7 CFR 765.102] Borrower failure to fulfill all graduation requirements within the time-period specified by the Agency constitutes default on the loan. The Agency will accelerate the borrower's loan without offering servicing options provided in 7 CFR Part 766 (5-FLP).**

If the borrower fails to provide requested financial information or to graduate when able to do so, the authorized agency official will notify the borrower of the non-compliance,--\* FSA's intent to accelerate the loans (FSA-2420), and appeal rights according to 1-APP.

The authorized agency official must prepare and submit all required documents for concurrence to accelerate and liquidate. This adverse action does not require primary loan servicing. See 5-FLP, Parts 15 and 16 for more detail on acceleration and liquidation.

## 20 Agreement for Using Proceeds

### A Planning

**[7 CFR 765.302(a)] The borrower and the Agency will execute an agreement for the use of proceeds.**

Using the FBP prepared in subparagraph 16 C the agency official will complete the FSA-2040 to describe plans for disposition of security and use of proceeds during the next operating year. Borrower will review the FSA-2040, initial, date, and sign in the designated places.

For established operations, where significant changes are not planned and with the borrower's input and consent, the FBP prepared in subparagraph 16 C may be used to complete the FSA-2040 for a second operating year.

For borrowers with:

- normal income security, the agreements will be updated at least biennially
- \*--basic security only, the agreement will be completed when disposition is planned during the period covered by the operating plan.

**Note:** Voluntary liquidation should be handled according to 5-FLP, Part 13.--\*

Disposition of security will be reported according to paragraph 162 and 163.

If the farm operating plan prepared for the operational review is not feasible, the account will be serviced according to 5-FLP.



## 21 Limited Resource Review

### A Borrower Account Reviews

**[7 CFR 765.51(a)] At least every two years, a borrower with limited resource interest rate loans is required to provide the Agency the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information provided in accordance with §761.105 of this chapter.**

The authorized agency official will usually review borrower accounts during the operational review \* \* \*; however, reviews may be completed at any time. The limited resource interest rate review process will be documented in FBP and tracked and monitored within DLS Operational Review workflow.

\* \* \*

Based on results of the review, the authorized agency official may adjust the interest rate, if the:

- borrower's debt service margin shows that the borrower can afford to pay a higher interest rate according to subparagraph B
- borrower makes a request to be removed from limited resource rates according to subparagraph C
- borrower defaults on the loan agreements according to subparagraph D.

The authorized agency official must approve the interest rate change by completing the Limited Resource Review section in the applicable FBP Credit Presentation. The interest rate change will be accomplished by completing the Operational Review workflow in DLS.

When a review is completed and no change is to be made to the borrower's interest rate, the authorized agency official will document the review in the applicable FBP Credit Presentation. This review will also be documented in the Operational Review workflow in DLS.

**\*--21 Limited Resource Review (Continued)****B Debt Service Margin**

**[7 CFR 765.51(b)] If the borrower's farm operating plan shows that the debt service margin exceeds 110 percent, the Agency will increase the interest rate on the loans with a limited resource interest rate until:**

**(1) A further increase in the interest rate results in a debt service margin of less than 110 percent; or**

**(2) The interest rate is equal to the interest rate currently in effect for the type of loan.**

TDCLCR from FBP is used to establish eligibility for limited resource rates. TDCLCR is located in the Repayment Capacity/Sensitivity and the Ratio/Indicators Reports within FBP.

If TDCLCR exceeds 110 percent, the authorized agency official will recalculate the borrower's total debt repayment by replacing the current interest rate with an interest rate that is 1 percentage point above the current interest rate. If the current regular interest rate is less than 1 percent higher than the borrower's existing limited resource rate, the authorized agency official will:

- apply the regular interest rate to the total debt repayment calculation
- recalculate the borrower's TDCLCR using the new total debt repayment amount.

This process is repeated, using increments of 1 percent, if needed, until the interest rate that allows the borrower's TDCLCR to be as close to, but not less than, 110 percent is identified or the regular interest rate currently in effect has been achieved. Increments of less than 1 percent may only be used to reach the regular interest rate currently in effect.

**Example:** The current interest rate for the type of loan is 7.25 percent. The limited resource interest rate is 5 percent. After increasing the interest rate by full percentage points to 7 percent, if the 110 percent TDCLCR requirement can still be met, the rate may be increased by 0.25 percent to reach the current full interest rate for the type of loan.

If the borrower has more than 1 limited resource loan, the authorized agency official will alternate increasing the interest rate on 1 loan at a time, until the borrower's TDCLCR is as close as possible, but not less than, 110 percent or the regular interest rate currently in effect has been reached for all existing limited resource loans.--\*

**\*--21 Limited Resource Review (Continued)****C Borrower Request**

The authorized agency official may adjust the interest rate on a borrower's limited resource loan to the regular interest rate for that type of loan, if all of the following provisions apply:

- borrower makes the request in writing
- borrower's TDCLCR at the regular interest rate is greater than or equal to 100 percent
- regular rate is lower than or equal to the limited resource rate.

**D Loan Agreement Default**

**[7 CFR 765.51(c)] Except as provided in paragraph (d) (subparagraph E) of this section, the Agency will increase the limited resource interest rate to the current interest rate for the type of loan, if the borrower:**

- (1) Purchases items not planned during the term of the loan;**
- (2) Refuses to submit information the Agency requests for use in reviewing the borrower's financial condition;**
- (3) Ceases farming, as described in § 765.253 (paragraph 99); or**
- (4) Is ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718 (1-CM).**

**E Deferred Loans**

**[7 CFR 765.51(d)] If the borrower has limited resource interest rate loans that are deferred, the Agency will not change the interest rate during the deferral period.--\***

**21 Limited Resource Review (Continued)****F Sending Notification Letters**

The authorized agency official must notify a borrower of any decision to change an interest rate with a letter similar to Exhibit 25. The letter must inform the borrower of:

- the new interest rate
- the authorization and reason for the change in interest rate
- the effective date of the new rate
- the amounts of new payments and dates due
- appeal rights unless the borrower requested the rate increase.

\*--The letter must be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. A copy of the notification letter shall be attached to the original promissory note and a file copy of the promissory note shall be maintained in the borrower's case file. The authorized agency official will not apply the increased interest rate until 30--\* calendar days after the letter is sent to the borrower. If the borrower appeals FSA's decision to increase the interest rate, the rate will not be changed until the appeal is concluded.

**G Change in Regular Interest Rate**

If the rate is being changed to the regular rate, and as of the effective date the regular rate of interest is something other than the rate noted in Exhibit 25, the borrower will receive the lower of the 2 rates.

## 22 Year-End Analysis

### A Summary of Year-End Analysis

\*--Refer to 1-FLP, Part 8 for guidance on year-end analysis.--\*

The following is a summary of year-end analysis to be completed with Operational Review and level of documentation and analysis.

- **New Loan/Assumption, New Subordination, or PLS Being Approved or Rejected**
  - The level of financial review for year-end analysis will be an in-depth analysis and documentation.
  - If there was a cash flow prepared in the previous production cycle, the year-end analysis will compare previous year projections to the actuals. If there was not a cash flow prepared in the previous production cycle, use previous year actuals to assure projections are realistic.
- **No New Loan – Biennial Operational Review**
  - The level of financial review for year-end analysis will be mid-level analysis and documentation.
  - If there was a cash flow prepared in the previous production cycle, the year-end analysis will compare previous year projections to the actuals. If there was not a cash flow prepared in the previous production cycle, utilize previous year actuals to assure projections are realistic.
- **Annual Assessment Update Only**
  - There will be no year-end analysis completed.
  - Documentation of discussion for annual assessment will be completed.

**\*--23 Summary of Operational Review****A Summary**

The following is a summary of the operational review components to be completed.

	<b>Par Ref</b>	<b>New Loan or New Subordination Being Approved</b>	<b>No New Loan – Biennial Operational Review</b>	<b>No New Loan – Annual Assessment Update Only</b>
Farm Assessment – Update	17	Yes	Yes	No
Farm Assessment – Discussion Documentation	17 B	No	No	Yes
Classification Review	18	Yes	Yes	No
Graduation Review	19	Yes	Yes	No
FSA-2040	20	If chattel security per subpar 20 A	If chattel security per subpar 20 A	No
Limited Resource Review	21	If Appl	If Appl	No
Year End Analysis	22	Yes	Yes	No

--\*

**24-30 (Reserved)**

**Part 3 Withdrawn--Amend. 35**

**31-33 (Withdrawn--Amend. 35)**

**34-45 (Reserved)**

**Part 4 Withdrawn--Amend. 35**

**46-48 (Withdrawn--Amend. 35)**

**49-60 (Reserved)**



## Part 5 Borrower Payments

### 61 General

#### A Purpose

This part identifies how payments received by FSA from the borrower are to be applied to borrower loans. For borrowers with chattel security, this part refers to proceeds that FSA will apply to the borrower's FLP debt according to FBP and FSA-2040.

#### B Acceptable Payment Forms

**[7 CFR 765.151(a)] Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.**

#### C Processing Payments

**[7 CFR 765.151(b)] The Agency credits the borrower's account as of the date the Agency receives payment.**

**Note:** When an office is closed because of a lapse in government funding, natural disaster, or response to emergency situation, borrower payments submitted by mail will be credited as of the date of the postmark.

When FSA receives a payment, the authorized agency official must record and process the payment according to 64-FI.

A receipt for payments received will be given when cash is received, or the borrower requests a receipt with other payment forms.

Any subsequent correction of applications will be processed in NRRS. For the correction to be updated to borrower's account, the authorized agency official will need to submit \*--FSA-2429 through the RD Business Center, FLB, ECM system. Changes in application of loan payments shall not be for trivial or minor purposes. FSA-2429 **must** be submitted as soon as the error in application of payments is discovered or by December 31 of the current CY, to not adversely impact FSA issuance of IRS-1098. Only payments received in the current CY can be changed.

Approval from Director, LSPMD is required to make changes in past CY's or after IRS-1098's have been prepared. Request shall be submitted by email to e-mail to **SM.FSA.DCWa2.AdmException** or **adminexception@wdc.usda.gov**.--\*



## 61 General (Continued)

**D Identifying Regular and Extra Payments**

When FSA receives a payment from the borrower, the authorized agency official will identify the source of income from which the payment was derived. The source of the income or proceeds is essential to determine whether FSA applies payments as regular or extra.

**[7 CFR 765.152(a)] Regular payments are derived from, but are not limited to:**

- (1) The sale of normal income security;**
- (2) The sale of farm products;**
- (3) Lease income, including mineral lease signing bonus;**
- (4) Program or disaster-related disbursements from USDA or crop insurance entities; and**
- (5) Non-farm income.**

**[7 CFR 765.152(b)] Extra payments are derived from any of the following:**

- (1) Sale of chattel security other than normal income security;**

such as farm equipment and breeding livestock.

- (2) Sale of real estate security;**
- (3) Refinancing of Agency debt;**

**Note:** As required in 64-FI, Exhibit 17, collections for refinancing are coded as “Y” in NRRS.

- (4) Proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;**

\*--Repair and replacement of security may include expenses such as engineering fees, contractor estimates or similar expenses to ensure insurance companies have properly adjusted damages to Agency security.--\*

- (5) Any transaction that results in a loss in the value of any Agency basic security;**
- (6) Refunds of duplicate program benefits or assistance to be applied on CL or EM loans; or**
- (7) Refunds of unused loan funds.**

**61 General****D Identifying Regular and Extra Payments**

Proceeds from the sale of basic security as part of a court approved bankruptcy sale must be applied in accordance with the terms of the Bankruptcy Court's order. An authorized agency official, in consultation with the Farm Loan Chief shall verify and document in the FBP the payment application determination. If the Court's order is silent as to how the proceeds should be applied; the Office of General Counsel has advised FSA to apply the proceeds from the sale of basic security as a regular payment rather than an extra payment. Only, in those cases that the application of basic security proceeds as a regular payment results in the delinquent account becoming current or on schedule.

**61 General (Continued)****E Canceling Undisbursed Loan Funds**

After a loan has been closed, the authorized agency official will complete FSA-2425 to cancel the obligation of funds that will not be used by the borrower. No interest accrues, since the funds were obligated, but not advanced.

FSA-2072 must also be prepared and submitted with a copy of FSA-2425 to the RD Business Center, FLB. See 1-FLP, subparagraph 5 B.--\*

The original FSA-2425 with the borrower's signature will be stapled to the original promissory note in the locked, fire-resistant file cabinet. A copy of FSA-2425 will be placed in the borrower's file in position 2 with the note and an ADPS Unclosed (UN) Screen screen-print, after completion of the deobligation by the RD Business Center, FLB.--\*

If it is clear that the unused funds will not be used, but the borrowers will not sign FSA-2425, SED's are authorized to approve cancellation of undisbursed loan funds after all PLS options have been exhausted or the debt is paid in full. This authority may not be redelegated. If PLS has not been exhausted, States Offices shall contact LSPMD for directions.

\*--The RD Business Center, FLB record of the loan will indicate the loan amount was--\* reduced after deobligation. Keeping FSA-2425 with the promissory note (both original and copy) is the paper trail evidence that the loan amount was reduced after closing and the borrower consented.

DLS will be updated as required.

## 62 Regular Payments

### A Applying Regular Payments

**[7 CFR 765.153(a)] A regular payment is credited to a scheduled installment on program and non-program loans. Regular payments are applied to loans in the following order:**

- (1) Annual operating loan;**
- (2) Delinquent FLP installments, paying least secured loans first;**
- (3) Non-delinquent FLP installments due in the current production cycle in order of security priority, paying least secured loans first;**
- (4) Any future installments due.**

\*--Regular payments received will be credited by the RD Business Center, FLB to loans in--\* the order provided in subparagraph 64 A, beginning first with administrative costs and protective advances plus interest. Administrative costs and protective advances will only add on to FO's, SW's, and CL's. For other loan types, a new loan account is established. The loan number for these loans is generally between 75 and 99. Any protective advance or administrative cost charged back to a borrower's account is immediately due and payable.

### B Regular Payments From Real Estate Sale Security With SED Approval

**[7 CFR 765.152(c)] Notwithstanding any other provision of this section, payments derived from the sale of real estate security will be treated as regular payments at the Agency's discretion, if the FLP loans will be adequately secured after the transaction.**

When FSA becomes aware that the borrower is selling all or a portion of the real estate security, FSA-2061 for a partial sale should be requested from the borrower. When FSA receives the payment from the sale of real estate security, the authorized agency official must consult FSA-2061 to determine the loan to which the payment should be applied,--\* generally in the order of lien priority.

**Note:** If the borrower requests that payments resulting from the sale or exchange of real estate security be applied to current, delinquent, or unmatured loan installments; the borrower, with the assistance of the authorized agency official, must complete and \*--submit FSA-2061. Only SED's may approve this application of funds. The authorized agency official will forward the completed FSA-2061 and any other materials required to SED for review. The authorized agency official will inform the borrower of the decision and provide appeal rights according to 1-APP, if FSA-2061 is not approved.--\*

**63 Extra Payments****A Applying Extra Payments**

**[7 CFR 765.153(b)] An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.**

**64 Distributing Payments to Loans****A Order**

**[7 CFR 765.154] The Agency applies both regular and extra payments to each loan in the following order, as applicable:**

**(a) Recoverable costs and protective advances plus interest;**

**(b) Deferred non-capitalized interest;**

**(c) Accrued deferred interest;**

**Note:** Accrued noncapitalized interest will be credited after accrued deferred interest.

**(d) Interest accrued to date of payment; and**

**(e) Loan principal.**

**B Distribution**

Distribute payments according to the following.

<b>IF the loan...</b>	<b>THEN...</b>
number is identified correctly on the payment information	*--the RD Business Center, FLB will automatically--* distribute the payment to borrower debt according to subparagraph A.
costs are separate from their parent loan (usually identified by loan numbers between 75 and 99)	the payment needs to be specifically identified to be applied to those loan cost accounts and then to the original loan.

## 64 Distributing Payments to Loans (Continued)

**C Notification of Account Activity and Status**

\*--The RD Business Center, FLB will normally send the borrower and the local FSA office--\* the following:

- “Reminder of Payments To Be Made” 60 calendar days before the installment due date, which shows the borrower the installments due on each loan

\*--**Notes:** State Offices that have elected to discontinue the RD Business Center, FLB--\* notification will send a payment reminder letter similar to Exhibit 25.4 to the borrower. A report is under development to assist in accessing the needed data.

The “Reminder of Payments To Be Made” or payment reminder letter sent by the State Office will always provide the VRU telephone number (1-888-518-4983). VRU is a secure, automated system that requires a PIN number, and guides borrowers in obtaining the status of their loans at any time. If further loan information is needed, such as a payoff amount, borrowers are directed to call the FSA office.

The borrower has the ability to change their PIN using the following instructions:

- borrower calls toll free number
- after being asked for their ID, the system checks to see if a PIN is present
- if so, the borrower will be asked to enter the PIN
- if they enter the incorrect PIN they will be given the option to PRESS “1” to re-enter it, or PRESS “2” to change it
- after pressing 2, they will be walked through the process of changing their PIN.
- FSA-2065 annually, which shows the loan status, all transactions completed during the calendar year, and VRU telephone number.

**Note:** See Exhibit 25.5 for an explanation of IRS forms sent to borrowers annually.

**65 Final Payments****A Calculating the Final Payment**

When FSA is notified of the date the borrower will make the final payment, the authorized agency official calculates the final payoff amount by checking the “TPOF” field of the ADPS AI and PF Status Screens.

The authorized agency official shall verify that no other accounting transactions are pending that would affect the payoff amount. This may include, but is not limited to, payments that may not yet have been applied, loan costs that may not be posted on the account yet, interest rate changes, accounting corrections, and shared appreciation recapture.

Final payoffs shall be verified by 2 agency officials to lessen the possibility of an incorrect payoff amount being provided. Both officials will initial the AI and PF Status Screens and any other documentation to certify the amount. Exhibit 26 will be sent to the borrower only if the request for payoff is made before the day of payment in full.

**Note:** If a customer is on PAD, this must be cancelled prior to submitting the final payment through NRRS.

\*--For borrowers that choose to use wire transfer to remit the payoff amount, County Offices shall contact the RD Business Center Collections Branch for guidance on accepting wire transfers. See 1-FLP, subparagraph 5 G for contact information.--\*

**B Supervised Bank Accounts and Undisbursed Loan Funds**

If a borrower has a supervised bank account, the authorized agency official may apply any remaining funds in the account to the final payoff or release the remaining funds in the supervised bank account to the borrower after they have paid the account in full.

See 1-FLP, Part 4 for more information on supervised bank accounts.

If a borrower has undisbursed loan funds, they must be canceled according to subparagraph 61 E before the account is paid off.

**65 Final Payments (Continued)****C Overpayment**

**[7 CFR 765.155(c)] If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than \$10, the borrower must request a refund from the Agency in writing. Overpayments of \$10 or more automatically will be refunded by the Agency.**

In NRRS, a refund receipt will be created for the remaining portion of the remittance. For refunds less than \$10, the borrower must request the refund from the Agency in writing.

See 64-FI, paragraph 54, for more information on FLP refunds.

**D Underpayment**

**[7 CFR 765.155(d)] If an Agency miscalculation of a final payment amount results in an underpayment, the Agency may collect all account balances resulting from its error. If the Agency cannot collect an underpayment from the borrower, the Agency will attempt to settle the debt in accordance with subpart B of 7 CFR part 1956. (7-FLP, Part 12)**

If the authorized agency official discovers that the borrower underpaid FSA in an amount that exceeds \$10, the account will be serviced according to 5-FLP, Part 10.

If the promissory notes or security instruments have been released, the authorized agency official will immediately request guidance from the State Office, who will consult OGC.

If voluntary payment is not made to pay the debt in full, if a compromise offer is not made or accepted, or if court action is not initiated to collect the debt, the account will be referred for collection under TOP and cross-servicing after appropriate notice, if the remaining debt exceeds \$100.

Debt cancellations over \$10 will only be processed after all other attempts to collect the debt have been exhausted.



**65 Final Payments (Continued)****E Borrower Refunds**

**[7 CFR Part 765.155(b)] If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.**

**F Security Instrument Releases**

**[7 CFR Part 765.155(a)] (1) Unless the Agency has reservations regarding the validity of the payment, the Agency may release the borrower's security instruments at the time payment is made, if the borrower makes a final payment by one of the following methods:**

- (i) U.S. Treasury check;**
- (ii) Cashier's check; or**
- (iii) Certified check.**

**[7 CFR Part 765.155(a)(2)] Security instruments will only be released when all loans secured by the instruments have been paid in full or otherwise satisfied.**

**\*--The authorized agency official will check FSA's automated systems, including ADPS, DLS, NRRS, and all information in the borrower's file.**

**Note:** If NRRS financial transaction status is not showing settled, send an e-mail to **SM.FSA.DCWA7.NRRS** requesting to check Treasury record for status of Remittance ID XXXX.--\*

SED may issue a State supplement providing guidance about actions and filing fees for the release of loan security instruments.

**[7 CFR 765.155(a)(3)] The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines that the total indebtedness is paid in full.**

After verifying that the loans are paid in full and the payment has cleared, the authorized agency official will close the case files and return the documents to the borrower according to 32-AS. FSA-2071 shall be attached with the documents sent to the borrower with a copy placed in the case file. Any assignments held by FSA will be terminated using Exhibit 27 and satisfaction of liens will be recorded on FSA-2433.

## 65 Final Payments

**F Security Instrument Release(s)**

FSA will not normally file release(s) of loan security instruments. FSA will provide the release(s) to the borrower and it will be their responsibility to file the release(s) with the local County Clerk, Department of Motor Vehicles (DMV) or New York Department of State (DOS). If FSA is legally required, or it is in our best interest to file releases, the local office will be responsible for obtaining the costs from the local County Clerk or DMV. DOS costs can be obtained at the following website:

<http://www.dos.state.ny.us/>

**UCC Terminations**

Revised Article 9 places certain requirements upon a secured party to file a termination statement. The requirements differ depending upon whether the financing statement covers “consumer goods” or other types of collateral. Since FSA deals almost exclusively with non-consumer goods, the requirements of NY UCC § 9-513(c) apply to FSA.

Essentially, FSA is required to either file a termination statement or send a termination statement to the debtor if: (1) FSA has received an “authenticated demand” from the debtor; (2) there is no longer any obligation secured by the collateral covered by the financing statement; and (3) FSA has made no further commitment to make an advance, incur an obligation or otherwise give new value to the debtor. If those requirements are met, then FSA is required to comply with the debtor’s request **within 20 days of receiving the demand from the debtor**. If FSA fails to comply with the termination requirement within the 20-day period, then Revised Article 9 permits another creditor to file a termination statement on behalf of the debtor, if the debtor authorized the filing, and the termination statement indicates that the debtor authorized it to be filed. *See* NY UCC § 9-509(d)(2).

- In cases where FSA refinances another lender’s debt, FSA may need to invoke its right to file a termination statement with regard to the other lender’s financing statement. Before doing so, however, FSA must verify in writing with the other lender that the lender has been paid in full and that the debtor sent the other lender an “authenticated demand” that the termination statement be filed. Unless the debtor actually requested that the termination statement be filed, FSA may not rely upon NY UCC § 9-509(d)(2) as authorization for filing a termination statement with regard to the other lender’s financing statement. By failing to verify that all of the statutory requirements have been met, FSA could run the risk of incurring sanctions (such as a \$500 penalty) for filing an unauthorized amendment to the lender’s financing statement. *See* NY UCC § 9-625(e).

**65 Final Payments (Continued)**

Additional guidance can also be found on NYS's intranet at:

<http://intra4.fsa.usda.gov/NY/NYi/UCC.htm>

**Mortgage Discharges/Releases**

New York generally refers to a mortgage discharge document as a “certificate of discharge” rather than a “satisfaction of lien.” The discharge document cannot list more than one mortgage at a time. The only exception is that a discharge document can list two or more mortgages where:

- (1) one of the mortgages corrects, perfects or modifies the other mortgage(s);
- (2) one of the mortgages spreads the lien of the other mortgage over the property subject to the lien of such mortgage; or
- (3) one of the mortgages consolidates all of the mortgages into a single lien.

In cases where a corrective mortgage or “spreader mortgage” was filed, FSA would simply include the recording information for the corrective mortgage(s)/spreader mortgage(s) after it describes the original mortgage.

If the mortgage has been assigned, then the discharge document must be signed by the “person who appears from the record to be the last assignee thereof or his personal representative.” This means that the Agency should not execute a discharge of mortgage if its mortgage has been assigned to a third party. If the mortgage was assigned by a third party to FSA, then the Agency would need to add an additional sentence or paragraph to the discharge document which describes the assignment.

The following sample documents (modify as needed) can be used if a New York form is not available from the forms website:

<http://intra3.fsa.usda.gov/dam/ffasforms/forms.html>

**66 Preauthorized Debit (PAD)****A Introduction**

\*--PAD payments are customer authorized transactions that allow the RD Business Center to electronically collect loan payments from a customer's account at a financial institution. CB is responsible for setting-up, changing, correcting and canceling PAD agreements.--\* PAD was implemented for our FLP customers as an alternative way to make weekly, bi-weekly, monthly, quarterly, semi-annual or annual payments on their loans. There is no additional cost to customers for using PAD.

**B Using Form RD 3550-28**

PAD is initiated by the customer using RD 3550-28. Customer use of PAD is strictly voluntary. RD 3550-28 must be completed by the customer and the FI. If the customer has a "filter" on their FI account, they will need to provide the FI with the:

- origination ID: 1220040804
- agency name: USDA RD DCFO.

A separate RD 3550-28 **must** be completed for each loan to which payments are to be applied. RD 3550-28 has no expiration date. The web address for the fillable form can be accessed at <https://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home>, select RD 3550-28.

**66 Preauthorized Debit (PAD) (Continued)****C County Office Actions**

After a transfer and assumption, new borrowers shall be notified of the availability of PAD using Exhibit 27.5 and RD 3550-28. A copy of the notification will be retained in the borrower's case file. See 3-FLP for instructions on initiating PAD for new applicants.

When a customer returns RD 3550-28 the County Office will:

- review each RD 3550-28 for accuracy and completeness

**Notes:** PAD may only be established for future payments. An accuracy check should be completed to ensure that customer's PAD payment goal will be met.

A payment submission that will **not** make the annual installment requires advance notice to the authorizing borrower. The County Office will document the notice in the case file (or FBP if appropriate).

- \*--FAX a copy of each accurate and complete RD 3550-28 to CB at 314-457-4370

**Note:** If using fax2mail, type //FINE at the end of the subject line. This method will be used for all PAD related contact with CB.

- retain each original RD 3550-28 in the borrower's case file (position 2).

**D RD Business Center Actions**

Upon receipt of RD 3550-28, CB will update the PAD agreement into the PAD stand-alone system. Allow up to 20 workdays for CB to establish a borrower in the PAD system.

PAD confirmation letters are created by CB when a new account is established or when a change is made to an existing account. The letters are sent to the Field Office and borrower.

**Note:** The County Office will complete a thorough review of all PAD confirmation letters immediately after they are received from the RD Business Center, CB. If an error is identified, CB should be contacted by FAX as listed in 1-FLP.--\*

**67 Managing PAD****A PAD Payments and Receipts**

Scheduled PAD payments are withdrawn from borrowers' FI accounts and updated to PLAS \*--(ADPS). FLB manually applies any payments that do not automatically update to PLAS.--\* The PAD transaction will be reflected on the statement the borrower receives from their FI. The statement is the borrower's payment receipt.

If a correction to an existing PAD agreement needs to be made, it should be clearly marked as a correction at the top of RD 3550-28 and FAXed to CB. The correction should be sent to CB at least 5 workdays before the correction request date.

**B Dealing With Non-Payment**

When the FI cannot post the PAD transaction to the designated borrower's account, the FI is instructed by CB to reject the transaction.

When a PAD transaction is rejected, CB contacts the County Office to verify the reason for rejection (such as insufficient funds, account closed, payment stopped), and to determine how the rejected payment will be collected. CB cannot proceed until the rejection is resolved; a timely reply from the County Office will expedite the process.

If the reason for the rejection is no fault of the borrower, the original credit date will be given when the resolution takes place.

If a borrower has 3 concurrent rejections, the PAD agreement will be terminated. See subparagraph E.

**C Restructures and Assumptions**

When a loan on PAD is being considered for restructuring or assumption, the County Office must FAX a detailed memo to CB to terminate the original RD 3550-28. To avoid additional payment withdrawals this should be done at least 5 workdays before the termination request date.

The County Office will notify the borrower that PAD is being canceled to process the restructuring or assumption. A record of the notification will be kept in the case file (or FBP if appropriate). This is not an adverse decision.

After a restructure of a loan formerly on PAD, the County Office will notify the borrower of the continued availability of PAD and provide the borrower with RD 3550-28. A record of the notification will be kept in the case file (or FBP if appropriate).

## 67 Managing PAD (Continued)

**D Final Payments**

To ensure proper account coding, final payments should not be submitted through PAD, but by the County Office through NRRS. County Office should take future PAD withdrawals into account when calculating final payments to reduce the number of refunds.

\*--At least 5 workdays before loan pay off, County Office should notify CB to terminate--\* PAD. The County Office will notify the borrower that PAD has been terminated to reduce the risk of overpayment and to ensure proper accounting of the final payment. A copy of the notification will be kept in the case file (or FBP if appropriate). This is not an adverse decision.

\*--If the PAD cancellation is not processed before the payoff and a PAD payment is drafted, the County Office must notify CB requesting refund of the drafted PAD. CB will notify CSB. The refund process can take up to 2 weeks to be completed by CSB.--\*

**E Canceling PAD**

A borrower may voluntarily cancel PAD by submitting a written request to the County Office. Within 5 workday of receipt of borrower's request to cancel PAD, County Office

\*--should notify CB to terminate PAD by detailed letter. A copy of the borrower's request and County Office's letter will be kept in the case file.

If a borrower has 3 concurrent rejections, the PAD agreement will be terminated by the Agency. CB will notify County Office that the PAD agreement has been terminated for--\* too many rejections. This is not an adverse decision.

**F Additional Information**

Below is a description of how the Bi-Weekly and Weekly PAD debits work.

- Bi-Weekly:
  - is always the 1<sup>st</sup> and 3<sup>rd</sup> or 2<sup>nd</sup> and 4<sup>th</sup> week of the month of any day of week
  - cycle (1<sup>st</sup> and 3<sup>rd</sup>) or (2<sup>nd</sup> and 4<sup>th</sup>) the initial payment falls on.

**Note:** There will always be (2) debits per month and all will fall on the same day of the week. The initial debit cannot be the 5<sup>th</sup> week of the month.

**Example:** If a borrower chooses to have their first payment pulled on Sunday, May 1, the actual debit from their account would be on May 2<sup>nd</sup> and then on May 16<sup>th</sup>. In this case, their debit will always be on the 1<sup>st</sup> and 3<sup>rd</sup> Mondays of the month and the date of credit will be on the 1<sup>st</sup> and 3<sup>rd</sup> Sundays of the month, etc.

## 67 Managing PAD (Continued)

**F Additional Information (Continued)**

Bi-Weekly 2 is always on the 1<sup>st</sup> and 15<sup>th</sup> of the month.

**Note:** There will always be (2) debits per month and the day of the week will vary from month to month. The initial debit must be on the 1<sup>st</sup> or 15<sup>th</sup> of the month.

**Example:** If a borrower chooses to have their first payment pulled on Sunday, May 1<sup>st</sup>, the actual debit from their account would be on May 2<sup>nd</sup> and then on May 16<sup>th</sup>. In this case, their debit will always be on the 1<sup>st</sup> and 15<sup>th</sup> of the month and the actual debit will be on that date unless it falls on a weekend and then it will be the following Monday. The credit date will always be the 1<sup>st</sup> and 15<sup>th</sup>.

Weekly 1 is always the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> week of the month of any day of the week the initial payment falls on.

**Note:** There will always be (4) debits per month and all will fall on the same day of the week. The initial debit cannot be the 5<sup>th</sup> week of the month.

**Example:** If a borrower chooses to have their first payment pulled on Sunday, May 1<sup>st</sup>, the actual debit from their account would be on May 2<sup>nd</sup>, then May 8<sup>th</sup> would debit on May 9<sup>th</sup>, then May 15<sup>th</sup> would debit on May 16<sup>th</sup> and then May 22<sup>nd</sup> would debit on May 23<sup>rd</sup>. If a borrower chooses to have their first payment pulled on May 24<sup>th</sup>, then the next debit would be on Monday, June 7<sup>th</sup>. Thereafter, June 14<sup>th</sup>, June 21<sup>st</sup> and June 28<sup>th</sup>. There would be no debit for the last Tuesday in May, which is May 31<sup>st</sup>.

Weekly 2 is always on the 1<sup>st</sup>, 8<sup>th</sup>, 15<sup>th</sup>, and 22<sup>nd</sup> of the month. There will always be (4) debits per month and the day of the week will vary from month to month. The initial debit **must** be on the 1<sup>st</sup>, 8<sup>th</sup>, 15<sup>th</sup>, or 22<sup>nd</sup> of the month.

**Example:** If a borrower chooses to have their first payment pulled on Sunday, May 1<sup>st</sup>, the actual debit from their account would be on May 2<sup>nd</sup>, then May 8<sup>th</sup> would debit on May 9<sup>th</sup>, then May 15<sup>th</sup> would debit on May 16<sup>th</sup> and then May 22<sup>nd</sup> would debit on May 23<sup>rd</sup>.



**68 Completing IRS W-9****A Instructions**

When FSA has security interest in proceeds from a borrower's insurance, integrator, buyer etc. FSA may receive a request from the third-party issuer of the payment to complete IRS Form W-9. IRS Form W-9 has instructions, however, the following are specific instructions for FSA:

- item 1 - USDA Farm Service Agency
- item 2 - do not complete
- item 3 - check "Other" and write "Federal Government"
- item 4 - "Exemption Payee Code" (2), and "Exemption from FATCA reporting"
- item 5 - Address, Stop 0523, 1400 Independence Ave. SW
- item 6 - Washington, D.C. 20250-0523
- \*--Part I – For FSA employer identification number see 62-FI, subparagraph 47 C
- Part II - an authorized agency official may sign and date the document.--\*

**Note:** A copy of the document should be filed in position 2 of the case file.

**69-95 (Reserved)**

**Part 6 Protecting FSA's Security Interests****Section 1 General Security Preservation and Lien Protection****96 Servicing Policy****A Overview**

This Part describes FSA's policies on general security preservation and lien protection, subordinations, junior liens, severance agreements, and releases of liens without monetary consideration.

**B General Policy**

**[7 CFR 765.201] All Agency servicing actions regarding preservation and protection of Agency security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.**

**C Security Inspections**

\*--Chattel security will be inspected annually, except in cases where the authorized agency official has justified in the assessment or analysis that no undue risk exists. However, all chattels will be inspected at least every 2 years. These security inspections shall be scheduled after a new loan has been closed by creating a new Farm Visit workflow in DLS.

After completing the Farm Visit workflow, followup security inspections shall be scheduled in DLS; thereafter, based on the applicable requirements of this section for the type of loan security and for the remainder of the loan term.--\*

In times of limited resources, the authorized agency official may prioritize the completion of security inspections within the requirements of the applicable regulations.

**Example:** An FO borrower who has been current with FSA and has provided chattels only as additional security might not need an annual inspection.

## 96 Servicing Policy (Continued)

**C Security Inspections (Continued)**

The authorized agency official:

- will inspect real property security at least once every 3 years
- should conduct more frequent inspections for a delinquent borrower or a borrower who has been indebted to FSA for less than 1 full crop year.

The purpose of inspections is to:

- verify that the borrower possesses all the property listed in the security instruments
- determine that the borrower is maintaining security properly
- update security instruments.

\*--The authorized agency official will record all security inspections in borrower's FBP and--\* in DLS by using the Farm Visit Scheduling, tracking and monitoring, workflow activities.

A field visit to complete a security inspection may be used to:

- review the accomplishments and goals (assessment) with the borrower
- emphasize any agreements that have been made
- discuss any concerns about the operation
- discuss any proposed changes.

For chattel secured loans, the following will be documented on the FSA-2028 work copy:

- individual security items that are inspected
- any revisions to the condition of the individual items
- number and condition of livestock and equipment
- any discrepancies from original livestock numbers that were discussed.

**Note:** See Part 7 for guidance on handling discrepancies.

**D Documenting Reviews Not Completed As Scheduled**

When the authorized agency official determines that a scheduled chattel inspection will not be completed as scheduled, the Farm Visit workflow in DLS shall be terminated. The terminated workflow must be documented as to why the workflow was not completed. A new Farm Visit workflow must be created and scheduled immediately as applicable.

**97 Maintaining Debt Instruments****A Identifying Debt Instruments**

Debt instruments are documents that show a debt owing with the terms of the debt amount, interest rate, years, etc. These instruments can include any of the following:

- accelerated repayment agreements
- approved debt settlement applications
- assumption agreements
- bankruptcy plans and/or stipulations accompanied by the confirmation order showing approval by the court and, when appropriate, discharge orders
- cost voucher documents
- court ordered or debt settlement documents
- promissory notes
- FSA-2543's
- suspension agreements.

**Note:** Many of these documents are considered essential FLP records that require maximum  
\*--protection and must be filed and locked in fire-resistant file cabinets, according to  
32-AS, subparagraph 59 A.--\*

**97 Maintaining Debt Instruments (Continued)****B Conducting Yearly Debt Instrument Inventory**

\*--In March of each year, the RD Business Center will prepare RC 830A listing all borrowers who should have debt instruments maintained in the County Office. The RC 830A report will be made available through an email from Rural Development Business Center Servicing Office to the State Office distribution list. State Offices will be responsible for distributing the report to local Service Centers for review.--\*

RC 830A includes the following for each borrower:

- name and case number
- fund code and loan numbers
- date of loan
- interest rate
- amount of noncapitalized interest, if applicable
- principal loan amount
- account flag.

When RC 830A is received, County Offices shall:

- verify that the debt instruments exist

**Notes:** Debt instruments such as bankruptcy plans and discharge orders should be attached to the instruments which they amend.

Shared appreciation payment agreements are not currently reflected on RC 830A, but should be noted and checked for accuracy.

- compare the information provided on RC 830A to the related debt instrument to identify any discrepancies

**Note:** Review findings shall be documented on RC 830A.

## 97 Maintaining Debt Instruments (Continued)

**B Conducting Yearly Debt Instrument Inventory (Continued)**

- take necessary corrective action when the:
  - difference in the principal loan amount or noncapitalized interest amount is more than \$100
  - interest rate must be corrected

**Note:** Attach a copy of the letter changing the interest rate to the promissory note (it is **not** necessary to correct promissory notes when the rate on the promissory note does not match RC 830A as a result of the interest rate being modified based on a limited resource review).

- obtain guidance from the OGC regional attorney, through the State Office, about any necessary corrections to promissory notes, or shared appreciation agreements
- ensure that copies of all instruments are filed in case files
- submit cases requiring corrections to the State Office coordinator on FSA-2446 and State  
\*--Office coordinators will send completed FSA-2446's to the RD Business Center, FLB.--\*  
See 1-FLP, subparagraph 5 B.

**Note:** State Office coordinators should track and monitor the submission and resolution of account corrections using FSA-2445.

- obtain guidance from OGC regional attorney, through the State Office, about the need to replace lost or missing debt instruments
- advise SED of the review results by July 31 of each year and retain RC 830A as a subdivided file under FLP-1-B, "Reports" according to 32-AS until the next year's report has been received and reviewed.

## 97 Maintaining Debt Instruments (Continued)

### \*--C Conducting Yearly Debt Instrument Inventory for CNC Accounts

Coinciding with the Yearly Debt Instrument Inventory provided in subparagraph 97 B, the County Office shall review a listing of all CNC borrowers who should have debt instruments maintained in the County Office. Offices will use the current year March RC 540-L to complete this action.

When the March RC 540-L is received, the County Office shall:

- verify that the debt instruments exist and are filed in the Service Center locking-type, fire-resistance file cabinets in accordance with 32-AS
- compare the information provided on March RC 540-L to the related debt instrument to identify any discrepancies

**Note:** Review findings shall be documented on March RC 540-L.

- ensure that copies of all instruments are filed in case files
- obtain guidance from the National Office, through the State Office, about missing debt instruments
- advise SED of the review results by July 31 of each year and retain the March RC 540-L as a subdivided file under FLP-1-B, “Reports” according to 32-AS until the next year’s report has been received and reviewed.--\*

## 98 Maintaining Security Instruments

### A Maintaining Security Documents

Each County Office must maintain security instruments according to 32-AS.

An FSA UCC Security Guide is available for guidance on perfecting and maintaining interest in non-real estate security. This is available from the Farm Loan Programs Systems page at <https://intranet-apps.fsa.usda.gov/flp/IndexServlet>. Under “Informational Links”, CLICK “FLP Training SharePoint” to go to the Farm Loan Programs Training SharePoint page.

Even if a borrower is being serviced under a bankruptcy plan, it is critical that the FSA UCC financing statement does not lapse. A continuation financing statement must be filed when necessary. FSA is permitted to do so without obtaining relief from the automatic stay according to 11 U.S.C. 362 (b)(3). See 5-FLP, Part 11 for additional bankruptcy guidance.

**98 Maintaining Security Instruments**

**C Obtaining New FSA-2028**

In addition to the events listed in the handbook, a new FSA 2028 “Security Agreement” will be completed when the borrower or security moves to a different address.



**98 Maintaining Security Instruments (Continued)****B Maintaining Current Information**

FSA must review or renew financing statements, security agreements, and other documents for each borrower periodically. County Offices shall use DLS to identify and track security instruments that need to be continued or updated. The authorized agency official will notify the borrower of any required information and documents. Notification, if not made in writing, should be documented in FBP.

**C Obtaining Subsequent FSA-2028's**

FSA obtains new FSA-2028's when:

- a security interest is taken in crops, if an interest was not previously obtained
- FSA obtains additional security new or additional security through a new loan or PLS
- modifications to the security listed on the working copy of current FSA-2028's have been made
- deemed necessary to protect FSA's security interests.

SED will issue a State supplement to specify when to obtain a subsequent FSA-2028 based on State law.

**D Direct Operating Loan-Micro Loan (DOL-ML) Identification Requirements for new FSA-2028's**

For each DOL-ML, an "M" and the fund code and loan number will remain next to the security for that loan, unless the loan is serviced according to 5-FLP. If a loan is serviced under 5-FLP as a delinquent borrower, the "M", fund code, and loan number will be discontinued.

## 98 Maintaining Security Instruments (Continued)

**D Direct Operating Loan-Micro Loan (DOL-ML) Identification Requirements for new FSA-2028's (Continued)**

- Example 1:** Borrower has a DOL-ML 44-01 secured by a tractor. A subsequent DOL-ML is made for the purchase of a plow. On the subsequent FSA-2028, only the tractor and plow will be listed as security. The servicing official will include next to the tractor “(M-44-01)” and plow “(M-44-02)”.
- Example 2:** Borrower has a DOL-ML 44-01 secured by a tractor, a subsequent DOL-ML 44-02, secured by a plow, and a subsequent DOL-ML 44-03 secured by 20 goats. Because of a designated weather disaster, the borrower has applied for and is eligible for PLS. Based upon eDALR\$ calculation, loans 44-01 and 44-02 are current and will not receive servicing, loan 44-03 will be restructured as a delinquent borrower. In the subsequent FSA-2028, the servicing official will include next to the tractor “M-44-01” and “M-44-02” next to the plow. The goats will no longer have the “M”, fund code, and loan number designations.
- Example 3:** Borrower has a DOL-ML 44-01 secured by a tractor, a subsequent DOL-ML 44-02, secured by a plow, and a subsequent DOL-ML 44-03 secured by 20 goats. Because of a designated weather disaster, the borrower is past due, has applied for, and is eligible for PLS. Based upon eDALR\$ calculation, loans 44-01 and 44-02 are current, loan 44-02 will not receive servicing, loans 44-01 and 44-03 will be restructured as past due borrower. In the subsequent FSA-2028, the servicing official will include a complete listing all assets (crops, machinery, equipment, livestock, poultry, etc.). Next to the plow the servicing official will include “M-44-02”. If separate and identifiable livestock security cannot be clearly established and/or maintained, all of the type of livestock purchased with DOL-ML funds will be listed on FSA-2028 and identified with an “(m)” and the applicable loan numbers “(xx-xx)”.
- Example 4:** Borrower owned 20 cows before DOL-ML. Borrower used DOL-ML to purchase 20 additional cows. Forty cows will be listed on FSA-2028 and identified with “(M-XX-XX)”.

**E Continuing, Amending, or Obtaining New Financing Statements**

Unless State law provides otherwise, financing statements filed according to UCC are effective for 5 years from the filing date. The authorized agency official must continue existing financing statements to retain FSA's security position beyond the original 5-year period. The authorized agency official will file the appropriate continuation form within the 6-month period before the end of the current 5-year period to extend the effective date of the original filing for an additional 5 years.

**Note:** A lien search is not required when the financing statement is properly continued.

## 98 Maintaining Security Instruments (Continued)

**D Continuing, Amending, or Obtaining New Financing Statements**

In order to change or add information to a financing statement that was previously filed on the UCC-1 form, FSA official should file the UCC-3 Amendment form. This amendment form may be used to: (1) add or delete collateral, (2) add or delete debtors and secured parties, or (3) amend the information previously contained in the financing statement. **It is especially important for FSA to file a UCC-3 Amendment whenever the debtor changes his or her legal name.** Obviously, an amendment would be necessary if the debtor changed his or her name due to marriage or divorce. It would also be necessary if an organization changes its legal name. It is extremely important that FSA amend its financing statement as soon as it learns about the name change. A failure to do so may result in the invalidation of FSA's financing statement.

Please note that when a new debtor or secured party is added by using a UCC-3 the filing is only effective for the new secured party/debtor as of the filing date of the UCC-3. It does relate back to the original filing date .

**Remaining Perfected****(A) General Information:**

- (1) A financing statement is generally effective for a period of **five years** after the date of filing. One exception is that an initial financing statement filed in connection with a public-financed transaction or manufactured home is generally effective for a period of 30 years after the date of filing.
- (2) When the period of effectiveness of a financing statement expires, the financing statement lapses unless a continuation statement has been filed. A financing statement may be continued for an additional five years by filing a continuation statement with the filing office within the six month period prior to the expiration of the period of effectiveness. If continued properly, the financing statement will remain in effect for an additional five-year period beginning with the day the financing statement would have lapsed in the absence of filing.
- (3) The continuation statement is ordinarily filed on Form UCC-3. The continuation statement should identify the original financing statement by date and file number, and state that the original financing statement is continued.

## 98 Maintaining Security Instruments (Continued)

**D Continuing, Amending, or Obtaining New Financing Statements****(B) Borrower moves Security:**

If a debtor changes its address within a county, or moves from one county to another, the Agency should file a UCC-3 amendment form with the NY Department of State for the purpose of updating the debtor's mailing address. There is no specific timeline for doing this.

If a debtor moves from one state to another, the Agency generally has four (4) months to file a financing statement in the new state (whether it be NY or somewhere else) in order to continue perfection of the original financing statement. If the Agency fails to re-file within the 4-month period, then the Agency will lose its lien priority over other creditors.

**(C) Effect of Borrower's Bankruptcy:**

Under Former Article 9, the lapse of a financing statement was tolled (suspended) if the borrower entered bankruptcy. **However, this tolling period was deleted when the UCC was revised.** The rule now is that the bankruptcy filing **does not** prevent a creditor's security interest from lapsing during the course of the bankruptcy case. Consequently, FSA must make sure that the UCC financing statement does not lapse by filing a continuation statement when necessary, even if the borrower is in bankruptcy. FSA is permitted to do this without obtaining relief from the automatic stay. *See* 11 U.S.C. § 362(b)(3).

**(D) Loss of Perfection:**

If the financing statement lapses, it ceases to be effective and any security that was perfected becomes unperfected. As a result, FSA's lien priority may be lost due to the existence of intervening creditors. The lapse in perfection does not, however, invalidate FSA's rights against the debtor. In the event that a financing statement does lapse and FSA wishes to re-perfect its security interest in the same collateral, FSA must file a new financing statement. FSA cannot "revive" a financing statement once it has lapsed.

Additional guidance can also be found on NYS's intranet at:

<http://intra4.fsa.usda.gov/NY/NYi/UCC.htm>

**98 Maintaining Security Instruments (Continued)****E Continuing, Amending, or Obtaining New Financing Statements (Continued)**

The authorized agency official shall amend or file a new financing statement only if the debt will be additionally secured either by:

- property not already described specifically or by type in the existing financing statement
- crops growing or to be grown that are not already covered by the existing financing statement
- fixtures not already described on the existing financing statement.

SED's will issue State supplements as needed to provide additional guidance and ensure compliance with State laws and procedures. Supplements should include the appropriate forms to be used for continuation, amendment, or new filings.

**F Purchase Money Interest (PMI) Identification Requirements for New FSA-2028's**

If separate and identifiable livestock security cannot be clearly established, all of the type of livestock purchased with loan funds will be listed on the security agreement and the PMI identifier (\*) will be used with a "Note" showing the number of livestock originally purchased with loan funds.

**Example:** Borrower used loan funds to purchase 100 cows. Borrower owned 100 cows before receiving the loan. Borrower now also owns 25 bred heifers. The FSA-2028 will list 225 cows identified with (\*) PMI and note-PMI in 100 cows.

\* \* \*

**98 Maintaining Security Instruments (Continued)****E Obtaining Assignments**

Assignments (CCC-36) of FP program payments will be obtained in the following instances:

1. When the borrower or agency requests that FSA FLP complete a CCC lien waiver, an assignment will be obtained on the payment if FSA FLP provided direct annual operating credit or if the borrower's direct loan payments are past due.
2. When as a loan approval or servicing condition (FBP Credit Presentation, loan obligation, form 2040, etc) the borrower is required to execute an assignment of existing or future FP/CCC program payments, the FLM/FLO will provide a copy of the documentation to the CED and they will complete all necessary steps to assign the payment to the borrowers FLP loan account.

FLP will generally not obtain a Joint Payment Authorization (CCC-37) from FP for a borrower's account. Based upon 36 FI, Form(s) CCC-36 and CCC-37 are valid when filed after the FSA or CCC program designated has been publicly announced by law, or Agency official.

Payments via CCC-36 are made after the following:

- claims due CCC or FSA
- receivables due CCC or FSA if the producer has voluntarily elected to pay the receivable
- the receivable is subject to offset from a specific program
- all IRS notices of levy, which are payable according to 58-FI
- claims due USDA agencies
- claims due other Government agencies.

**F Real Estate Security Instruments:**

When the agency discovers that a mortgage contains an error, the authorized Agency Official will immediately consult with the State Office, who in turn will seek guidance from OGC on how to correct the error. If the error was made by the Agency, then fees associated with filing new documents will be paid from PLCE "A" funds after approval by the FLC as outlined in part 7 of 1-FLP Handbook. The borrower will be responsible for paying any fees that are not directly attributable to the Agency's actions. If the borrower fails to provide the funds required to file the corrected mortgage, the borrower's account will be charged for the costs associated.

## 98 Maintaining Security Instruments (Continued)

### G Obtaining Assignments

FSA may require that borrowers assign FP payments to FSA for FLP loan payments. Assignments for program payments will be maintained according to 63-FI.

SED's will issue State supplements as needed to:

- provide guidance on maintaining existing assignments
- ensure compliance with State laws.

### H Real Estate Security Instruments

Real estate security instruments will be obtained, corrected, amended, or continued according to applicable State law. SED's will issue State supplements to provide guidance for complying with State requirements.

**\*--Note:** No limitations period exists with respect to actions by government agencies to foreclose mortgages or deeds of trust per 28 U.S.C.A. § 2415(c). Accordingly, State limitations periods, and specifically those governing foreclosures, are not effective against the Federal Government. Regional OGC should be contacted for guidance on specific cases.--\*

## 99 Borrower Responsibilities for Complying With Loan Instruments

### A General Policy

[7 CFR 765.202] The borrower must:

**(a) Comply with all provisions of the loan agreements;**

**(1) Non-compliance with the provisions of loan agreements and documents, other than failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default on FLP loans by the borrower;**

**(2) Borrower non-compliance will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests;**

**\*-- Note:** Non-compliance by borrowers should be addressed according to 5-FLP, Part 3.--\*

**99 Borrower Responsibilities for Complying With Loan Instruments (Continued)****B Borrower Responsibilities**

[7 CFR 765.202] The borrower must:

- (b) Maintain, protect, and account for all security;
- (c) Pay the following, unless State law requires the Agency to pay:
  - (1) Fees for executing, filing, or recording financing statements, continuation statements or other security instruments; and

**Notes:** Exhibit 28 will be used to inform the borrower of any fees required.

\*--Exhibit 28.4 will be used for borrowers in bankruptcy.--\*

- (2) The cost of lien search reports;
- (d) Pay taxes on property securing FLP loans when they become due;
- (e) Maintain insurance coverage in an amount specified by the Agency;
- (f) Protect the interests of the Agency when a third party brings suit or takes other action that could affect Agency security.

**C Requirement to Operate Security**

[7 CFR 765.251] (a) A borrower is required to be the operator of Agency security in accordance with loan purposes, loan agreements and security instruments. See operator in Exhibit 2.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan agreements and security instruments.

(c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253 (subparagraphs D and E).

**D Conditions for FSA Consent to Borrower Ceasing to Operate**

[7 CFR 765.253] If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

- (a) Such action is in the Agency's best interests;
- (b) The borrower is unable to graduate on any program except for CL;
- (c) The borrower is not ineligible as a result of disqualification for Federal Crop Insurance violation according to 7 CFR part 718;



## 99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

### D Conditions for FSA Consent to Borrower Ceasing to Operate (Continued)

(d) Any one of the following conditions is met:

- (i) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;
- (ii) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or
- (iii) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 years.

### E Real Estate Surface Leases

[7 CFR 765.252(a)] The borrower must request prior approval to lease the surface of real estate security. The Agency will approve requests provided the following conditions are met:

- (1) The lease will not adversely affect the Agency's security interest;
- (2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage. Or

The term of surface leases for farm property no longer in use, such as old barns, or for nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

**Note:** Surface leases of farm property no longer in use or nonfarm purposes must be approved by SED, unless redelegated to FLC, FLS, or DD.

\* \* \*

- (3) The lease does not contain an option to purchase; and
- (4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met (subparagraph D). Leases for nonfarm enterprises, such as solar farms, which take significant acreage of the operation out of agriculture production are not authorized. Non-productive land may be considered for this type of lease; and--\*
- (5) The lease and any contracts or agreements in connection with the lease must be reviewed and approved by the Government.

**99 Borrower Responsibilities for Complying With Loan Instruments (Continued)****F Conditions for Continuation**

Consent for a borrower's request or action to cease operating the security or lease the property shall be considered by DD's according to this paragraph.

If FSA cannot give the borrower consent to cease operating or lease the real estate security,  
 \*--FSA will immediately notify the borrower of non-monetary default according to 5-FLP,--\*  
 paragraph 66.

**G Mineral Leases**

**[7 CFR 765.252 (b)] The borrower must request Agency consent to lease any mineral rights used as security for FLP loans.**

**(1) For FO loans made from December 23, 1985, to February 7, 2014, and loans other than FO loans secured by real estate and made from December 23, 1985, to November 1, 2013, the value of the mineral rights must have been included in the original appraisal in order for the Agency to obtain a security interest in any oil, gas, and other mineral associated with the real estate security.**

**(2) For all other loans not covered by paragraph (b)(1) of this section (subparagraph 99 G), the Agency will obtain a security interest in any oil, gas, and other mineral on or under the real estate pledged as collateral in accordance with the applicable security agreement, regardless of whether such minerals were included in the original appraisal.**

**(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:**

**(i) The Agency's security interest; or**

**(ii) Compliance with any applicable environmental requirements of part 799 of this chapter.**

See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.

**(4) The term of the mineral lease is not limited.**

**H Chattel Security Leases**

**[7 CFR 765.252 (c)] Lease of chattel security is not authorized.**

\*--FSA immediately notifies the borrower of non-monetary default according to 5-FLP,--\*  
 paragraph 66.

**99 Borrower Responsibilities for Complying With Loan Instruments (Continued)**

**I Allotments Leases**

**[7 CFR 765.252 (e)] (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest in the allotment.**

**(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.**

**J Lease Proceeds**

**[7 CFR 765.252 (d)] Lease proceeds are considered normal income security and may be used in accordance with § 765.303 (paragraph 163).**

**100 (Withdrawn--Amend. 37)**

**101 Making Protective Advances****A Allowed Protective Advance Uses**

**[7 CFR 765.203] When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:**

FSA may act to protect its interest when the borrower fails to do so. If there is a prior lien, FSA will not make protective advances unless the prior lienholder refuses to take action. The authorized agency official must document evidence of the prior lienholder's refusal to take action in the borrower's case file. Further, the authorized agency official must document in FBP that advancing Government funds to protect FSA collateral is in FSA's best interest based on the equity available for FSA recovery or as determined through 5-FLP, Exhibit 37.

FSA will make protective advances according to 1-FLP, Part 7 on program loan expenses.

Once a protective advance is made, that protective advance is a debt owing and immediately ~~due and payable~~. Borrowers will immediately be notified of a non-monetary default and ~~serviced~~ according to 5-FLP. According to 5-FLP, Part 4, only protective advances used to pay real estate taxes may receive primary loan servicing. All other protective advances cannot be restructured and must be immediately repaid by the borrower.

**101 Making Protective Advances****A Allowed Protective Advance Uses**

Borrower payments received will be applied first to annual operating loans and then to any advance made for protective advance purposes according to Part 5.

**[7 CFR 765.203(a)] Maintain abandoned security property;**

FSA may only make a protective advance for necessary emergency repairs if the borrower abandons the property, or the property is custodial property. Total expenditures for emergency repairs in excess of \$1,000 must have prior SED approval. The authorized agency official will determine if the borrower has abandoned the property according to 5-FLP, paragraph 701.

**[7 CFR 765.203(b)] Preserve inadequately maintained security;**

FSA may maintain security that the borrower has not adequately maintained, but has not abandoned. FSA must document in the borrower's FBP the borrower's failure to maintain the security adequately. Expenditures under this paragraph must receive prior approval from SED.

**101 Making Protective Advances (Continued)****A Allowed Protective Advance Uses (Continued)****[7 CFR 765.203(c)] Pay real estate taxes and assessments;**

FSA may pay borrower real estate taxes and assessments. FSA will make protective advances to pay delinquent real estate taxes only if there is imminent danger that the property will be forfeited.

When allowed under State law, for accounts that have been accelerated, the Agency will protect its lien by bidding at the tax sale according to 5-FLP, Part 17.

While the Agency may bid at a tax sale, the payment of real estate taxes is discouraged unless necessary to protect the government's interest. SED will issue a State Supplement on processing actions, procedures, and timing for the payment of a borrower's real estate taxes.

**[7 CFR 765.203(d)] Pay property, hazard, or flood insurance;**

FSA may make protective advances to maintain insurance coverage on security only to  
\*--protect FSA's financial interests and with the concurrence of DAFLP.--\*

**[7 CFR 765.203(e)] Pay harvesting costs;****[7 CFR 765.203(f)] Maintain Agency security instruments;**

FSA may make protective advances to maintain security instruments only when necessary to protect the interest of FSA.

**[7 CFR 765.203(g)] Pay ground rents;****[7 CFR 765.203(h)] Pay expenses for emergency measures to protect the Agency's collateral; and**

The authorized agency official will determine when it is appropriate to make protective advances for the payment of harvesting costs, ground rents, or expenses for emergency measures to protect FSA's collateral on a case-by-case basis.

**[7 CFR 765.203(i)] Protect the Agency from actions by third parties (5-FLP, paragraphs 602 and 603).****B Protective Advance Alternatives**

FSA may consider making a loan, releasing income, loan servicing, subordination, or transfer and assumption, if the borrower meets all applicable eligibility, feasibility, and security requirements instead of making a protective advance.

**101    Making Protective Advances****A    Allowed Protective Advance Uses**

FSA will only pay delinquent real estate taxes when the Agency is officially notified by the tax authority that there is imminent danger that the security property will be forfeited. FSA will only pay taxes on the parcels that serve as security for FSA. The FLM is responsible for ensuring that taxes are not paid on non-security property. Once the Agency receives notification of potential forfeiture (tax foreclosure) of the property, the borrower will immediately be notified of the non-monetary default via Form FSA 2514 per paragraph 67A of 5-FLP. Payment of the delinquent taxes by FSA does not cure the non-monetary default.

Exhibit 37 of 5-FLP will be used to determine whether FSA will pay delinquent real estate taxes by calculating the estimated recovery value. An automated version of the exhibit is available at the NYS Intranet site <http://fsaintranet.sc.egov.usda.gov/states/NY/NYi/farmloanprogram.htm> .

Payment of the taxes must result in a positive recovery for FSA. If the amount being vouchered is in excess of \$50,000, the approval official must notify the STO via an e-mail. If the estimated recovery value is less than \$20,000, State Office concurrence is required to pay the taxes. If the taxes will not be paid, the FLM will then request the SED to consider FSA's liens as valueless in accordance with paragraph 147 of 4-FLP.

The sending of Offset notices as outlined in RD instruction 1951-C will be completed once the protective advance is 90 calendar days past due based upon the 540 report or other agency records.

## 102 Notifying Potential Purchasers

### A States With CFS

**[7 CFR 765.204(a)] The Agency participates and complies with central filing systems in States where CFS has been organized. In a State with a CFS, the Agency is not required to additionally notify potential purchasers that the Agency has a lien on the borrower's chattel security, unless specifically required by State law.**

States with CFS maintain records reflecting liens placed against agricultural products  
 \*--according to the Food Security Act of 1985 (Pub. L. 99-198). It is the purchasers'--\* responsibility to obtain information about lien filings using CFS.

### B States Without CFS

**[7 CFR 765.204(b)] In a State without CFS, the Agency follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. The Agency will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses that buy or sell chattels or crops. In addition, the Agency may provide the list of borrowers to potential purchasers upon request.**

\*--Potential purchasers listed by the borrower on FSA-2040 will be notified of the Agency's lien on the borrower's chattel security. Exhibit 29 will be completed and must include the following items as required by Section 1324 of the Food Security Act of 1985, codified at 7 U.S.C. § 1631:--\*

- FSA Office address (the name and address of any secured party)
- name and address of each debtor
- Social Security number of each debtor, or other approved unique identifier, and if a debtor does business other than as an individual, the tax ID number
- description of the farm products given as security, including:
  - reasonable description of the farm product or products produced by the borrower (such as type and amount of crops, livestock, or farm machinery)
  - crop year
  - county (or counties) in which the products are produced or located
  - any payment obligations imposed on the buyer by FSA (the secured party) as a condition for release of the security interest.



**102 Notifying Potential Purchasers (Continued)****B States Without CFS (Continued)**

SED shall issue a State Supplement after consulting with the Regional OGC, providing the method to notify potential purchasers, and document receipt of the notification as required by the Food Security Act, 7 U.S.C. § 1631 (g)(3).

**Note:** Follow applicable directives providing guidance for protecting PII.

To ensure that purchasers are aware of the Government's security interests, this notification will be updated annually by a new Exhibit 29 or Exhibit 30. If there are any material changes or at the discretion of the authorized agency official, a new Exhibit 29 and/or 30 should be sent more often.

If requests are made for notification beyond the listed requirements, they can only be sent by Exhibit 29 to business firms in the trade area that buy chattel or crops or sell them for commission.

\*--Pre-notification requirements of this subparagraph are not required for the sale of products listed on FSA-2040, Items 6 D and E if the potential purchaser is unknown. Typically, these cases are specialty crops that a producer sells to the public at a local farmer's market.

**103 FSA Responsibilities Under Third Party Actions****A County Office Responsibility**

The authorized agency official will immediately send the borrower notice to cure the non-monetary default according to 5-FLP, Part 3 when FSA:--\*

- learns about a third party action or other borrower's failure to comply with the loan agreement that could affect FSA's security interest, or
- is made a party to a court action that could affect FSA's security interest.

**103 FSA Responsibilities Under Third Party Actions (Continued)**

**B SED's Responsibility**

SED's will:

- consult with OGC about all lawsuits involving the property and any other third party actions when necessary
- advise the authorized agency official on the actions the County Office should take to protect FSA's security interest.

**104-115 (Reserved)**

## Section 2 Subordinations

## 116 Requesting Subordinations

## A Borrower Application

**[7 CFR 765.205 (a)] The borrower must submit the following, unless it already exists in the Agency's file and is still current as determined by the Agency:**

**[7 CFR 765.205 (a)] (1) Completed Agency application for subordination form;**

**\*--FSA-2062 will be used for all chattel and real estate subordination requests.--\***

**\* \* \***

**[7 CFR 765.205 (a)] (2) A current financial statement, including, in the case of an entity, financial statements from all entity members;**

FSA-2037 \* \* \* or any other format approved by FSA containing the same information.

**[7 CFR 765.205 (a)] (3) Documentation of compliance with the Agency's environmental regulations contained in part 799 of this chapter;**

AD-1026.

See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.

**[7 CFR 765.205 (a)] (4) Verification of all non-farm income;**

**[7 CFR 765.205 (a)] (5) The farm's operating plan, including a projected cash flow \*--budget reflecting production, income, expenses, and debt repayment plan; and FSA-2038 or any other format approved by FSA containing the same information.--\***

**[7 CFR 765.205 (a)] (6) Verification of all debts.**

**116 Requesting Subordination**

**A Borrower Application**

A guide letter similar to NY Exhibit 1 will be prepared to assist the borrower in providing a complete application. Send the required forms with the letter when a subordination has been requested.

**116 Requesting Subordinations (Continued)****A Borrower Application (Continued)**

A credit report is required unless current credit information is already contained in the borrower's case file or is otherwise available. The credit report fee will be paid by FSA unless the borrower has also applied for an FLP loan.

A current credit report obtained by the participating lender is authorized for use to verify debts.

See 3-FLP, subparagraph 42 A for the verification process of non-farm income and debts.

With subordinations, FSA and the lender essentially partner in providing joint financing to the borrower and share applicable financial and loan information.

\*--FSA may accept application items listed on FSA-2062 Part A, Item 3 from borrowers, or--\* directly from lenders who submit documents on behalf of the borrower; or obtain copies of the items from the guaranteed lenders FSA file, to support subordination requests. \* \* \*

These items will be input into FBP. The analysis completed by the approval official can be brief since both FSA and the lender have processed loans according to their respective credit quality requirements.

\* \* \*

**116 Requesting Subordinations (Continued)****B Processing Subordination Requests**

The authorized agency official will enter the following information into DLS and use it to track and monitor subordination requests:

- date the application is received
- applicant name
- type of assistance requested
- subordination amount requested.

During a time of limited staffing resources, the authorized agency official may prioritize the completion of the year-end analyses for subordinations during non-operational review year according to current agency directives. In these situations, both of the following requirements must be met:

- an operational review has been completed in the last 12 months
- the decision is based upon the cash flow submitted by the lender which the agency concurs. An FBP cashflow is not being used; however, concurrence will be documented in FBP Running Record.



## 117 Conditions for Real Estate Subordinations

### A Real Estate Security

**\*--Note:** See Part 7 Section 3 for requirements for subordinations and non-disturbance agreements made for nonlending purposes.--\*

**[7 CFR 765.205(b)]** For loans secured by real estate, the Agency will approve a request for subordination subject to the following conditions:

**(1) If a lender requires that the Agency subordinate its lien position on the borrower's existing property in order for the borrower to acquire new property and the request meets the requirements in paragraph (b) (3) of this section (subparagraph 117 A), the request may be approved. The Agency will obtain a valid mortgage and the required lien position on the new property. The Agency will require title clearance and loan closing for the property in accordance with § 764.402 of this chapter (3-FLP, Part 16).**

**(2) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized loan purpose may be approved when it meets the requirements in paragraph (b)(3) of this section (subparagraph 117 A) and it is needed for the entity member to finance a separate farming operation. The subordination must not cause the unpaid principal and interest on the FLP loan to exceed the value of loan security or otherwise adversely affect the security.**

**(3) The Agency will approve a request for subordination of real estate to a creditor if:**

**(i) The loan will be used for an authorized loan purpose or is to refinance a loan made for an authorized loan purpose by the Agency or another creditor;**

**\*--See 3-FLP for authorized loan purposes. Exception: Refinancing real estate debt is an authorized purpose for a subordination.--\***

**(ii) The credit is essential to the farming operation, and the borrower cannot obtain the credit without a subordination;**

**(iii) The FLP loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;**

**(iv) Except as authorized by paragraph (c)(2) of this section (subparagraph 118 B), there is no other subordination outstanding with another lender in connection with the same security;**

**(v) The subordination is limited to a specific amount;**

**(vi) The loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;**



## 117 Conditions for Real Estate Subordinations

**A Real Estate Security (Continued)**

**(vii) If the loan is made in conjunction with a guaranteed loan, the guaranteed loan meets the requirements of § 762.142(c) of this chapter (2 FLP, paragraph 279);**

**(viii) The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;**

**(ix) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the production cycle;**

**(x) Except for CL, the borrower is unable to partially or fully graduate;**

**Note:** Account classification must have been completed within the last 24 months as required by 1-FLP, Part 8, Section 4. For accounts classified as 1 or 2, graduation review must have been completed according to requirements of Part 4.

**(xi) The borrower must not be ineligible as a result of a conviction for controlled substances according to part 718 of this chapter (1-CM);**

**(xii) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to part 718 of this chapter (1-CM);**

**(xiii) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in part 799 of this chapter; (1-EQ and 6-CP)**

**(xiv) Any planned development of real estate security will be performed as directed by the lessor or creditor, as approved by the Agency, and will comply with the terms and conditions of § 761.10 of this chapter (1-FLP);**

**(xv) If a borrower with an SAA mortgage is refinancing a loan held by a lender, subordination of the SAA mortgage may only be approved when the refinanced loan does not increase the amount of debt; and**

**(xvi) In the case of a subordination of non-program loan security, the non-program loan security also secures a program loan with the same borrower.**

**Note:** Before approval of any subordination, borrower's ability to graduate to commercial credit must be considered and documented.

**(4) The Agency will approve a request for subordination of real estate to a lessee if the conditions in paragraphs (b)(3)(viii) through (b)(3)(xvi) of this section are met**

**\*--(subparagraph 117 A and subparagraph 196).--\***

**Note:** Real estate subordination to a lessee must be approved by SED.

## 117 Conditions for Real Estate Subordinations (Continued)

**B Releasing and Refiling Lien Instruments Instead of Subordination**

SED's may approve releasing and refiling lien instruments instead of subordination when the request meets the following:

- application meets requirements in subparagraphs 116 A and 117 A
- subordination is unacceptable to the lender refinancing the borrower's loan

**Note:** The refinanced loan will be sold on the secondary market and a first lien is required.

- the borrower agrees to execute new security instruments

**Notes:** The new security instruments will be refiled immediately following the lender's security instrument securing the loan.

SED will consult OGC to obtain instructions in protecting FLP's lien position. SED will issue a State supplement to provide additional guidance and ensure compliance.

- no additional debt will be placed ahead of FLP's debt, except for customary costs appropriate to the transaction

**Notes:** If construction is started before a request is received, approval will not be provided.

See subparagraph 197 B for customary costs.

- the refinancing will result in better repayment terms that, except for CL, will assist the borrower in progressing toward graduation.

**Note:** SED's may delegate their approval authority for releasing and refiling lien instruments instead of subordination to FLC, FLS, or DD.

## 118 Conditions for Chattel Subordinations

### A Chattel Security

**[7 CFR 765.205(c)] The requirement for chattel subordinations are as follows: (1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(3)(i) through (xiii) of this section (subparagraph 117 A). Multi-year subordinations may only be approved according to OGC-approved State supplements.**

Multi-year subordination must meet all requirements set forth in this subparagraph. State supplements must specifically address the following:

- borrower's inability to obtain credit without subordination, including guarantee
- borrower's inability to partially graduate
- borrower's ability to pay debt before funds are released for each production cycle
- advances for the subsequent years are not authorized without FSA's written consent.

### B Second Subordinations on Chattel Security

**[7 CFR 765.205(c)(2)] The Agency will approve a request for a second subordination to enable a borrower to obtain crop insurance, if the following conditions are met:**

**(i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay insurance premiums from the crop or insurance proceeds;**

**(ii) The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and**

**(iii) The subordination meets the conditions under paragraphs (b)(1) through (12) of this section (subparagraph 117 A).**

### C CCC Loans

CCC-679's will be used according to 8-LP instead of a subordination when FP makes a CCC loan to the borrower. FSA does not subordinate to CCC loans.

## 119 Appraisal Requirements

## A Appraisals

**[7 CFR 765.205(d)] An appraisal of the property that secures the Agency loan will be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 (1-FLP) of this chapter.**

At a minimum, real estate appraisals will be obtained when property is to be improved, purchased, or exchanged. FSA does not require an appraisal for real estate security when either of the following occur:

- borrower's case file contains an existing appraisal that was completed within the previous \*--18 months and meets the requirements of 1-FLP, subparagraph 141 G.--\*

\* \* \*

- loan for which the borrower requests the subordination is:
  - to refinance an existing prior lien and the resulting prior lien will **not** be increased except for customary costs appropriate to the transactions

**Note:** See subparagraph 197 B for customary costs.

- for an essential repair that is needed to restore the value of the security and complies with subparagraph 117 A.

FSA does **not** require an appraisal for chattel security when the:

- proposed subordination is for annual operating and family living expenses only and the projected income from farm production exceeds the subordination amount
- \*--existing FSA chattel appraisal is less than 1 year old and meets the requirements of 1-FLP, subparagraph 141 G.--\*

The authorized agency official must consider property additions to, and deletions from, the latest FSA appraisal and fully document the decision.

\* \* \*

**120 Approving or Denying Subordination Request****A Approval Authority**

In preparing a real estate subordination (FSA 2455), the approval official must ensure that only the security instruments needed to meet the borrower's and lender's request are listed. In block # 3 of Form FSA 2455 the following statement shall be added -

**This subordination shall not extend to more than one advance in the respective amounts or purposes set out above without securing the specific consent of the Government. Final maturity date is \_\_\_\_\_.**

The acknowledgement in block # 8 can be obtained from the NY 1-FLP par 3 . The preparer shall insert **Onondaga** as the county when being completed for SED approval.

For subordinations requiring SED approval, Form FSA-2060 will be forwarded (e-mail, fax, or mail) to the FLP STO. Form FSA-2455 will be prepared and e-mailed to the FLP STO for signature.

## 120 Approving or Denying Subordination Requests

### A Approval Authority

Except for SED's, approval officials may approve subordinations if the amount of the subordination, plus the principal balance of existing subordinations, is not more than their \*--maximum approval authorities for each loan type subordinated according to 1-FLP, subparagraph 29 A. When the lien priority for more than 1 type of loan is subordinated--\* the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. SED authority to approve subordinations is limited to \$1 million total EM indebtedness; otherwise, SED's may approve subordinations regardless of the amount. SED's may delegate their authority for approving subordinations to FLC, FLS, or DD.

**Note:** SED's are the only FSA officials with approval authority for subordinating real estate security for an operating-type loan purpose.

The authorized agency official may approve the subordination by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the local servicing official the responsibility to execute agency and required legal documents to complete the subordination.

The authorized agency official must include in the physical case file, all components of FBP that require signatures as provided in the FPB User Guide, available at <https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index>.

The authorized agency official will sign FSA-2455 or any other format required in State supplements, as necessary, to meet State legal requirements.

Once a request is approved, it is closed according to State supplements. The authorized agency official must enter the date that FSA approves a request in DLS.

### B Appeal Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.

121-125 (Reserved)



**Section 3 Junior Liens****126 General Conditions for Junior Liens****A General Policy**

**[7 CFR 765.206(a)] The borrower will not give a lien on Agency security without the consent of the Agency. Failure to obtain Agency consent will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests.**

To request FSA approval of a junior lien, the borrower must submit to FSA:

\* \* \*

•\*--FSA-2061--\*

- a copy of the farm operating plan submitted to the junior lienholder
- an FBP or other similar plan of operation that shows the junior lien and repayment schedule
- any other information necessary for FSA to make a decision.



**126 General Conditions for Junior Liens (Continued)**

**B Conditions for Consent to a Junior Lien**

**[7 CFR 765.206(b)] The Agency will consent to the terms of a junior lien if all of the following conditions are met:**

**[7 CFR 765.206(b)] (1) The borrower's ability to make scheduled loan payments is not jeopardized;**

**[7 CFR 765.206(b)] (2) The borrower provides the Agency a copy of the farm operating plan submitted to the junior lienholder, and the plan is consistent with the Agency operating plan;**

**[7 CFR 765.206(b)] (3) The total debt against the security does not exceed the security's market value;**

FSA will not obtain appraisals to consider junior liens. Any appraisal required by FSA to make this decision must be supplied by the borrower or lender and will be reviewed by FSA to ensure that all 1-FLP requirements are met.

**[7 CFR 765.206(b)] (4) The junior lienholder agrees in writing not to foreclose the security instrument unless written notice is provided to the Agency;**

**[7 CFR 765.206(b)] (5) The borrower is unable to graduate on any program except for CL; and**

**[7 CFR 765.206(b)] (6) The junior lien will not otherwise adversely impact the Agency's financial interests.**

**\*--Note:** Approval authority rests with any authorized agency official.--\*

**C Unapproved Junior Liens**

FSA will consider an unapproved junior lien on security when determining future borrower eligibility for FSA loanmaking or servicing actions.

**127-135 (Reserved)**

## Section 4 Severance Agreements

### 136 Conditions for Severance Agreements

#### A Severance Agreements Conditions

**[7 CFR 765.207] For loans secured by real estate, a borrower may request Agency consent to a severance agreement or similar instrument so that future chattel acquired by the borrower will not become part of the real estate securing the FLP debt. The Agency will consent to severance agreements if all of the following conditions are met:**

- (a) The financing arrangements are in the financial interest of the Agency and the borrower;**
- (b) The transaction will not adversely affect the Agency's security position;**
- (c) The borrower is unable to graduate on any program except for CL;**
- (d) The transaction will not jeopardize the borrower's ability to pay all outstanding debts to the Agency and other creditors; and**
- (e) The property acquired is consistent with authorized loan purposes.**

The borrower must submit all information required under subparagraph 126 A to request FSA consideration.

#### B Items That May Be Included in a Severance Agreement

Examples of items that the borrower may acquire subject to a chattel lien and, therefore, may be included in a severance agreement are:

- silos
- storage bins
- bulk milk tanks
- irrigation equipment
- other income producing facilities.

#### C Approving Severance Agreements

SED is authorized to approve severance agreements. This authority may be redelegated to the FLC, FLS, or DD.

**\*--The authorized agency official will approve a severance request by executing FSA-2061--\***  
and the necessary severance agreements. OGC approval must be obtained on a severance agreement submitted on a form that has not previously been approved for use in the State.

**136 Conditions for Severance Agreements**

**C Approving Severance Agreements**

FSA will execute a severance agreement Form FSA 2060 on items covered by paragraph 136B when it is clearly FSA's intent to have the property be considered personal property and not real estate. Otherwise, FSA will consider the items as real estate and deny the request for the severance agreement.

When the borrower and another creditor requests FSA to execute a severance agreement to allow the borrower to finance and the lender to secure their loan, FSA will request that the borrower submit a copy of the creditor's proposed severance agreement. An electronic version of the agreement is preferred. The approval official will review the document, provide any recommendations or corrections to the agreement, and forward to the STO for review and consultation with OGC.

**136 Conditions for Severance Agreements (Continued)****C Approving Severance Agreements (Continued)**

The authorized agency official may approve the severance agreement by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO the responsibility to execute agency and required legal documents to complete the severance agreement. The authorized agency official must include in the physical case file, all components of FBP that

\*--require signatures as provided in the FPB User Guide, available at  
<https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index.-->\*

Processing and tracking a request for severance agreement will be done in DLS, Consent Request. Indicate in the comment section “Severance Agreement dated mm/dd/yr” (insert date).

SED’s may issue State supplements on approving severance agreements, as appropriate.

**D Appeals Rights**

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.

**137-145 (Reserved)**

## **Section 5 Release of Real Estate and Chattel Security Liens Without Monetary Consideration**

### **146 Release Without Monetary Consideration**

#### **A Approval**

\*--SED may approve a release request by executing FSA-2061, FSA-2470, or other--\* documents approved by OGC. Before approval of a release without monetary consideration, borrower's ability to graduate to commercial credit must be considered and documented.

The transaction may be approved by using the electronic signature command in the credit presentation section of FBP. SED may designate responsibility to an authorized agency official to execute agency and required legal documents to complete the transaction in FBP. All components of FBP that requires signatures must be included in the physical case file.

#### **B Release Because of Mutual Mistakes**

SED's can authorize a release because of mutual mistakes only when they do all of the following:

- determine that a mutual error existed when the security was included in FSA's mortgage or lien
- obtain OGC's advice on whether a mutual mistake was made
- substantiate that the mistake was made
- document the findings in the borrower's FBP credit presentation.

#### **C Release Because of No Evidence of Indebtedness**

SED may release a borrower's mortgage or lien, if the records of State and County Offices \*--and the RD Business Center, FLB contain no evidence of an existing indebtedness--\* secured by the mortgage or lien.

**Note:** The authorized agency official should verify that the borrower has no outstanding debt with the Rural Development. The findings should be documented in the borrowers FBP credit presentation.

## 146 Release Without Monetary Consideration (Continued)

**D Borrower Requested Chattel Security Release**

**[7 CFR 765.305(c)] The Agency will release its lien on chattel security without compensation, upon borrower request provided:**

- (1) The borrower has not received primary loan servicing or Disaster Set-Aside within the last 3 years;**
- (2) The borrower will retain the security and use it as collateral for other credit, including partial graduation as specified in § 765.101 (Part 4);**
- (3) The security margin on each FLP direct loan will be 150 percent or more after the release. The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter (1-FLP, Part 6); however, well documented recent sales of similar properties can be used if the Agency determines a supportable decision can be made without current appraisals;**
- (4) The release is approved by the FSA State Executive Director; and**
- (5) Except for CL, the borrower is unable to fully graduate as specified in § 765.101 (Part 2).**

The authorized agency official will prepare FBP credit presentation explaining how each of the applicable conditions above are met and submit the narrative along with supporting documentation to the State Office for review and concurrence. To meet the 3-year requirement for not having received PLS or DSA, the borrower's request can only be made at least 3 years since their initial loans. Supporting documentation will include all calculations and copies of any well-documented recent sales, such as recent auctions, or other transactions in the area. In addition, the authorized agency official will assure that requirements in Part 2 are completed. State Office officials will review the request and if they concur, submit the request to the SED for approval.

**E Borrower Requested Real Estate Security Release**

**[765.351(f)] Real estate security may be released by FSA without compensation when the requirements of paragraph (a) of this section (subparagraph 196 B), except paragraph (a)(3) of this section (subparagraph 196 B), are met, and:**

- (1) The borrower has not received primary loan servicing or Disaster Set-Aside within the last 3 years;**
- (2) The security is:**
  - (i) To be retained by the borrower and used as collateral for other credit, including**  
**\*--partial graduation as specified in § 765.101 (Part 2); or--\***

**146 Release Without Monetary Consideration (Continued)****E Borrower Requested Real Estate Security Release (Continued)**

- (ii) **No more than 10 acres, or the minimum size that meets all State and local requirements for a division into a separate legal lot, whichever is greater, and is transferred without compensation to a person who is related to the borrower by blood or marriage.**
  - (3) **The property released will not interfere with access to or operation of the remaining farm;**
  - (4) **Essential buildings and facilities will not be released if they reduce the utility or marketability of the remaining property;**
  - (5) **Any issues arising due to legal descriptions, surveys, environmental concerns, utilities are the borrower's responsibility and no costs or fees will be paid by FSA;**
  - (6) **The security margin on each FLP direct loan will be above 150 percent after the release. The value of the retained \* \* \* security will normally be based on appraisals obtained as specified in § 761.7 of this chapter (1-FLP, Part 6); however, well documented recent sales of similar properties can be used if the Agency determines the criteria have been met and a sound decision can be made without current appraisals;**
- The 150 percent security margin applies to each direct loan on the account, including any proposed new loans.
- (7) **The release is approved by the FSA State Executive Director; and**
  - (8) **Except for CL, the borrower is unable to fully graduate as specified in § 765.101 (Part 4).**

The authorized agency official will prepare a FBP credit presentation explaining how each of the applicable conditions above are met and submit the narrative along with supporting documentation to the State Office for review and concurrence. To meet the 3-year requirement for not having received PLS or DSA, the borrower's request can only be made at least 3 years since their initial loan. Supporting documentation will include all calculations and copies of any well-documented recent sales, such as real estate comparables, recent \*--auctions, or other transactions in the area. In addition, the authorized agency official will assure that requirements in Part 2 are completed. State Office officials will review the--\* request and if they concur, submit the request to the SED for approval.

**F Appeals Rights**

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.

## 147 Releasing Valueless Liens

### A Conditions for Releasing Valueless Liens

SED's are authorized to release FSA mortgages or other liens, if 1 of the following is determined:

- the mortgage or lien has no present or prospective value
- enforcement of the mortgage or lien would be ineffectual or uneconomical.

SED authority may:

- be exercised under any of the following:
  - for the borrower to convey title of the property to a third party
  - because of litigation
  - if the account has been accelerated and either of the following is occurring:
    - Government is liquidating the security
    - borrower has voluntarily liquidated all other remaining security
- **not** be redelegated; however, an acting SED may approve releases.

SED's cannot release a valueless judgment lien or valueless statutory redemption rights, except with OGC's consent.

### B Information Required to Release a Valueless Lien

To determine the present or prospective value of the security to be released, the authorized agency official should obtain all of the following:

- market value appraisal report on the security prepared according to 1-FLP, Part 6 except in cases in which FSA determines that the lien is invalid

**Note:** Exceptions may be requested in accordance with paragraph 4 for appraisals completed between 12 and 18 months ago which have not been updated by the appraiser.

- names of the holders of prior liens on the property
- written verification of the amount secured by each lien that is before FSA's
- amount of taxes or assessments
- other items that might constitute a prior claim.

The authorized agency official must document this information in the borrower's FBP and submit the case file to SED for review.



**147 Releasing Valueless Liens (Continued)**

**B Information Required to Release a Valueless Lien (Continued)**

The SED may approve the valueless lien by executing FSA-2433, FSA 2470, or other documents approved by OGC.

The SED may approve the release by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the SED may designate the FLM, SFLO, or FLO the responsibility to execute the required legal documents to complete the transaction.

The authorized agency official must include in the physical case file, all components of FBP that require signatures as provided in the FPB User Guide, available at

**\*--<https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index>--\***

**148-160 (Reserved)**

**Part 7 Disposition of Security****Section 1 Disposition of Normal Income and Basic Chattel Security****161 General Requirements****A Security Accounting**

**\*--[7 CFR 765.301(a)] The borrower must account for all chattel security, and maintain records of dispositions of chattel security and the actual use of proceeds. The borrower must make these records available to the Agency upon request.**

The authorized agency official may require that the borrower provide receipts or other documentation to verify the chattel security sale.--\*

**B Fair Market Value**

**[7 CFR 765.301(b)] The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.**

**[7 CFR 765.301(b)(1)] The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.**

The authorized agency official may consult readily and commonly available sources of price information to assess the adequacy of the price.

**[7 CFR 765.301(b)(2)] The market value for basic security is determined by an appraisal obtained in accordance with § 761.7 of this chapter (1-FLP, Part 6).**

FSA may require an appraisal to determine the fair market value of basic chattel security, unless the security is sold through a legitimate public auction.

**C FSA Lien Release**

**[7 CFR 765.301(c)] When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.**

## 161 General Requirements (Continued)

**D Consent of Lienholders for Release of Proceeds**

**[7 CFR 765.301(d)] The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.**

The authorized agency official may permit the borrower to use proceeds from the sale of normal income security for payment of transaction costs before application to FSA loan balances if:

- costs incurred are considered routine and customary marketing costs for the transaction
- the borrower cannot pay the costs
- the purchaser will not pay the costs.

The authorized agency official may require:

- that the borrower provide receipts or other documents that can be used to verify the type and amount of transaction costs
- the borrower to reimburse FSA, if it is determined that any of these conditions have not been met.

**E Disruption of Farming Operation**

**[7 CFR 765.301(e)] The transaction must not interfere with the borrower's farming operation or jeopardize the borrower's ability to repay the FLP loan.--\***

When reviewing the borrower's proposal for disposition of basic security and use of proceeds, the authorized agency official must determine if and how the proposed disposition and use of proceeds will affect:

- the financial viability of the borrower's operation, including the borrower's ability to repay obligations to FSA and non-FSA creditors
- the management of the borrower's operation
- FSA's security interest.

The authorized agency official may approve the transaction after determining that it will improve the borrower's financial position or structure in such a way that improves the borrower's ability to repay FSA loans or improves the financial basis of the operation.

**161 General Requirements (Continued)**

**F Furthering FSA Program Objectives**

**[7 CFR 765.301(f)] The disposition must enhance the program objectives of the Agency loan.**

**G Security Exchange or Replacement**

**[7 CFR 765.301(g)] When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the farming operation as well as meet the program objectives, purposes, and limitations for the type of loan.**

**H Proceeds Payable to Both the Borrower and FSA**

**[7 CFR 765.301(h)] All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency. If all \*--FLP loan installments and any past due installments, for the period of the agreement--\* for the use of proceeds have been paid, however, these payments from the sale of normal income security may be payable solely to the borrower.**

**162 Agreement for Disposition of Normal Income and Basic Chattel Security**

**A Agreement for the Use of Proceeds**

\*--See paragraph 20 for information on the preparation of the agreement.--\*

**B Using the Agreement for the Use of Proceeds**

**[7 CFR 765.302(b)] The borrower must report any disposition of basic or normal income security to the Agency as specified in the agreement for the use of proceeds.**

**[7 CFR 765.302(c)] If a borrower wants to dispose of normal income security in a way different than provided by the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition unless all FLP payments planned on the agreement have been paid.**

**[7 CFR 765.302(d)] If the borrower sells normal income security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.**

**162 \* \* \* Agreement for Disposition of Normal Income and Basic Chattel Security (Continued)****\*--B Using the Agreement for the Use of Proceeds (Continued)--\***

FSA will record the disposition of security on FSA-2045. When the borrower sells chattel security and notifies FSA, the authorized agency official must complete FSA-2045 to record the:

- description of security sold
- quantity of security sold
- way in which security was sold (such as to a wholesaler, to a neighbor, etc.)
- date of sale
- amount of proceeds received
- use of proceeds (exact amount recorded for debt repayment, operating expenses, family living, or capital purchases).

The authorized agency official must indicate whether approval is granted for the disposition and use of proceeds by marking “yes” or “no”, initialing, and dating the agreement in the appropriate location. If the disposition or use of proceeds is not authorized on the agreement, the authorized agency official shall take action according to Part 7, Section 2.

Normal income security dispositions will continue to be reported and recorded until all annual installments due to FSA have been paid current. Basic security dispositions must be reported until FSA no longer has a lien against the security.

**C Government Payments and Insurance**

The borrower must submit documentation of all Government payments, crop insurance, and insurance proceeds derived from the loss of security.

## 162 \* \* \* Agreement for Disposition of Normal Income and Basic Chattel Security (Continued)

**\*--D Modifying and Updating Agreements for the Use of Proceeds--\***

**[7 CFR 765.302(e)] The borrower must provide the Agency with the necessary information to update the agreement for the use of proceeds.**

**[7 CFR 765.302(f)] Changes to the agreement on the use of proceeds will be recorded, dated, and initialed by the borrower and the Agency.**

FSA and the borrower will document agreed upon changes to FBP and FSA-2040 through entering, initialing, and dating mutually accepted modifications as indicated for each FBP and FSA-2040. See 1-FLP, Part 8, Section 3.

**Note:** The authorized agency official and the borrower must complete a new FBP and revise FSA-2040 for major changes to the borrower's farming operation.

SED's may issue further guidance as needed on the changes that require FBP revision or replacement.

When FSA and the borrower agree to revisions over the telephone, the authorized agency official will:

- initial and date the change
- mark FBP or FSA-2040 with "Revised through telephone contact."
- send written confirmation to the borrower of any significant changes
- have the borrower date and initial the change the next time the borrower is in the County Office.

## 163 Using Proceeds From Chattel Security

### A General Requirements

**[7 CFR 765.303(a)] (1) Proceeds from the sale of basic security and normal income security must be remitted to lienholders in order of lien priority.**

**(2) Proceeds remitted to the Agency may be used as follows:**

**(i) Applied to the FLP loan;**

**(ii) Pay customary costs appropriate to the transaction.**

**(3) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means in time to prevent the borrower and the Agency from suffering a substantial loss.**

**(4) Security may be consumed as follows:**

**(i) Livestock may be used by the borrower's family for subsistence;**

**(ii) If crops serve as security and usually would be marketed, the Agency may allow such crops to be fed to the borrower's livestock, if this is preferable to marketing, provided the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.**

### B Releasing Normal Income Security for Essential Family Living and Farm Operating Expenses

**[7 CFR 765.303(b)] In addition to the uses specified in paragraph (a) of this section, the agreement for the use of proceeds will allow for release of proceeds from the sale of normal income security to be used to pay essential family living and farm operating expenses. Such releases will be terminated when an account is accelerated.**

See Exhibit 2 for the definition of essential family living and farm operating expenses. FSA may not consider all of the examples included in the definition as essential for every family and farming operation. The authorized agency official must consider all of the following:

- the individual borrower's operation
- what is typical for that type of operation in that area
- what is an efficient method of production considering the borrower's resources.



**163 Using Proceeds From Chattel Security (Continued)****B Releasing Normal Income Security for Essential Family Living and Farm Operating Expenses (Continued)**

The borrower must contact FSA for approval if the borrower wants to use proceeds to pay for farm operating expenses for future operations not included in the current FBP, so that FSA may work with the borrower to develop a feasible FBP. When the borrower and FSA cannot agree on security releases for essential family living and operating expenses, the borrower must request the release in writing. If rejected, the authorized agency official will notify the borrower, in writing, why the requested release was denied, including why the expenses requested for release are not basic, crucial, or indispensable to the family, the farming operation, or both. Appeal rights will be included with the notification. See 1-APP for appeal procedures.

**C Basic Security**

**[7 CFR 765.303] (c) In addition to the uses specified in paragraph (a) of this section:**

- (1) Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.**
- (2) Security may be exchanged for chattel property better suited to the borrower's needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.**

**Note:** Insurance proceeds not being used immediately to replace the security should be kept in a supervised bank account according to 1-FLP, Part 4. If an account is not established, SED may request an Administrator's Exception under paragraph 4.

- (3) Proceeds may be used to purchase chattel property better suited to the borrower's needs if the Agency will acquire a lien on the purchased property. The value of the purchased property, together with any proceeds applied to the FLP loan, must at least equal the value of the Agency lien on the old security.**

**\*--164 Multiple Releases for Farm Operating Expenses Within the Term of an Annual OL****A Review of Production Cycles**

FSA may, on a case-by-case basis for annual OL's only, authorize normal income security releases for the purpose of reinvestment within a 24-month period in accordance with the farm business plan associated with the annual OL at the time of loan approval. These releases may be specifically beneficial for operations with multiple growing and marketing seasons within the term of the annual OL. These releases may be outside of other planned releases for authorized annual OL purposes (e.g., family living expense).

**Example 1:** A cattle feeder operation plans to purchase and feed 6 sets of calves within a 24-month period (1 set every 4 months with \$125,000 of associated credit needed for each rotation). FSA approves a \$125,000 direct annual OL request to purchase and feed the initial set of cattle. When the first set of calves are sold, FSA may release the sale proceeds in accordance with the approved farm operating plan and FSA-2040. The sale proceeds will be used to purchase the second set of calves and inputs. This may continue through the fifth set of calves. The sale proceeds from the sixth set of calves would be used to pay the direct annual OL in full.

Use of this provision is not authorized to exceed a 24-month period.

Authorizing releases under this subparagraph will require substantial planning and analysis throughout the term of the annual OL. Releases considered under this subparagraph must have been projected as part of the approved farm business plan reflecting releases for purposes of reinvestment pursuant to 3-FLP, subparagraph 201 D.

Before release of normal security for reinvestment for a subsequent growing or marketing season, the borrower must submit the following for the purpose of analyzing the previous and the upcoming production cycles:

- current balance sheet
- actual financial and production performance for the previous production cycle
- revisions, if necessary, to projected income/expense for the next production cycle.

Loan officials must conduct a review of the operation's performance using the established guidelines for Operational Reviews. See Paragraph 22 for additional details. The review can be limited in scope to coincide with the previous production and marketing cycle.--\*

**\*--164 Multiple Releases for Farm Operating Expenses Within a Production Year (Continued)**

**B Determination to Release**

The authorized agency official will determine if, based on the results of the review of the previous production cycle and current projections, a release for reinvestment is authorized. The FBP "Ending Cash On Hand" must be positive for each production cycle under this subparagraph. If there are significant changes to the operation or projections from the original approved FBP cash flow budget, then an updated FBP cash flow projection may be necessary to demonstrate a feasible plan is still achievable. The agency official will discuss with the borrower the benefits of paying the outstanding accrued interest on the annual OL before releases for a subsequent production cycle. The agency will release only the amount necessary to fund the reinvestment as determined in the income/expense projection for the next production cycle. Releases for a subsequent operating cycle will not exceed the original note amount. Before releases for the final production cycle within the annual OL term, the income/expense review must show the borrower will be able to pay the direct OL loan installment due at annual OL maturity.

During the term of the annual OL, the authorized agency official and borrower will revise, if necessary, FSA-2040 in accordance with subparagraph 162 D.

If a request for a release of proceeds under this paragraph is rejected, the authorized agency official will notify the borrower, in writing, why the requested release was denied. Appeal rights will be included with the notification. See 1-APP for appeal procedures.--\*

**165 (Reserved)**

**166 Releasing Security Interest****A Lien Release General Requirements**

**[7 CFR 765.305(a)] When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.**

**B Specific Security Item Releases**

When releasing specific items that must be recorded under UCC or chattel mortgage laws, the authorized agency official will use FSA-2470 or other form approved by OGC and required by State law. However, FSA may not deliver the actual release until 15 calendar days after receiving the payment unless the payment is made in cash, money order, certified check, or check from a known and reputable lender. When SED's must approve a transaction or when FLM, SFLO, or DD want advice on approval of a transaction, the borrower's case folder and any other information pertinent to the transaction will be sent to the State Office. The authorized agency official must ensure that only specific items are released.

**Note:** When specific items are listed on FSA-2028, the authorized agency official **must**  
\*--record the disposition on the working copy of FSA-2028 and FSA-2045.--\*

**166 Releasing Security Interest (Continued)****C Releasing Wool and Mohair Lien Conditions**

**[7 CFR 765.305(b)] Security interests on wool and mohair may be released when the security is marketed by consignment, provided all of the following conditions are met:**

- (1) The borrower assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs;**
- (2) The borrower assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair; and**
- (3) The borrower and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the borrower and the Agency.**

The authorized agency official may execute releases of FSA's lien on wool and mohair on FSA-2465. As FSA-2465 is not a binding agreement until executed by all parties in interest, including the borrower, the broker, and FSA. The authorized agency official may execute it before other parties.

**167-180 (Reserved)**

## Section 2 Unapproved Disposition of Security

### 181 Initial FSA Actions Upon Discovery

#### A Unauthorized Chattel Security Disposition Discoveries

**[7 CFR 765.304(a)] If a borrower disposes of chattel security without Agency approval, or misuses proceeds, the borrower must:**

**(1) Make restitution to the Agency within 30 days of Agency notification; or**

**(2) Provide disposition or use information to enable the Agency to consider post-approval within 30 days of Agency notification.**

Borrower disposal of security or use of proceeds in a way not listed on FSA-2040 violates the loan agreement and FSA will not release its security interest.

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using Exhibit 31.

**\*--Note:** If a borrower has been discharged in bankruptcy of all FSA debt and security has not been liquidated when FSA discovers the unauthorized disposition, use Exhibit 31.5.--\*

The authorized agency official must document an unapproved disposition of chattel security on FSA-2045, FSA-2551, and in the borrower's FBP. The borrower will also be initialized into DLS Special Servicing under the "Borrower Potentially Commits a Non-Monetary Default" category and tracked until servicing is completed. DD will review any unauthorized dispositions being tracked in DLS Special Servicing as part of the Quarterly Review.

If the borrower does not make restitution or provide information necessary for FSA to post-approve the sale within 30 calendar days, the authorized agency official will notify the  
**\*--borrower of non-monetary default according to 5-FLP, Part 3, and proceed according to--\***  
 5-FLP, Part 11, Section 2.

**181 Initial FSA Actions Upon Discovery (Continued)****B Notification to Third Party Purchasers**

With SED concurrence, the authorized agency official will send Exhibit 32 \* \* \* to third-party purchasers when the:

- disposition cannot be approved
- third party has purchased collateral for an FSA loan
- borrower is unable or unwilling to make restitution and has been notified according to 5-FLP, Part 3.

If the borrower's account is in liquidation, FSA will often attempt to liquidate remaining chattel security on which FSA holds a first lien before making demand or taking civil action against third-party purchasers. Exhibit 32 makes demand on the third-party purchaser to return the property or pay the value of the security to FSA within 30 calendar days.

If no response has been received within 30 calendar days, Exhibit 33 will be forwarded to the purchaser by SED. If satisfaction is not made within 15 calendar days, SED will forward the account to OGC according to 5-FLP, paragraph 421.

**182 Post-Approval of Chattel Security Disposition****A Post-Approval of Unapproved Dispositions**

When FSA discovers that a borrower has disposed of all or some of the security property not listed on the agreement or has used funds for some purpose not listed on the borrower's agreement, FSA may post-approve the disposition if all of the requirements of paragraph 163 are met.

The authorized agency official must document the decision to post-approve an unauthorized \*--chattel property disposition on the agreement and in the borrower's FBP.--\*

**B Denying Post-Approval Requests**

The authorized agency official may not post-approve a disposition of chattel security if the use of proceeds does not comply with paragraph 163. Servicing will continue according to subparagraph 181 A.

**C Determining the Disposed Security's Value**

FSA will not release its lien if the security was sold for less than the market value, until the full value of the security is remitted to FSA.

FSA will determine the disposed security's value in each unapproved disposition case through either:

- the most recent appraisal
- a current value price listing for similar property
- an updated property value appraisal based on FSA-2028 information.



**\*--183 Requirements for Handling Borrower Non-compliance--\***

**A Future Eligibility Decisions**

**[7 CFR 765.304(b)] Failure to cure the first unauthorized disposition in accordance with paragraph (a) of this section (subparagraph 181 A), or a second unauthorized disposition, whether or not cured, constitutes a non-monetary default, will be considered by the Agency when making eligibility determinations for future requests for assistance, may adversely impact such requests, and may result in civil or criminal action.**

**\*--The authorized agency official will process the non-monetary default according to 5-FLP, Part 3. The default can be corrected by post-approval but will be considered by FSA in future eligibility decisions. If FSA does not post-approve the transaction or the borrower does not make restitution, FSA will proceed according to 5-FLP, Part 11, Section 2. DLS Customer Profile, Loan Servicing Information section, will be displayed with information related to Unauthorized Disposition of Security that was entered in DLS Special Servicing, Potential Non-Monetary Default (NMD) category.--\***

**184-195 (Reserved)**

**Section 3 Real Estate Security Releases, Exchanges or other Disposition  
of Portion or Interest**

**196 Requirements**

**A General**

**[7 CFR 765.351] The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.**

**Notes:** This section also applies to subordinations and non-disturbance agreements made for nonlending purposes.

This section also covers the sale of water and water rights.

The borrower must:

- complete and sign FSA-2061 with the assistance of the authorized agency official
- provide a written contract or an agreement for the property indicating the price and terms of the transaction
- sell the property for not less than the appraised value unless FSA is being paid in full.

\* \* \*

**196 Requirements (Continued)****B Conditions for Approval**

**[7 CFR 765.351(a)]** The following conditions apply to all transactions affecting real estate:

**[7 CFR 765.351(a)] (1)** The transaction will enhance the objectives for which the Agency loan or loans were made;

**[7 CFR 765.351(a)] (2)** The transaction will not jeopardize the borrower's ability to repay the Agency loan, or is necessary to place the borrower's operation on a sound basis;

**Note:** Partial releases after acceleration can be approved, according to subparagraph 197 E, as items (1) and (2) can be met by orderly liquidation.

**[7 CFR 765.351(a)] (3)** Except for releases in paragraph (f) of this section (subparagraph 146 E), the amount received by the borrower for the security being disposed of, or the rights being granted, is not less than the market value and will be remitted to the lienholders in the order of lien priority;

**Note:** Release of real estate security to be retained by the borrower is not authorized except in conjunction with an approved debt settlement action or as set forth in subparagraph 146 E.

**[7 CFR 765.351(a)] (4)** The transaction must not interfere with the borrower's farming operation;

**[7 CFR 765.351(a)] (5)** The market value of the remaining security is adequate to secure the Agency loans, or if the market value of the security before the transaction was inadequate to fully secure the Agency loans, the Agency's equity in the security is not diminished;

**[7 CFR 765.351(a)] (6)** The environmental requirements of part 799 of this chapter must be met (1-EQ and 6-CP);

See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.

**196 Requirements**

**A General**

Paragraph 196 is not clear as to what is needed from the borrower for a complete partial release request. The sample guide letter has been prepared to assist the credit team and borrower and may be used when a partial release is requested. See NY Exhibit 2 for the sample letter.

## 196 Requirements (Continued)

**B Conditions for Approval (Continued)**

**[7 CFR 765.351(a)] (7) The borrower cannot graduate to other credit on any program except for CL;**

**\*--Note:** Account classification must have been completed within the last 24 months as required by 1-FLP, Part 8, Section 4. For accounts classified as 1 or 2, graduation review must have been completed according to requirements of Part 4.--\*

**[7 CFR 765.351(a)] (8) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.**

**\*--C Sale of Timber, Gravel, Oil, Gas, Coal, Other Minerals, Water, or Water Rights--\***

**[7 CFR 765.351(b)] (1) Agency security instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.**

**(i) The sale of timber from real estate which secures an FLP loan will be considered a disposition of a portion of the security.**

**Note:** When renewable annual sales of timber can be projected, the proceeds may be treated as normal income.

**(ii) When the Agency has a security interest in oil, gas, or other minerals as provided by § 765.252(b) (subparagraph 99 G), the sale of such products will be considered a disposition of a portion of the security by the Agency.**

**\*--The sale of water or water rights from real estate that secures an FLP loan will be considered a disposition of a portion of the security.--\***

**D Compensation for Damage to Real Estate Security**

**[7 CFR 765.351(b)(2)] Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage, and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders' consent, used for an authorized loan purpose.**

**E Disposition of Security for Outstanding ST's**

**[7 CFR 765.351(a)(9)] The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.**

Commodities produced by the property, such as when timber is thinned, can be sold without paying ST in full, as long as all proceeds are applied to ST.

**196 Requirements****C Sale of Timber, Gravel, Oil, Gas, Coal, or Other Minerals, and Easements:**

FSA must obtain the following:

1. FSA-2001 Loan application – See 4-FLP par 166A. Completed and signed for applicant and all members, if an entity.
2. FSA-2060 for real estate subordination requests - Be sure to include the annual lease payment amount and any amounts already received.
3. A current (within 90 days of application) financial statement, including, in the case of an entity, financial statements from all entity members. Form FSA-2037
4. The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan. Must have the last 3 years of financial and production history. (Form FSA 2038)
5. FSA-2004 Authorization to Release Information – in order to contact creditors or employers – for all applicants and members of an entity.
6. FSA-2007 Statement For Non-Applicants (non-borrowers who have ownership interest)
7. FSA-2005 Creditor List – please complete for all creditors listed on balance sheet.
8. Current FSA-2006 Property Owned and Leased
9. FSA- 2014 Verification of Income (if applicable) – Please complete Part A #1 only for Employer's name and address – return to FSA – we will mail to your employer.
10. An individual credit report fee made payable to: Farm Service Agency. (Use only if the applicant is also applying for a Direct loan.)
11. Documentation of compliance with the Agency's environmental regulations
  - AD-1026 information is required to be updated
  - Copy (electronic or website preferred) of the Company's Environmental Assessment or Environmental Impact Statement
12. FBP Credit Presentation and Assessment (See 4-FLP par 4). The FLM/FLO should include their opinion on the proposal and language being proposed on the forms being provided.
13. Real Estate Appraisal of the Farm, including easement area
14. Copies of all public and private documents (i.e. lease, easement contract, assignment, agreements, etc) already signed or proposed between the Company, the borrower, and FSA.

**196 Requirements (Continued)**

**C Sale of Timber, Gravel, Oil, Gas, Coal, or Other Minerals, and Easements:**

15. Legal description for the easement area (usually not the entire farm)
16. Detailed and accurate map of the proposed site, access areas, and of the surrounding area.

**Note** – Once complete the file shall be forwarded to STO for approval. National office approval may be required due to the long term lease. FSA National Office has required us to obtain an assignment of all payments.





**196 Requirements (Continued)****F Exchange of Security Property**

**[7 CFR 765.351(c)] (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352 (paragraph 197).**

**(2) Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.**

**G Sale Under a Contract for Deed**

**[7 CFR 765.351(d)] A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:**

**(1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;**

**(2) Payments will not exceed 10 annual installments of principal plus interest or the remaining term of the FSA loan, whichever is less. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;**

**(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;**

**(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder's approval, used in accordance with § 765.352; (paragraph 197)**

**(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;**

**(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;**

**(7) All other requirements of this section are met.**

**\* \* \***

**197 Allowable Use of Proceeds From the Release of Real Estate Security**

**A Applying Proceeds to Liens**

**[7 CFR 765.352(a)] Proceeds from transactions affecting the real estate security may only be used as follows:**

**(1) Applied on liens in order of priority;**

**B Use of Proceeds for Paying Costs**

**[7 CFR 765.352(a)(2)] To pay customary costs appropriate to the transaction, which meet the following conditions:**

**(i) Are reasonable in amount;**

**(ii) Cannot be paid by the borrower;**

**(iii) Will not be paid by the purchaser;**

**(iv) Must be paid to consummate the transaction; and**

**(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.**

Examples of customary costs may include:

- abstracts

**\* \* \***

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

**197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)****C Use of Proceeds for Land Development**

With SED consent, proceeds may also be used for:

**[7 CFR 765.352(a)(3)] For development or enlargement of real estate owned by the borrower as follows:**

- (i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;**
- (ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;**
- (iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 (1 FLP, Part 4) of this chapter;**
- (iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;**
- (v) Construction and development will be completed in accordance with § 761.10 of this chapter.**

The authorized agency official must:

- require the borrower to prepare a development plan for the planned activity
- conduct a final inspection of the borrower's property after construction completion.

**197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)****D Additional Proceeds Usage Requiring FSA Consent**

With SED's consent, proceeds may be applied to FSA as regular payments, according to paragraph 62. SED's should consider the following when providing consent:

- using real estate proceeds as regular payment should not be a re-occurring event
- FSA has significant excess security based upon current appraisals
- the security being sold is a non-essential asset
- the borrower has not received disaster set-aside or PLS within the past 3 years or have payments deferred
- \*--the application of the payment is not being used to resolve non-monetary default or--\* impending acceleration
- the borrower has been impacted directly by a disaster, is still in recovery, and the sale and application of the proceeds will allow the borrower to resume normal payments.

**Note:** SED's authority may be redelegated to FLC.

**E Pending Liquidation**

**[7 CFR 765.352(b)] After acceleration, according to 5-FLP, Part 15, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.**

Necessary and customary costs appropriate to the transaction:

- include only those costs that the borrower cannot pay from their own resources
- do not include capital gains taxes or junior liens.

**198 Appraisals****A Appraisal Requirements**

**[7 CFR 765.353(a)] (1) The Agency will obtain an appraisal of the security proposed for disposition.**

**(2) The Agency may waive the appraisal requirement when the estimated value is less  
\*--than \$50,000.--\***

The authorized agency official is responsible for estimating value. The estimate will be based upon the intended use of the real estate and will be supported by comparable sales and/or discussions with real estate agents and documented in the case file.

An appraisal report for the security to be transferred or released (except for releases without monetary compensation under subparagraph 146 E) will be obtained when the authorized agency official believes it necessary to protect the financial interest of the government or the  
\*--disposition is greater than \$50,000.--\*

**[7 CFR 765.353(b)] The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security.**

A new appraisal report for the security being retained will only be obtained when the authorized agency official determines that the value of the retained property could be adversely affected by the loss of the transferred or released property.

**[7 CFR 765.353(c)] Appraisals, when required, will be conducted in accordance with § 761.7 of this chapter (1-FLP, Part 6).**

**Note:** Exceptions may be requested according to paragraph 4 for appraisals completed between 12 and 18 months ago.

Appraisal reports under this section may show the current market value of the property being transferred or released, and the property being retained (when determined appraisal is necessary), on a single appraisal report or on separate appraisal reports.

The value of rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate security.

## 199 Approving or Denying Partial Releases or Exchanges

### A Approval Authority

Approval officials may approve partial releases or exchanges when FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of the approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED is authorized to approve any transaction consistent with this section.

On an individual case basis, SED may approve a partial release or exchange for less than the appraised value under this paragraph when:

- the amount being received is within 10 percent of the appraised value

**Note:** This authority applies to this paragraph only.

**Example 1:** A borrower is selling a parcel of real estate and has agreed to a sales contract for \$200,000. However, the appraisal indicates a value of \$215,000. Since the appraisal is within 10 percent ( $215,000 \times .10 = 21,500$  ~  $193,500$  -  $215,000$ ), the transaction can be approved without a DAFLP exception.

- the property has been professionally and extensively marketed.

\*--The authorized agency official must approve a partial release by executing FSA-2061 and--\* FSA-2470.

The authorized agency official may approve the transaction by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO the responsibility to execute agency and required legal documents to complete the transaction.

The authorized agency official must include in the physical case file, all components of FBP that require signatures as provided in the FPB User Guide, available at <https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index>.

Processing and tracking a request for partial release will be done in DLS.

**199 Approving or Denying Partial Releases or Exchanges (Continued)**

**\*--B Real Estate Auctions**

Borrower requests to sell real estate at public auction may only be approved through an Administrator's Exception unless the:

- loans secured by the property are paid in full
- auction floor bid is either:
  - the appraised market value
  - within 10% of the appraised market value and approved by SED.

If submitting a request for Administrator's Exception to approve a sale by public auction, the request will address:

- information required under subparagraph 4 B
- auctioneer's experience with selling real estate
- auctioneer's plan for advertising the auction, including where advertisements will be placed and how long they will run
- how the auction will maximize FSA recovery over a traditional sale through a realtor
- appraised values of the property as it is being advertised and auctioned.

**Note:** This can be demonstrated with an appraisal that addresses separate tract values as an addendum.

**C Appeal Rights--\***

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.

**200-210 (Reserved)**

**Section 4 (Withdrawn--Amend. 28)**

**211, 212 (Withdrawn--Amend. 28)**

**213-230 (Reserved)**

**Part 8 Withdrawing Existing Party****231 Withdrawal Requirements****A General**

If a jointly liable party requests FSA approval for withdrawal from an entity and conveyance of interest in the security to the remaining members in the entity, FSA considers this request according to this Part when all of the following conditions are met:

- a remaining spouse or entity member is already personally liable for the debt
- there is no change in the entity name (except in divorce cases when the account must be renamed to match the remaining spouse)
- FSA can issue FSA-2080 according to subparagraph B.

If a proposed action does not meet the requirements of this subparagraph, FSA will process the withdrawal as a transfer and assumption according to Part 9.

**Note:** For the purposes of this Part and Part 9, an entity is defined as a husband and wife, partnership, corporation, or any other entity in which more than 1 person is liable for the debt.



## 231 Withdrawal Requirements (Continued)

**B FSA-2080's**

**[7 CFR 765.406(b)(4)] Except for loans in default being serviced under 7 CFR part 766 (5-FLP), if an individual who is jointly liable for repayment of an Agency loan withdraws from the farming operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:**

- (i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;**
- (ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and**
- (iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.**

When a transfer is not required under Part 9, and an existing party is requesting a release, the request must be submitted to the local FSA office detailing which members want to be released from liability and which members will remain liable for the debt. In addition, the borrower entity must both:

- file, with the proper authority, documentation that properly identifies and legally accomplishes the intended withdrawal and submit copies of this documentation to FSA

**Note:** This could include a divorce decree or documentation of a change in the corporation or partnership composition.

- submit:
  - a new FBP that projects the repayment ability of the remaining entity members or new entity that will be liable for the debt
  - any other documentation required by FSA in connection with the proposed withdrawal, such as individual financial statements and earning statements of the \*--withdrawing party when the account is undersecured--\*
  - a copy of the document transferring any security interest from the withdrawing party to the remaining borrower, and could include a new deed or bill of sale to the remaining members of the borrower entity.

**231 Withdrawal Requirements (Continued)****C Approval Authority**

When FSA's debt plus prior liens, less the market value, is \$1 million or more (including principal, interest, and other charges), FSA-2080's must be approved by the Administrator or designee. FLM's or SFLO's may approve FSA-2080's when all FLP security is transferred and the total outstanding FLP debt is assumed; otherwise, SED's must approve FSA-2080's. All cases requiring FSA-2080's from SED's will be submitted for review or debt settlement under 7-FLP, Part 12.

The authorized agency official may approve the transaction by executing the electronic signature command in the credit presentation of FBP. Under the electronic signature, the approval official may designate FLM, SFLO, or FLO the responsibility to execute agency and required legal documents to complete the transaction.

If the borrower is delinquent, FSA will consider FSA-2080's according to 5-FLP, subparagraph 84 D.

**\*--D FSA Actions**

A copy of the FSA-2080 should be placed with the original promissory note along with a copy in the borrower's case file attached to the copy of the promissory note.

The authorized agency official will manually maintain a released of liability list of borrowers and/or co-borrowers who signed FSA-2080 and have been approved and released of liability on active and paid in full loans. This list will be maintained in Operational Folder FLPF-4. The following information will/must? be documented for each borrower:

- borrower name
- FSA borrower ID
- loan numbers
- date the release liability was approved
- copy of the executed FSA-2080.

The "Unlink Related Entity" function in DLS must not be used in cases where release of liability has been approved.

**Note:** If a borrower and/or co-borrower have been released from liability on a loan and debt offset is being pursued, the authorized agency official will refer to 7-FLP, Part 4 and the DLS User Guide for instructions on unlinking the released individual before offset.--\*

**232-245 (Reserved)**



## Part 9 Transfer of Real Estate and Chattel Security

### 246 Transfer of Security and Assumption of Debt

#### A General

**[7 CFR 765.401(a)] (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.**

**(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each entity member must assume personal liability for the loan.**

**(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.**

FBP \* \* \* must demonstrate the repayment ability and management capacity of the transferee.

**[7 CFR 765.401(b)] A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.**

FSA requires the transfer and assumption of security and FSA debt when:

- a new borrower wants to replace the existing borrower
- \*--an existing borrower is now operating, or proposes to operate as an entity with a non-relative
- an existing borrower proposes to transfer FSA security to an entity controlled or owned by the borrower.

FSA requires an assumption of debt, but not a transfer of security (assumes title to assets is not changing) when:

- a new member wants to join the borrower entity
- the entity member withdraws when remaining entity members are not personally liable for the debt

**Note:** See definition of operator in Exhibit 2.

Operators include borrowers who obtained individual loans and later formed an operating 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.--\*

**246 Transfer of Security and Assumption of Debt**

**A General**

Transfer of security and assumption of debt is encouraged as the transaction helps the Agency preserve loan funds, may potentially save the parties closing costs, and can be utilized to correct owner/operator eligibility requirements.

When a borrower who has loans secured by Real Estate proposes (or when FSA discovers) to form an operating entity, the loans must be transferred and assumed by the operating entity. In most cases the approval official will be able to complete the transaction by following paragraph 247 B. If there are no new loan funds being advanced, an appraisal or title examination/insurance is not required.

**246 Transfer of Security and Assumption of Debt (Continued)****A General (Continued)**

**\*--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 operation 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.--\*

**B ST's**

ST's will only be transferred on NP rates and terms according to subparagraph 248 E, unless transfer is required because of the death of a borrower, in which case transfer will be considered according to Part 10.

**C Junior Liens**

When a transferee assumes:

- the transferor's entire FSA debt, SED's must concur with the proposed transfer of any junior liens
- less than the full amount of FSA's debt, junior liens to the assumed debt are prohibited.

**D Partial Transfer and Assumption**

A borrower may transfer FSA indebtedness in whole notes only. The borrower and transferee may not split an individual loan. The borrower must demonstrate that a proposed partial sale is in the best financial interest of the operation and that the sale will not adversely affect the security and/or Government's financial interest.

The compensation received by the transferor and applied to the transferor's FSA debt may not be less than the market value of the property sold.

When the value of the property exceeds the debt to be assumed, the transferee may pay with cash on hand or obtained through credit. FSA applies such cash payment to the transferor's indebtedness according to Part 5.

**246 Transfer of Security and Assumption of Debt (Continued)****E Determining the Assumption Amount**

[7 CFR 765.403(d)] The transferee must assume the lesser of:

- (1) The outstanding balance of the transferor's loan; or
- (2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.

**F Determining the Value of the Security Property**

The value of the security property must be determined before approving a transfer and assumption. Appraisals will be conducted according to 1-FLP, Part 6. The appraisal determines the value of the security and the amount of the indebtedness that may be assumed.

**G Forgiveness of Youth Loan Debt**

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this section as part of its eligibility. The criteria for determining if the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR section 766.104(a)(1). Any borrower who met those criteria when the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to the present regulations and can preclude the applicant from receiving a loan from FSA.

**247 Types of Transfers and Assumptions****A New Eligible Borrower**

[7 CFR 765.403(a)] The Agency may approve transfers of security with assumption of Agency debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:

- (1) The transferee meets all loan and security requirements in part 764 (3-FLP) of this chapter for the type of loan being assumed; and
- (2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 (1-FLP) of this chapter.

\*--Transfer of security and assumption of debt for a new eligible borrower is completed at new rates and terms. If the debt for the existing borrower is delinquent, the delinquency is resolved when the transfer and assumption at new rates and terms is completed.--\*

**247 Types of Transfers and Assumptions (Continued)****A New Eligible Borrower (Continued)**

Before a sale, the borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process.

The completed documents must include, as applicable:

- complete application by the proposed transferee for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- appraisal from the transferor's file, with a copy to the transferee's file
- transferring "deed" or "bill of sale" from the transferor to the transferee
- FSA-2025
- \*\*--FSA-2061--\*
- FSA-2080, if applicable
- FSA-2476
- FSA-2489
- additional documents such as UCC1's, FSA-2028's, and mortgages as required.

**B Adding a New Member to a Borrower Entity**

To add new entity members to an existing borrower entity, the proposed individual entity members and the entity as a whole must meet the eligibility requirements as defined in 3-FLP, Part 4. Adding a new member to a borrower entity is completed at same rates and terms.

The borrower and the proposed entity member should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- complete application by the proposed new entity for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- FSA-2025



**247 Types of Transfers and Assumptions (Continued)****B Adding a New Member to a Borrower Entity (Continued)**

- FSA-2489 or FSA-2026, or both
- new FSA-2026's, if needed
- FSA-2476, if applicable
- security instruments, as appropriate.

The transaction will be completed under subparagraph 248 C.

**C Withdrawing a Member and the Remaining Members Are Not Jointly Liable**

If a personally liable party withdraws from an entity and all remaining entity members are not jointly liable for the debt, FSA will process the transfer and assumption according to this part. Accordingly, all transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If all remaining entity members are jointly liable, the withdrawal is processed according to Part 8.

The borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process.

The completed documents may include:

- FBP, for the new entity demonstrating the repayment ability and management capacity of the remaining borrower entity
- updated farm assessment
- documents identifying the reason for the withdrawal such as a death certificate, a divorce decree, or a change in the composition of a corporation or partnership
- documentation of the transfer of the property such as a “deed” or “bill of sale” to the remaining members of the borrower entity
- narrative by the authorized agency official describing and recommending the proposal
- FSA-2025
- FSA-2489, FSA-2026, or both
- FSA-2080, if applicable
- FSA-2476, if applicable
- new security instruments, as appropriate.

## 247 Types of Transfers and Assumptions (Continued)

### D Adding New Entity

When an existing individual borrower forms an entity, the borrower should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process.

**\*--Example 1:** Existing individual borrower has created a sole proprietor LLC. Borrower will now operate the farm under this new LLC.

**Example 2:** Existing sole individual borrower is requesting to add his son as a co-borrower. The primary borrower (father) will remain the same, but there will now be 2 individual co-borrowers. As a result, the operation will be considered an entity as the definition within handbook 4-FLP consists of an exception to include any arrangement in which more than 1 person is party to the debt.--\*

The completed documents may include:

- FSA-2001
- narrative by the authorized agency official describing the proposal
- FBP demonstrating the repayment ability
- new security instruments, as appropriate
- FSA-2489, FSA-2026, or both
- FSA-2476, if applicable.

The transaction will be completed under subparagraph 248 C.

### E NP Applicant

FSA may allow NP assistance only when it is in FSA's best interest.

FSA allows NP assistance only to accommodate enhanced collection potential for outstanding loans.

The documents FSA requires for a NP transfer and assumption are the same as for a program eligible applicant, except FSA does not need to determine the borrower's eligibility.

## 248 Assumption Terms

### A Basic Policy

Loans will generally be assumed on new rates and terms. A loan may only be assumed on the same rates and terms according to paragraph C.

### B Eligible Applicant - New Rates and Terms

**[7 CFR 765.403(e)] The interest rate and loan term will be determined according to rates and terms established in part 764 (3-FLP) of this chapter for the type of loan being assumed.**

### C Eligible Applicant - Same Rates and Terms

A transfer and assumption of all debt and security processed at the same rates and terms does not require an appraisal.

**[7 CFR 765.402] An eligible applicant may assume an Agency loan under the same rates and terms as the original note if:**

**(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;**

**(b) A family member of the borrower or an entity comprised solely of family members of the borrower assumes the debt along with the original borrower;**

**\*--Note:** Includes an existing individual borrower that has created a sole proprietor entity and will now operate the farm under the new entity.--\*

**(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;**

**(d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or**

**Note:** The new entity must replace the present entity and consist of the same members.

## 248 Assumption Terms (Continued)

**C Eligible Applicant - Same Rates and Terms (Continued)**

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be a family member of the original \*--borrower or an entity in which the entity members are comprised solely of family--\* members of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when FSA made the original loan or remain an entity \*--comprised solely of people who were original entity members, partners or joint--\* operators when the entity received the original loan.

\*--(3) A corporation, including limited liability company, cooperative, or other legal business organization, the transferee must:

(i) Have been a corporate stockholder, cooperative member, or other member of a legal business organization, when the Agency made the original loan or will be an entity comprised solely of entity members who were entity members when the entity--\* received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of \*--the individual stockholders or entity members in the transferee.--\*

**D Transfer and Assumption of Types of Loans No Longer Made by FSA**

[7 CFR 765.403(c)] Real estate loan types the Agency no longer makes (i.e. EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter (3-FLP) and the property proposed for transfer meets program requirements.

## 248 Assumption Terms (Continued)

**E Transfer of Security and Assumption of Debt by Ineligible Borrowers**

See 1-FLP, Part 2 for levels of authority for approval of NP loans. SED has unlimited approval authority for NP loans. FSA approves NP loans on FSA-2025. Applications for NP \*--assistance that cannot be approved will be denied by sending Exhibit 35 to the applicant.--\* Applicants have 15 calendar days to request a review of the decision by the next level supervisor within FSA.

**[7 CFR 765.404(a)] (1) The Agency will allow the transfer of real estate and chattel security property to applicants who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.**

**(2) The Agency will reclassify the assumed loan as a Non-program loan.**

**[7 CFR 765.404(b)] Transferees must:**

**(1) Provide written documentation verifying their credit worthiness and debt repayment ability;**

**(2) Not have received debt forgiveness from the Agency;**

**(3) Not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718; and**

**(4) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.**

**248 Assumption Terms (Continued)****E Transfer of Security and Assumption of Debt by Ineligible Borrowers (Continued)**

**[7 CFR 765.404(c)]** The transferee must assume the total outstanding Agency debt or if the value of the property is less than the entire amount of debt, an amount equal to the market value of the security less any prior liens. The total outstanding Agency debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's market value.

**[7 CFR 765.404(d)]** Non-program transferees must make a downpayment to the Agency of not less than 10 percent of the lesser of the market value or unpaid debt.

**[7 CFR 765.404(e)]** The interest rate will be the Non-program interest rate in effect at the time of loan approval.

See 1-FLP, Exhibit 17 for NP interest rates.

**[7 CFR 765.404(f)] (1)** For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the applicant's repayment ability.

**(2)** For a Non-program loan secured by chattel property only, the Agency schedules repayment in five years or less, based on the applicant's repayment ability.

**248 Assumption Terms (Continued)****F Modification of Security Instruments**

Covenants in promissory notes and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FLP operation requirements, and consent to junior lien encumbrance will be deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and the approval official initialing the changes.

**G Transfer from a NP Borrower**

**[7 CFR 765.403(b)] Applicants eligible for FO loans under part 764 (3-FLP) of this chapter may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as an FO loan.**

When a NP borrower proposes to sell security property, the authorized agency official may approve assumption of indebtedness on program or NP terms based on the eligibility of the transferee.

FSA does not release NP borrowers of liability.

## 249 Reviewing Transfer Request

### A Reviewing Required Documents

The authorized agency official will review the transfer request to assure that the documents required are present and complete according to paragraph 247. See 1-FLP, Part 2 for transfer and assumption approval authority.

If the required documents are incomplete or additional information is needed, FSA will request the transferor and the transferee to provide the additional information, as appropriate. The authorized agency official must inform the transferor and the transferee that FSA will not process the transfer request until the application is complete.

### B Insurance Requirements

A transferee must obtain insurance according to 3-FLP, Part 6.

### C Title Clearance

A transferee must obtain title clearance and legal services for closing a transfer according to 3-FLP, Part 16. FSA does not require title clearance and legal services when the interest of a liable party on the note is conveyed to another liable party who assumes the total indebtedness at same rates and terms.

### D Reviewing Loan Application

The authorized agency official will review the application according to this Part and 3-FLP, Part 3.

### E Approving the Transfer and Assumption

Approval officials may approve transfer and assumption when the FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED may redelegate their authority to approve transfer and assumption to FLC, FLS, or DD.

The authorized agency official may approve the transfer and assumption by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO, the responsibility to execute the required documents to complete the transaction.

The authorized agency official must include in the physical case file, all components of FBP  
 \*--that require signatures as provided in the FPB User Guide, available at  
[https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index.--\\*](https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index.--*)



**249 Reviewing Transfer Request (Continued)****E Approving the Transfer and Assumption (Continued)**

The authorized agency official will use FSA-2025 to notify the applicant that the transfer and assumption has been approved.

If FSA rejects the transfer and assumption request, the authorized agency official will notify the borrower of appeal rights according to 1-APP.

**250 Closing the Transfer****A Basic Policy**

**[7 CFR 765.405] The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:**

- (a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;**
- (b) The transferee's payoff of any junior liens does not exceed \$5,000;**
- (c) Fees are customary and reasonable;**
- (d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and**
- (e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.**

The authorized agency official will prepare closing documents according to 3-FLP, Part 16 and State and local requirements. Closing documents will be filed according to State law and as described in the State supplement.

**B Final Processing**

The authorized agency official will follow the flowchart in DLS Loan Servicing Users Guide, Section 5.2, to determine if a "1M", "4A", or "4D" transaction is needed in DLS to record the transfer and assumption of the loan or loans.

The signed documents in the transfer docket will be placed in the transferee's case file and the transferor's file shall be maintained according to 32-AS.

\*--In situations where the transferee provides a down payment to the transferor, the down payment funds will be applied towards the transferor's existing balance prior to processing the transfer and assumption within DLS per subparagraph 250 B.--\*

**251 Determining Transferor Liability After Closing****A Full and Complete Transfer**

**[7 CFR 765.406(b)(1)] The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.**

**B Transfer and Assumption of a Portion of the Indebtedness**

**[7 CFR 765.406(a)] Agency approval of an assumption does not automatically release the transferor from liability.**

**[7 CFR 765.406(b)(2)] If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.**

**[7 CFR 765.406(b)(3)] If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request \*--debt settlement in accordance with subpart B of 7 CFR part 1956. (7-FLP, Part 12)--\***

If all security has been transferred, the remaining debt will be considered for debt settlement instead of release of liability under this Section.

In partial debt and partial security transfer cases, the transferee may pay any sale price or security shortfalls to resolve deficiencies as approved by the authorized agency official by any of the following:

- cash contribution
- participation credit
- subsequent FSA loans.

If only a portion of the indebtedness is to be assumed by the transferee, the authorized agency official must recommend and SED must approve or deny settlement of the remaining indebtedness.

**250 Closing the Transfer**

**A Basic Policy**

The completed closing documents are:

- Form 2476 Transfer of Real Estate Security
- Form 2489 Assumption Agreement,
- Form FSA 1927-1 NY Real Estate Mortgage. The mortgage will be filed with the County Clerk's office to clarify the chain of title and provide record notice to other creditors of the current existence of the loan agreement.

**251 Determining Transferor Liability After Closing (Continued)**

**C Authority**

\*--The approval official for the transfer and assumption may consider and execute FSA-2080--\* in conjunction with the transfer and assumption action when all of the following conditions are met:

- transferee assumes the entire amount of the indebtedness
- transferee's indebtedness is fully secured
- transferor transfers all security
- transfer and assumption will not result in a loss to the Government.

If any of these requirements are not met, only SED's have the authority to execute FSA-2080's.

**252-265 (Reserved)**



**Part 10 Deceased Borrowers****266 General****A Overview**

This Part describes the procedures FSA follows upon learning of the death of an FLP borrower.

**B Contacting the Deceased's Family, Heirs, or Other Liable Parties**

The authorized agency official will contact the family, heirs, or liable parties as soon as practical after the death of a borrower to discuss plans for the farm.

The authorized agency official will complete FSA-2490 to:

- determine how to proceed with the deceased borrower's account
- assess FSA's security position
- ensure FSA's security is adequately protected and maintained.

If no liable party remains, the heirs/representatives contacted will be informed that:

- the loan can be paid in full or assumed on eligible or ineligible rates and terms, if all requirements are met
- estates cannot be FSA program or NP borrowers.

\* \* \*

**266 General****A Overview**

In most cases the authorized agency official should contact the deceased borrower's family no later than 30-60 days from the date of the borrower's death. When completing Form 2490 it is very important to obtain accurate information and to determine the intent of the family.

As a reminder, an estate is not eligible for primary or preservation servicing (5-FLP). Therefore, upon the death of an applicant, the State Office will need to be consulted to determine the next action. A family member could be a borrower if he/she chooses to assume the debt on eligible or ineligible rates and terms. Refer to part 9 of 4-FLP.

If no family members are willing to assume liability for the debt, the account can be treated as being in non-monetary default. However, consultation with OGC will be needed before any notices are sent to the estate.

FSA needs to ensure that security is being properly maintained and accounted for. If it is not, you may need to contact the STO for additional guidance.

**266 General (Continued)****C Consulting SED**

To complete FSA-2490 and determine an appropriate course of action, the authorized agency official will refer to State supplements, as appropriate; however, SED's will always be notified when:

- determining claim priority
- filing a proof of claim
- withdrawing a proof of claim
- initiating, participating in, or contributing to a probate or administrative hearing
- servicing a borrower's account when no will exists.

SED's will consult with OGC, as appropriate.

When necessary, the authorized agency official will forward the following information to SED:

- FSA-2490
- the borrower's case file
- a recommendation on how FSA should proceed with the borrower's account.



**267 Servicing Options for Program Loan Accounts****A Continuation**

**[7 CFR 765.451(a)] Following the death of a borrower, the Agency will continue the loan with any individual who is liable for the indebtedness provided that the individual complies with the obligations of the loan and security agreements.**

The authorized agency official will process applicable changes to MIDAS Business Partner and DLS to change any name, account number, or case number.

**B Transfer and Assumption**

**[7 CFR 765.451(b)] The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.**

See Part 9 for more information on transfer and assumptions.

**C Shared Appreciation (FSA-2543's)**

If an FSA-2543 exists at the time of the borrower's death, see 5-FLP, subparagraph 342 A.

**D Liquidation**

If a deceased borrower's farm loan accounts cannot be paid in full, voluntarily liquidated, resolved through continuation with existing obligors, or transferred to a third party, the \*--authorized agency official will comply with 5-FLP, subparagraph 65 B before proceeding according to 5-FLP, paragraph 66. If the deceased borrower's loan payments are deferred, the authorized agency official will include canceling the deferral as of the date of the borrower's death with the notification provided in 5-FLP, subparagraph 65 B.--\*

**268    Servicing Options for NP Accounts****A    General Policy**

When a borrower with only NP's dies, FSA shall determine whether the borrower's NP's may be continued or assumed by another party. If NP's cannot be continued or assumed, FSA shall liquidate NP's according to 5-FLP, Part 16.

**B    Continuation with a Jointly Liable Borrower**

**[7 CFR 765.452(a)(1)] The Agency will continue the loan with a jointly liable borrower if the remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.**

\*--The authorized agency official shall process applicable changes to MIDAS Business Partner and DLS to change the borrower's name and case number.--\*

**C    Transfer and Assumption**

**[7 CFR 765.452(b)] A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part (Part 9).**

**[7 CFR 765.452(a)(2)] The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower according to the loan and security instruments.**

See subparagraph 248 C for information on continuing or assuming a loan.

**D    Security Transfer Beyond Heirs**

**[7 CFR 765.452(c)] (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and**

**(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part (Part 9).**

**269-280    (Reserved)**

## Part 11 Borrowers Entering the Armed Forces

## 281 General

**\*--A Protections for Borrowers on Active Duty**

[7 CFR 765.161] (a) *Protections for borrowers on active duty.* The Servicemembers Civil Relief Act (Public Law 108-189) and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (Public Law 108-375) provide certain loan servicing protections for military borrowers. The Agency will apply those loan servicing protections to applicable Farm Loan borrowers.

(1) The benefits and protections of the Servicemembers Civil Relief Act apply to borrowers on active duty at all times.

(2) The requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 apply during a time of a war or national emergency as declared by the President or Congress.

(b) *Eligibility for National Guard members and military reservists.* Borrowers who are National Guard members or military reservists will be eligible for the protections covered by this section, as specified in paragraphs (b)(1) and (2) of this section:

(1) National Guard members must be on duty for at least 30 consecutive calendar days.

(2) Military reservists are eligible from the date orders are received to report for active duty.

(c) *Entity eligibility.* National Guard members and military reservists on active duty and any operating entity owned solely by the active duty borrower may be considered for protections specified in paragraph (a) of this section.--\*

\* \* \*

**A    Act Impact**

The "Servicemembers Civil Relief Act" basically rewrote provisions of the Soldiers' and Sailors' Civil Relief Act.

With regard to foreclosure actions, the statute provides that a sale, foreclosure or seizure of property for a breach of an obligation secured by a mortgage or other security in the nature of a mortgage shall not be valid if made during, or within 90 days after, the period of the service member's military service except: (1) upon a court order granted before such sale, foreclosure or seizure with a return made and approved by the court; or (2) if made pursuant to a written agreement by the service member to waive his/her rights and protections under the Service members Civil Relief Act.

This means that the Agency is prohibited from foreclosing on a service member's property unless: (1) the Agency receives prior court approval, or (2) the serviceman agrees to waive his rights pursuant to a written agreement. Consequently, if a service member does not liquidate security or execute a POA, the Agency may have to wait until the period of military service is over in order to liquidate the account.

**282 Servicemembers Civil Relief Act of 2003****A Interest Rate**

Subject to paragraph 283, FSA may not charge interest exceeding 6 percent on existing FLP debt if the borrower enters full-time active military duty.

Upon learning that a borrower enters active duty, the authorized agency official shall send Exhibit 52 to the borrower stating that the interest rate on their existing FSA loans will not exceed 6 percent while the borrower is on active military duty. The borrower shall submit written notice and a copy of the military orders calling the service member to military service and any orders further extending military service. The interest rate change will be effective with the date the military service started (as verified in the military orders submitted by the borrower).

If the borrower's interest rate is already lower than the 6 percent rate, the borrower will be notified that FSA will not increase the borrower's interest rate.

In times of war or national emergency, active duty members are eligible to have their FSA interest and payments deferred on existing loans. Exhibit 52 may be used as is or a similar notification letter may be used to address the borrower's specific circumstances. See paragraph 283 for additional details.

Adjustments to the interest rate based on military service must be processed by the RD \*--Business Center, FLB only; therefore, the authorized agency official should send a memorandum to the RD Business Center, FLB that confirms the military service of the--\* borrower and the effective date of that service.

In addition, the authorized agency official shall process applicable changes to MIDAS Business Partner to change the borrower's address to the address at which FSA may contact the borrower while on active military duty or the address of a designated power of attorney.

**B Penalty for Violations**

Violations of the Servicemembers Civil Relief Act of 2003 are misdemeanors. Knowingly violating the provisions of the Servicemembers Civil Relief Act of 2003 is punishable by fines, imprisonment for not more than 1 year, or both.

## 282 Servicemembers Civil Relief Act of 2003 (Continued)

**C Borrower Contact**

When the authorized agency official learns that a borrower plans to enter the Armed Forces on full-time active duty, the authorized agency official shall immediately contact the borrower to ensure that someone adequately cares for the borrower's loan security during their absence. The authorized agency official shall determine whether the borrower wants to:

- retain chattel or real estate security while on active duty
- lease real estate security while on active duty
- dispose of chattel or real estate security before reporting to active duty.

\*--In addition, during the contact the authorized agency official shall ask the borrower to provide the servicing office with a copy of the military orders calling the service member to military service and any orders further extending military service that apply. The orders will be placed in position 4 of the case file. The contact efforts and the outcome must be documented in FBP running record.--\*

**D Power of Attorney**

If the borrower decides to retain ownership of the FSA loan security while on active duty and there are no other parties liable for the debt, the authorized agency official shall encourage the borrower to authorize a power of attorney. The borrower may designate a power of attorney before entering active duty. A person designated with a power of attorney has the responsibility to ensure both:

- proper use and maintenance of the borrower's chattel and real estate security
- timely payment on the borrower's insurance, taxes, and FSA loan.

The borrower should be encouraged to use a military power of attorney prepared and executed pursuant to 10 U.S.C. 100b. No further legal review is required for a power of attorney prepared for the borrower by the military. SED's shall issue State supplements for all other acceptable power of attorney documents.

**E Real Estate Security Leases**

The authorized agency official, when appropriate, may encourage a borrower, while on active duty, to lease real estate security in which FSA has a security interest when the rental income fully repays the borrower's:

- annual installment
- real estate taxes
- required hazard insurance.

If the borrower decides to lease the real estate security, the authorized agency official may encourage the borrower to enter into a written lease and obtain an assignment of rental income proceeds in an amount sufficient to cover the borrower's annual FSA installment using FSA-2044.

**282 General****D Power of Attorney**

FSA should not complete a Power of Attorney for a borrower, but we can assist the borrower. The form can be obtained from the following website:

<http://www.nylawfund.org/pubs/durpoa.pdf>

The agency approval official should review the POA document. We recommend that the borrower grant all of the powers listed in the POA. However, if the borrower wants to limit the POA to certain issues, then the powers that seem to be the most relevant to FLP issues are: (1) real estate transactions, (2) chattel and goods transactions, (3) banking transactions, (4) business operating transactions, and (5) records, reports and statements. The combination of those powers is broad enough to permit the attorney-in-fact to apply for loans, sign security instruments and apply for servicing. However, other powers might need to be required on a case-by-case basis (for example, the POA would need to grant the power to do “insurance transactions” if life insurance is being pledged as collateral for the loan). If two or more persons are to be appointed agents for the borrower, the STO will need to review the document with OGC.

**282 Servicemembers Civil Relief Act of 2003 (Continued)****F Disposal of Security**

If the borrower decides to sell the security before entering military service, the borrower may:

- dispose of the security with a voluntary sale and then apply the sale proceeds to the balance of the FSA loan according to Part 5
- transfer the security and the loan to another person according to Part 9.

**G Borrower Default**

If, while serving on active duty, the borrower becomes delinquent on payments or is otherwise in default, the authorized agency official will send the borrower and the person designated by the borrower with power of attorney notices as required by 5-FLP, Part 3. SED's will fully use the exception authority granted in 5-FLP when additional time is needed by the borrower for submitting a complete servicing application.

FSA may not sell or seize a borrower's property while the borrower is on active duty and 3 months thereafter, except by court order. OGC and SED must provide consent before an authorized agency official may accelerate an account.

If the account has been referred to DOJ, FSA must notify DOJ that the borrower is entitled to relief under the Servicemembers Civil Relief Act of 2003.

**H Security Abandonment**

If the borrower abandons the security, FSA will service the borrower's account according to 5-FLP, Part 18.

**I Failure to Cooperate**

The date a borrower is released from active duty may often be obtained from the Service Members Civil Relief Act website at <https://scra.dmdc.osd.mil/>.

\*--Access to the website may be established for verification of active duty status at the State Office. Each State Office may establish or open their own account as needed based on borrowers who are in active duty status. The application will send an 8-digit access code to the employee's email to enter the website. Google Chrome is the recommended browser.--\*

However, if the borrower fails to cooperate with FSA and the date cannot be obtained, the authorized agency official shall consult with the State Office for servicing guidance.



**282 Servicemembers Civil Relief Act of 2003 (Continued)****J Treasury and Internal Administrative Offsets**

Treasury and internal administrative offsets will be discontinued once a borrower is ordered to report for induction or military service, and any payments received as a result of offset after the date the borrower was called to active duty will be refunded. Treasury offsets shall be suspended by State Offices by deleting affected loans each quarter on the Borrowers Eligible for TOP Offset Certified Screen or the Borrowers Eligible for TOP Offset Screen. Co-borrowers associated with this debt must also be deleted in an effort to reduce hardship on the family. See applicable FI directives for further information. The suspension will begin when the borrower is ordered to report for induction or military service and continues during the period of active duty and 3 months thereafter.

**Note:** Use delete code “07”, “Borrower was indebted to FSA before entering full time active duty military service and the account is being serviced according to the National Defense Act.”

**K Treasury Cross-Servicing**

Borrowers and co-borrowers called to active military duty similarly shall not be referred for cross-servicing.

**Note:** If the borrower has been referred to Treasury for cross-servicing, State Offices must  
\*--FAX FSA-2722's with code “07” in item 14A to the RD Business Center, FLB.--\*  
See 1-FLP, subparagraph 5 B.

**L Canceling the 6 Percent Interest Rate**

If FSA decreased the borrower's interest rate, as soon as the authorized agency official verifies that a borrower is no longer on active duty, the authorized agency official shall send a  
\*--letter to the RD Business Center, FLB. This letter instructs the RD Business Center, FLB--\*  
to terminate the 6 percent interest rate and revert to the rate in existence before the assignment of the 6 percent rate.

**283 Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005****A Suspension of Interest Accrual and Payments**

During a time of war or national emergency as declared by the President or Congress, the FLP payments on existing loans of borrowers on active duty will be suspended and interest will not accrue beginning on October 28, 2004, or the date in which they enter active duty, whichever is later. If any regular payments have been made since the date noted, October 28, 2004, the borrower should be contacted, and the payment will be refunded at their request. For **existing** loans, all payments due, as well as the due dates of all payments due during and after such active duty will be suspended or deferred for a period of time equal to the time the borrower is on active duty during war or a national emergency.

**Example:** A borrower with an OL (matures January 15, 2019, annual payment on January 1) and a FO (matures February 15, 2040, annual payment on January 1) enters active duty on October 1, 2016, and is discharged on April 1, 2017 (182 days).

- Interest will not accrue from October 1, 2016, to April 1, 2017.
- The payments on both loans will be due on September 30 each year (April 1, 2017 + 182 days = September 30).

**Note:** Funds from the sale of basic security must be applied as an extra payment according to subparagraph 63 A.

When information is received by the County Office that a borrower has entered or is entering active duty, the County Office will send:

- the borrower, Exhibit 52, informing them that for **existing** loans, payments will be suspended and interest will not accrue during time of active duty
- \*--the RD Business Center, FLB a courtesy copy by FAX (1-FLP, subparagraph 5 B).--\*

**283 Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005  
(Continued)**

**B Reinstating Annual Payments and Interest Accrual**

The payment suspension and interest nonaccrual status will end on the earlier of the date the:

- war or national emergency is over
- borrower is released from active duty.

When information is received that the war or national emergency is over, or the borrower has been released from active duty, the County Office shall:

- send the borrower Exhibit 53, informing them that suspension and nonaccrual status has ended, the payment deferral period has started, and the expected due date of the post-deferral payment
- \*--send the RD Business Center, FLB a courtesy copy by FAX--\*
- attach a copy of Exhibit 53 to the impacted promissory notes.

**Note:** Pre-military service delinquent payments will also be deferred on Exhibit 53 for a period equal to the length of service. Any delinquency remaining at the end of the deferral period will be serviced under 5-FLP, Part 3.

**C PLS and DSA**

When a borrower applies for PLS, it will be treated like a normal servicing application under 5-FLP, Part 3 and will be entered into eDALR\$ accordingly without any changes to the servicing term available. If eDALR\$ generates a feasible plan, provide the offer to the borrower as normal.

For instances where a feasible plan cannot be found or the borrower requests DSA, State Offices shall contact LSPMD for assistance.

**D Acceleration or Foreclosure**

FSA will not accelerate or foreclose on the property of a borrower in the armed forces during the borrower's tenure of service and for the term of their deferral, thereafter.

**Notes:** If the account has been referred to DOJ, notify DOJ that the borrower is entitled to relief under the Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (subparagraph 281 A).

Notify DOJ once information is received that the war or national emergency is over, or if the borrower has been released from active duty.

**284-290 (Reserved)**



**Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities****291 Procedures and Servicing Responsibility****A General**

When a borrower moves from 1 office jurisdiction to another, FSA will transfer loan records and servicing responsibilities. In general, the County Office for the borrower's old location should transfer borrower records when the farm headquarters is relocated to another jurisdiction.

When FSA has referred an account to DOJ or Treasury, borrower records will remain in the existing County Office location.

A County Office may not transfer a borrower's records to another County Office while FSA is considering a debt settlement application for that borrower.

**B Borrower Responsibilities**

When FSA receives notification that a borrower intends to relocate loan security, the authorized agency official must notify the borrower of his or her responsibilities arising from the move.

A borrower who moves or plans to move must:

- notify the County Office in which the security is currently located that they want to move FSA security and provide the intended new address or property location through FSA-2495
- arrange for the care and/or disposition of any loan-related security or properties that the borrower will not move
- promptly execute and provide recording and lien search fees for any new security instruments FSA may require.

For moves within a county, the borrower may apply verbally for approval to relocate security.

**291 Procedures and Servicing Responsibilities**

**A General**

Par 291 does not provide any guidance for approving or rejecting a borrower's Form 2495 "Application to Move Security." For moves within NYS, FLM's are the approval officials. The FLC must be copied on all correspondence between offices. For moves outside of NYS, the SED must approve the transfer of the borrower's account.

**291 Procedures and Servicing Responsibility (Continued)****C File Transfer and Notification Procedure**

When files or servicing responsibilities are proposed for transfer to another FSA jurisdiction within the same State, the transferring County Office must route FSA-2495, together with the borrower's case file, to SED for concurrence and processing guidance.

When the borrower proposes a move to another State, the transferring County Office must route FSA-2495 and the borrower's case file to the transferring SED. SED reviews the transfer material for relocation acceptability and route the transfer material to the receiving State's SED. In such cases, the receiving SED will then:

- contact transferring SED with any concerns or questions
- notify the transferring SED of the address of the receiving County Office
- forward the transferred material to the receiving County Office.

The transferring County Office should process the transfer by completing a "9G" transaction in DLS.

The transferring County Office:

- shall send the receiving office the original security and debt instruments along with the case file, using a carrier method that provides for protection of PII and documentation of delivery
- is responsible for notifying the borrower about whether the relocation of chattel security is authorized.

For moves within a county, the authorized agency official may verbally notify the borrower of FSA's decision. However, the authorized agency official should always document any \*--decision in the borrower's FBP.--\*

If FSA does not approve the transfer, the transferring County Office will service the case according to 5-FLP, Part 3.

Transferring and receiving FSA Offices may request each other's assistance as appropriate.

For special or problem circumstances accompanying a security or records relocation, SED should seek assistance from the Regional OGC.

**291 Procedures and Servicing Responsibility (Continued)****D Receiving Office Responsibilities**

New security instruments are necessary for borrower relocations and borrower crop and chattel relocations, unless other guidance is provided through a State supplement or from the Regional OGC.

\*--The receiving County Office must obtain a new UCC1 and FSA-2028 (3-FLP, Part 16)--\* when a borrower moves:

- to a new farm and crops or fixtures on new real estate will serve as security
- to a new farm which is to serve as security
- FSA chattel security to a new County Office location.

The receiving County Office must obtain a new UCC1 and FSA-2028 as soon as possible, but no later than 30 calendar days after the borrower's move.

If the borrower does not execute the new instruments, the County Office shall refer the case to SED with recommendations for appropriate action. Normally, the receiving County Office will notify the borrower according to 5-FLP, subparagraph 66 A \* \* \* and proceed to liquidation with the assistance of the transferring County Office. For interstate moves, the receiving County Office must execute and file a new UCC1 with the following text:

“The above collateral was brought into \_\_\_\_ from \_\_\_\_ County, State of \_\_\_\_, subject to a security interest of the Secured Party.”

The receiving County Office should see the applicable State supplement for instructions and guidance on lien searches.

**292-300 (Reserved)**





**Part 13 (Withdrawn--Amend. 38)**

**301 (Withdrawn--Amend. 38)**

## Reports, Forms, Abbreviations, and Delegations of Authority

### Reports

None.

### Forms

This table lists all forms referenced in this handbook.

Form Number	Title	Display Reference	Paragraph Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		116
CCC-679	Lien Waiver		118
FSA-2002	Three-Year Financial History		Ex. 20
FSA-2003	Three-Year Production History		Ex. 20
FSA-2025	Notification of Approval Terms and Conditions and Borrower Responsibilities		247-249
FSA-2026	Promissory Note		3, 247, Ex. 2, 20
FSA-2028	Security Agreement		Text, Ex. 2, 4
FSA-2029	Mortgage/Deed of Trust		3
FSA-2037	Farm Business Plan – Balance Sheet		116, Ex. 20
FSA-2038	Farm Business Plan – Income and Expenses		116, Ex. 20
FSA-2040	Agreement for the Use of Proceeds and Security		20, 162, 181, Ex. 29
FSA-2044	Assignment of Income		281
FSA-2045	Record of the Disposition of FSA Security/Release of Proceeds		162, 166, 181
FSA-2061	Application for Partial Release or Consent		Text
FSA-2062	Application for Subordination to a Commercial Lender		116
FSA-2065	Annual Statement of Loan Account		64, Ex. 25.5
FSA-2071	Transmittal of Document		65
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		61
FSA-2080	Release From Personal Liability		231, 247, 251

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

## Forms (Continued)

Form Number	Title	Display Reference	Paragraph Reference
FSA-2420	Intent to ACL for Failure to Provide Information or to Graduate		19
FSA-2425	Request to Cancel Undisbursed Loan Funds		61
FSA-2429	Request for Change in Application		61
FSA-2433	Satisfaction of Lien		65, 147
FSA-2445	Control Log PLAS/GLAS Account Corrections		97
FSA-2446	PLAS/GLAS Account Correction		97
FSA-2450	Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Proceeds		162
FSA-2455	Subordination by the Government		120
FSA-2465	Assignment, Acceptance, and Release (Wool and Mohair)		166
FSA-2470	Partial Release		166, 212, 146, 147
FSA-2476	Transfer of Real Estate Security		247
FSA-2489	Assumption Agreement		247
FSA-2490	Deceased Borrower Report		266
FSA-2495	Application to Move Security Property		291
FSA-2543	Shared Appreciation Agreement		3, 97, 267
FSA-2551	Request for Non-monetary Default Determination		100, 181
FSA-2585	Acquisition or Abandonment of Secured Property		Ex. 25.5
FSA-2722	Update to TOP and Cross-Servicing Information		282
IRS 1098	Mortgage Interest Statement		61, Ex. 25.5
IRS 1099-A	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1099-C	Cancellation of Debt		Ex. 25.5
IRS 1099-G	Certain Government Payments		Ex. 25.5
IRS 1099-INT	Interest Income		Ex. 25.5
IRS 1099-MISC	Miscellaneous Income		Ex. 25.5
IRS W-9	Request for Taxpayer Identification Number and Certification		68
UCC1	National Financing Statement		247, 291, Ex. 2
RD-3550-28	Authorization Agreement for Preauthorized Payments		66, 67

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

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
AI	account information	65
APCD	type of applicant code	Ex. 25.5
CB	Collections Branch	66, 67
CFS	Central Filing System	102
CL	conservation loan	Text, Ex. 2
CNC	currently not collectible	Ex. 25.5
CONACT	Consolidated Farm and Rural Development Act	1, Ex. 2
CSB	Community Servicing Branch	67
ECM	Enterprise Content Management	61
FLB	Farm Loan Branch	61, 62, 64, 67, 97, 146, 282, 283, Ex. 51-53
GL	guide letter	2
NP	nonprogram loan	16, 46, 62, 266, 248
PAD	Preauthorized Debit	66, 67
PF	Payoff Balance	65
PIN	personal ID number	63
PLS	primary loan servicing	61, 98, 146, 197, 283
PRB	Program Reports Branch	Ex. 25.5
RC	report code	Text, Ex. 25.5
SAA	Shared Appreciation Agreement	117, Ex. 2
ST	softwood timber loan	16, 196, 246
SW	soil and water	19
TDCLCR	Term Debt and Capital Lease Coverage Ratio	21, 32
VRU	Voice Response System	63

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

SED's may redelegate their authority to approve:

- subordinations or releasing and refiling lien instruments instead of subordination to FLC, FLS, or DD
- surface leases for farm property no longer in use (such as old barns) or for nonfarm purposes (such as wind turbines, communication towers, or other similar installations) to FLC, FLS, or DD
- severance agreement to FLC, FLS, or DD
- transfer and assumption to FLC, FLS, or DD.

**Forms**

NY FSA 2433	Certificate of Discharge (when the FSA debt is paid in full)
NY FSA 2433-1	Certificate of Discharge (when the FSA is not paid in full)
NY FSA 2433-2	<u>Certificate of Discharge – (Debt Paid in Full with</u>
<u>Assignment)</u>	

Title



Title



**Sample Subordination Letter**

Date

Name

Address

City, State Zip

Dear var:

Enclosed are the items required for a complete Subordination request:

1. Form FSA-2060, Applications for Partial Release, Subordination or Consent. This form is jointly completed by the lender and the borrower. This form is for Real Estate subordinations only.
2. Form FSA-2001, Request for Direct Loan Assistance. This form is to be completed by the borrower.
3. A letter from the lender requesting a subordination and statement of need, purpose and term of the proposed credit.
4. A current financial statement, including in the case of an entity, financial statements from all entity members. Forms FSA-2037 and FSA-2038 are enclosed for your use.
5. Verification of all non-farm income.
6. The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan.
7. Credit Bureau Report fee. A check or money order in the amount of \$\_\_\_\_\_ made payable to Farm Service Agency. (Use only if the applicant is also applying for a Direct loan.)
8. Verification of all debts. Form FSA-2005 is enclosed for your use.
9. Environmental – current Form AD1026.

If you have any questions, please contact our office.

Sincerely,

VAR

Farm Loan var

VAR/var

Enclosures



**Definitions of Terms Used in This Handbook (7 CFR 761.2(b))****Abandoned Security Property**

**Abandoned security property** is security property that a borrower is not occupying, or is not in possession of, or has relinquished control of, and has not made arrangements for its care or sale.

**Acceleration**

Acceleration is a demand by a lender for immediate repayment of the entire balance of a debt if the security instrument or promissory note is breached. When FSA accelerates an account, the entire loan balance is due in 30 calendar days.

**Additional Security**

**Additional security** is any property which provides security in excess of the amount of security value equal to the loan amount.

**Agency**

**Agency** is FSA, an agency of USDA, including its personnel and any successor Agency.

**Agency Official**

Agency official is any employee with the agency. This term is used when the action does not require inherent or delegated authority.

**\*--Agreement for the Use of Proceeds**

**Agreement for the use of proceeds** is an agreement between the borrower and the Agency for each production cycle that reflects the proceeds from the sale of normal income security that will be used to pay scheduled FLP loan installments, including any past due installments, during the production cycle covered by the agreement.--\*

**Approval Official**

Approval official is the specific employee who has the authority to approve or deny the described action.

**Assumption**

**Assumption** is the act of agreeing to be legally responsible for another party's indebtedness.

**Authorized Agency Official**

Authorized agency official is an employee who has either inherent or delegated authority to complete the described action.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****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.

**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.

\* \* \*

**Chattel**

**Chattel** is any property that is not real estate.

**Chattel Security**

**Chattel security** is property that may consist of, but is not limited to: crops; livestock; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

**Civil Action**

**Civil action** is a court proceeding to protect the Agency’s financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt’s assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.

**Collateral**

**Collateral** is property pledged as security for a loan to ensure repayment of an obligation.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (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.).

\* \* \*

**Cooperative**

Cooperative is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

**Corporation**

Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

**Debt Settlement**

Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.

**Debt Service Margin**

Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.

\* \* \*

**Deed**

Deed is a signed instrument legally transferring real estate to another.

**Default**

Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

**Delinquent Borrower**

Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

## Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

### Direct Loan

**Direct loan** is a loan funded and serviced by the Agency as the lender.

### \*--Embedded Entity

**Embedded Entity** means entity that has a direct or indirect interest, as a stockholder, member, beneficiary or otherwise, in an entity.--\*

### Entity

An **entity** means a corporation, partnership, joint operation, cooperative, limited liability company or trust.

**Exception:** For Parts 8 and 9, an **entity** is defined as a husband and wife, partnership, corporation, or any other arrangement in which more than 1 person is party to the debt.

### \*--Entity Member

An **entity member** means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.--\*

### Essential Family Living and Farm Operating Expenses

**Essential family living and farm operating expenses:**

- (1) Are those that are basic, crucial, and indispensable.
- (2) Are determined by the Agency based on the following considerations:
  - (i) The specific borrower's operation;
  - (ii) What is typical for that type of operation in the area; and
  - (iii) What is an efficient method of production considering the borrower's resources.
- (3) Include, but are not limited to, essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials, and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property, and crop insurance; auto and truck expenses; and utility payments.



**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Family Living Expenses**

**Family living expenses** are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

**Family Members**

**Family members** are the immediate members of the family residing in the same household with the borrower, or, in the case of an entity, with the operator.

**Farm**

**Farm** is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term “farm” also includes the term “ranch.” It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

**FLP’s**

**Farm Loan Programs** are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

**Foreclosed**

**Foreclosed** is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

**Good Faith**

**Good faith** is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower’s inability to adhere to all agreements is due to circumstances beyond the borrower’s control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Graduation**

**Graduation** means the payment in full of all direct FLP loans, except for CLs, made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

**Guaranteed Loan**

**Guaranteed loan** is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

**Hazard Insurance**

**Hazard insurance** is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

**Initial Loan**

**Initial loan** is the first loan of its type processed by FSA. A borrower having one OL and one FO has 2 initial loans, because they are different loan types.

**Joint Operation**

**Joint operation** is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

**Junior Lien**

A **junior lien** is a lien that is subordinate to a prior lien on the same item of security.

**Lien**

**Lien** is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

**Limited Resource Interest Rate**

**Limited resource interest rate** is an interest rate normally below the Agency's regular interest rate, which is available to applicants unable to develop a feasible plan at regular rates and are requesting:

- (1) FO or OL loan assistance under part 764 of this title; or
- (2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Liquidation**

**Liquidation is the act of selling security for recovery of amounts owed to the Agency or lender.**

Liquidation occurs when no further assistance will be given and includes instituting civil suit against a borrower to recover security or Economic Opportunity property or against third parties to recover security or its value or to recover amounts owed to FSA; filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings.

**Loan Costs**

**Loan costs are administrative costs and/or protective advances that have been charged back to a borrower's account according to the promissory note, other security instrument, or FSA regulation.**

**Note:** Most loan costs are tied to specific loans; however, PLAS will only "Add on" this cost if the loan fund code is that of farm ownership or soil and water. If the loan fund code is for operating, emergency, or other loan types, the cost item is established under a separate loan number with the same fund code as the original loan. This loan numbering system generally starts with loan 99 and works backwards (98, 97, 96) with each loan cost paid. The interest rate of the loan cost will be the same as the original loan; however, the loan account is immediately due and payable and will reflect a final year of the loan the same as the year the cost was paid.

**Loan Agreement**

**Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.**

**Loan Servicing Programs**

**\*--Loan servicing programs include any primary loan servicing program, conservation--\* contract, current market value buyout, and homestead protection.**

**Market Value**

**Market value is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.**

**Mortgage**

**Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term "mortgage" also includes the terms "deed of trust" and "security agreement."**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Net Recovery Value of Agency Security**

**Net recovery value of Agency security** is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.

**Net Recovery Value of Non-Essential Assets**

**Net recovery value of non-essential assets** is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

**Non-Capitalized Interest**

**Non-capitalized interest** is accrued interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

**Non-Essential Assets**

**Non-essential assets** are assets in which the borrower has an ownership interest, that:

(1) Do not contribute to either of the following:

- (i) Income to pay essential family living expenses, or
- (ii) The farming operation; and

(2) Are not exempt from judgment creditors or in a bankruptcy action.

**Non-Monetary Default**

**\*--Non-monetary default** means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements, or loan.

**Note:** Filing for bankruptcy and failing to complete the required borrower training are not considered non-monetary defaults. See 3-FLP, subparagraph 474 C.--\*

**Nonprogram Loan**

**Non-program loan** is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

## Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

### Normal Income Security

**Normal income security is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.**

Normal income security does not include any equipment (including fixtures in States that have adopted UCC) or foundation herd or flock that is the basis of the farming operation and is the basic security for an FSA loan.

### Note

A note is written evidence of indebtedness, such as a bond or FSA-2026.

### 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 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 operation 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 (7 CFR 761.2(b)) (Continued)****Partnership**

**Partnership** is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

**Primary Loan Servicing Programs**

**Primary loan servicing programs** include:

- loan consolidation and rescheduling, or reamortization;
- interest rate reduction, including use of the limited resource rate program;
- deferral;
- write-down of the principal or accumulated interest; or
- any combination of the above.

**Prior Lien \* \* \***

A **prior lien** is a lien that is recorded in front of, or is otherwise superior to, an FSA lien on the same security. The individual or entity that has filed this lien is the prior lienholder.

**Prospectus**

**Prospectus** consists of a transmittal letter, a current balance sheet, and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific FSA direct loan applicants and borrowers.

**Protective Advance**

A **protective advance** is an advance made by the Agency or a lender to protect or preserve the collateral itself from loss or deterioration. A protective advance may be used for purposes, including but not limited to the following:

- delinquent taxes
- annual assessments
- ground rents
- hazard or flood insurance premiums against or affecting the collateral
- harvesting costs
- other expenses needed for emergency measures to protect the collateral.

## Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

**\*--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, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.--\*

**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.”

**Security Instrument**

**Security instrument** includes any document given the Agency a security interest on real or personal property.

**Shared Appreciation Agreement**

**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 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.

**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.

**Subsequent Loan**

A **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.

**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.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Trust**

**Trust** is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

**Unauthorized Disposition Of Chattel Security**

Unauthorized disposition of chattel security is the sale of chattel security not authorized by FSA before the sale.

**VRU**

VRU is a secure automated system that requires a PIN number, and guides borrowers in obtaining the status of their loans at any time. If further loan information is needed, such as a payoff amount, borrowers are directed to call the FSA office.





**Sample Partial Release Letter**

Date

Name

Address

City, State Zip

Dear var:

Enclosed is an Application for Partial Release, Subordination or Consent (Form FSA-2060). Please complete this form in its entirety and return it to our office along with a copy of the signed sales contract and a legal description of the parcel being sold.

Our regulations are very specific as to the use of proceeds from the sale. Proceeds will be remitted to the first lien mortgage holder minus any acceptable survey costs, attorney fees, real estate taxes and real estate commission necessary to give clear title on the parcel being sold. Other use of the proceeds is not authorized without FSA's prior concurrence.

Once the application form, sales contract and legal description are received in our office, we will schedule a visit to do an appraisal of the parcel being sold.

Enclosed are the items required for a complete Partial Release request:

(Include forms as needed)

1. Form FSA-2060, Applications for Partial Release, Subordination or Consent. This form is jointly completed by the lender and the borrower. This form is for Real Estate subordinations only.
2. A current financial statement, including in the case of an entity, financial statements from all entity members. Forms FSA-2037 and FSA-2038 are enclosed for your use.
3. Verification of all non-farm income.
4. The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan.
5. Verification of all debts. Form FSA-2005 is enclosed for your use.
6. Environmental – current Form AD1026.

If you have any questions, please contact our office.

Sincerely,

VAR

Farm Loan var

VAR/var

Enclosures

## State Supplements

The following table lists required State supplements.

<b>Subparagraph</b>	<b>Required State Supplement</b>
* * *	
* * *	
* * *	
65 F	Loan security instruments releases.
98 C	Obtaining new FSA-2028's.
98 E	Continuing financing statements.
*--98 G	Obtaining assignments.
98 H	Real Estate Security Instruments--*
* * *	
101 A	Payment of a borrower's real estate taxes.
102 B	Potential purchaser notification.
117 B	Releasing and refiling lien instruments.
118 A	Multi-year subordinations.
120 A	Real estate subordinations.
136 C	Severance agreements.
250 A	Closing documents for transfer and assumptions.
266 C	Guidance for deceased borrower processing.
282 D	Establishment of power of attorney.
291 D	Transfer of borrower's records and lien searches.

**Note:** SED's shall:

- issue State supplements according to 1-AS, paragraph 216
- obtain approval of State supplements according to 1-AS, paragraph 220.



## Request for Operational Review Information

The following is an example letter the authorized agency official may use to **request information from borrower**. Go to <https://inside.fsa.usda.gov/>. CLICK “**Employee Forms**” at the top of the page and CLICK “**Find Current Forms Using Our Form Number Search**”.

For “Form Number” ENTER “**4-FLP Exhibit 20**”.

\*--

(Use Agency Letterhead format with local return address)

### REQUEST FOR OPERATIONAL REVIEW INFORMATION

Dear:

At the time you obtained your loan from the Farm Service Agency (FSA), you were unable to get the credit you needed from conventional lenders. The objective of the FSA credit program is to provide you with temporary credit assistance. Once you become financially able to obtain credit from conventional lenders, you are required to refinance and pay off your FSA loan (also called “Graduation”).

Agency policy requires that we complete an operational review to determine your financial status and the progress you are making at least biennially. More frequent reviews are required when you obtain a subsequent FSA loan or subordination, become financially distressed or delinquent, or have loans with deferred payments. In order to complete an accurate review, we ask you to provide the following information to our office.

- 1) Actual financial performance for the past year (a copy of your last year’s tax return or last year’s income and expense records is acceptable).
- 2) Current balance sheet,
- 3) Projected income/expense for next year (a copy of your current year’s is also acceptable)
- 4) Annual crop and livestock production yields
- 5) Review and update, if needed, of assessment (copy attached). Please pencil in comments or changes.

Enclosed are forms FSA-2002, FSA-2003, FSA-2037 and FSA-2038 you can use to provide us with the requested information, or you can provide us with copies of the actual records as indicated above.

(1<sup>st</sup> mailing) [insert date 30 calendar days from the letter].

(2<sup>nd</sup> mailing) [insert date 15 calendar days from the letter].

If you have made sufficient progress, the information or other information in your case file may be provided to lenders to determine if they can refinance your Farm Loan Programs debt.

Failure to submit any required documents is a violation of your loan agreement and FSA can accelerate your account. It is important that you are not in violation of your loan agreement since this can impact any future request for Farm Loan Programs assistance.

If you have questions, or need help putting the information together, please contact our office.

Sincerely,

(Name)  
(Title)

--\*





## Lender Agricultural Loan Underwriting Standards

Each October, the authorized agency official shall contact local lenders to obtain their underwriting criteria for making agricultural loans. Information gathered from these contacts will be summarized \*--on the following. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 22”.--\*

### Lender Agricultural Loan Underwriting Standards

Short-Term Credit					
	Lender	Lender	Lender	Lender	Applicant
Date Completed					
Name					
Lending Limit					N/A
Minimum Loan Size					N/A
Percent Equity					
Percent Repayment Margin					
Types of Security Required					
Maximum Loan to Security Value					N/A
Maximum Term of Loan					N/A

Intermediate-Term Credit					
	Lender	Lender	Lender	Lender	Applicant
Date Completed					
Name					
Lending Limit					N/A
Minimum Loan Size					N/A
Percent Equity					
Percent Repayment Margin					
Types of Security Required					
Maximum Loan to Security Value					N/A
Maximum Term of Loan					N/A

Long-Term Credit					
	Lender	Lender	Lender	Lender	Applicant
Date Completed					
Name					
Lending Limit					N/A
Minimum Loan Size					N/A
Percent Equity					
Percent Repayment Margin					
Types of Security Required					
Maximum Loan to Security Value					N/A
Maximum Term of Loan					N/A





**\*--Borrower Prospectus**

If any lenders are interested in refinancing FSA loans, the authorized agency official will send the lender a letter similar to the following, providing financial summary information on the borrower. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 23”.

4-FLP, Exhibit 23

(Use Agency Letterhead format with local return address.)

**BORROWER PROSPECTUS**

Dear:

FSA is required to determine if direct loan applicants can obtain commercial credit with an FSA loan guarantee. Also, FSA direct loan borrowers must be referred to commercial lenders for guaranteed or nonguaranteed financing when they appear to meet the lending criteria of a cross-section of local lenders.

Your institution is among those that asked to receive prospectus information on all such FSA applicants and borrowers. Therefore, we have attached financial summary information on the following borrower for your review and consideration:

Name	Eligible for FSA Loan Guarantee	Total Amount Existing FSA Term Loan(s)	Estimated Loan Needed
	YES NO		

We would like to know whether we may refer this borrower to you for further consideration, and have enclosed a stamped, self-addressed envelope. Should more than one lender extend a firm offer to provide credit, the borrower will choose the lender.

FSA loan guarantees of up to 95 percent are available to qualified applicants and borrowers. FSA may guarantee up to \$ \_\_\_\_\_ in some circumstances. Guaranteed loan fees (1.5%) are waived for loans to beginning or socially disadvantaged farmers involved in the direct down payment loan program, and for loans to beginning farmers participating in a qualified State Beginning Farmer Program, and in cases where at least a majority of the guaranteed loan funds are used to refinance an Agency direct loan by the lender.

This borrower qualifies for a Market Placement application. In such cases, FSA will make the feasibility determination and present the lender with the completed initial application package for review.

Please return this letter within 10 days with your referral determination indicated. We are always available to answer questions you may have.

Sincerely,

Lender Use:

\_\_\_\_\_ Refer

\_\_\_\_\_ Do Not Refer

(Name)  
(Title)

**Attachments**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.asc.usda.gov/complaint\\_filing\\_cust.html](http://www.asc.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.



**\*--Notice to Borrower to Refinance FSA Indebtedness**

If any lenders are interested in refinancing FSA loans, the authorized agency official will send the borrower a letter, similar to the following, listing lenders that are interested in refinancing the borrower's FSA loans. Go to <https://inside.fsa.usda.gov/>. CLICK "Employee Forms" at the top of the page and CLICK "Find Current Forms Using Our Form Number Search". For "Form Number" ENTER "4-FLP Exhibit 24".

4-FLP, Exhibit 24

(Use Agency Letterhead format with local return address.)

**LETTER TO NOTIFY BORROWERS TO REFINANCE THEIR FSA INDEBTEDNESS**

Dear:

The financial progress you have made since receiving your Farm Service Agency (FSA) loan(s) has been reviewed. You should take pride in the progress you have made. We share that pride with you and are pleased that we may have been of service.

Your FSA loan and security instruments require you to refinance the unpaid balance of your loan(s), when you have progressed to the extent that you can obtain credit from responsible cooperative or commercial lenders.

Lenders have been contacted to determine their requirements and the availability of credit to new customers. We have evaluated your financial progress, together with the lender requirements, and find that you should now be able to secure satisfactory credit to pay your FSA loan(s). Therefore, we request that you refinance your [Enter type of loan, FO, OL, etc] loan(s) in full.

This approximate balance is \$ \_\_\_\_.

We suggest you contact the following lenders within 30 days. You may contact other lenders if they offer credit for the type of loan(s) being considered for refinancing. [Enter lenders that have indicated they would consider the credit]

If you are unable to graduate your loan(s) in full, you will need to provide this office within \_\_\_\_ days with written evidence showing that you made an earnest effort to seek other credit. Such evidence should include:

- The name(s) of other lender(s) contacted
- The amount of loan requested by you and the amount, if any offered by the lender(s)
- The rates and terms offered by the lender(s) or the specific reason(s) why other credit is not available, and
- The purpose of the loan request.

If you wish, an appointment will be arranged to discuss questions you may have. Our telephone number is \_\_\_\_.

Sincerely,

[Authorized Agency Official's Title]

--\*

**\*--Notice to Borrower to Refinance FSA Indebtedness (Continued)**

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

--\*



## Notice of Change in Interest Rate

The following is an example letter the authorized agency official may use to notify a borrower of any decision to change an interest rate. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 25”.

\*--

4-FLP, Exhibit 25

(Use Agency Letterhead format with local return address.)

### NOTICE OF CHANGE IN INTEREST RATE

Dear:

Your promissory note dated \_\_\_\_ for the original amount of \_\_\_\_ dollars (\$ \_\_\_\_ ) provides for a change in interest rate for a limited resource loan in accordance with the Farm Service Agency regulations.

Effective \_\_\_\_, the interest rate on this loan will change to \_\_\_\_ percent ( \_\_\_\_ %) on the unpaid principal balance. Your installment due \_\_\_\_, 20 \_\_, and all future installments will be (\$ \_\_\_\_ ). This is the interest rate in effect today. If your rate is being changed to the regular rate and, as of the effective date, the regular rate of interest is something other than the rate above, you will receive the lower of the two rates. We will notify you again if this interest rate change between today and the effective date and if your payment changes as a result. This is, however, the only notification that provides you with the right to appeal the decision to change your interest rate. The interest rate will not change until any appeal is concluded.

This change in interest rate is for the reason indicated below.

- ☐ Increase in repayment ability as per Farm Business Plan dated \_\_\_\_.
- ☐ \_\_\_\_ (Enter reason if other than above for increase in interest rate. i.e., you failed to keep the agreements made when the deferral was granted when you purchased items not planned for during the term of the loan, refused to submit information we requested, ceased farming, borrower request.).
- ☐ Borrower request change under subparagraph 21 F

[1] Insert mediation, reconsideration, and appeal rights from 1-APP unless borrower request the change under subparagraph 32B] and (2) Insert ECOA Notice from 1-FLP, subparagraph 41C.]

Sincerely,

(Name)  
(Title)

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

--\*

## IRS Forms, Corrections, and Reports

### A IRS Forms

County Offices receive reports for the year ending December 31 of FLP borrowers reported on IRS 1099-A, IRS 1099-C, IRS 1099-G, and copies of IRS 1099-INT and IRS 1099-MISC with the form mailed to the borrower, as applicable.

**\*--Note:** The RD Business Center, PRB reports this information to IRS and the borrower.--\*

The following forms are mailed out by **COB January 31** of each year.

IRS Form	Explanation
1098	<p>IRS 1098:</p> <ul style="list-style-type: none"> <li>• is attached to FSA-2065 for the annual yearend reporting</li> <li>• applies only to loans secured by real estate only or secured by real estate and chattel.</li> </ul>
1099-A	<p>IRS 1099-A is sent to IRS and the affected FLP borrowers:</p> <ul style="list-style-type: none"> <li>• whose security property was acquired as a full or partial satisfaction of their debt during the calendar year</li> <li>• reported on FSA-2585 during the calendar year.</li> </ul> <p><b>Note:</b> Use FSA-2585 as a substitute for IRS 1099-A when State and County Offices become aware of an abandonment and the acquisition <b>will not</b> be processed within 6 months. The borrower <b>*--receives 1 copy</b> and the RD Business Center, PRB receives the other copy through e-mail at <b>RD-MOSTL-NFAOC-PRB@stl.usda.gov</b> no later than the <b>first workday in January</b>. Contact information is available in 1-FLP, subparagraph 5 E. The information on the RD Business Center, PRB copy is data converted and merged with--* the IRS 1099-A acquisition data reported to IRS. It is <b>critical</b> that all spaces on FSA-2585 be completed.</p> <p>County Offices receive RC 960 that identifies each borrower, the unpaid principal, and market value of the acquired or abandoned property reported to IRS and the borrower.</p>



IRS Forms, Corrections, and Reports (Continued)

A IRS Forms (Continued)

IRS Form	Explanation
1099-C	<p>IRS 1099-C is provided to each borrower with a direct loan that had debt discharged through a writeoff, shared appreciation write-down, * * * or writeoff of a lease account during the calendar year. Writeoffs processed with a class of writeoff code “5”, which are CNC (borrower is <b>not</b> released from liability), and equity receivable <b>writeoffs</b> are <b>not</b> reported to IRS. The total amount of debt canceled with an effective date in the calendar year will be reported on IRS 1099-C. The amount includes the following:</p> <ul style="list-style-type: none"> <li>• deferred interest</li> <li>• deferred noncapitalized interest</li> <li>• interest discharged from the note and advance</li> <li>• noncapitalized interest</li> <li>• principal discharged from the note and advance.</li> </ul> <p>County Offices receive RC 970 that identifies each borrower and the amount of discharged debt reported to IRS and the borrower.</p>
1099-G	<p>IRS 1099-G will be provided to <b>all</b> recipients of grant funds during the calendar year. Grant disbursements with current year check dates will be reported.</p> <p>IRS 1099-G generated with invalid addresses will be mailed to the appropriate State Office to distribute immediately to the grant recipients. Servicing offices will receive RC 980 that identifies each grant recipient and the disbursed amount reported to IRS and the borrower.</p>
1099-INT	<p>IRS 1099-INT is provided to IRS for direct loan borrowers who received interest income (interest paid) on refunds made under the Internal Administrative Offset Program.</p> <p><b>*--Note:</b> The RD Business Center, PRB mails a copy to the borrower and--* the County Office. IRS 1099-INT is sent to borrowers who <b>must</b> have APCD on the ADPS MI Status Screen of “1”, “Individual”, or “2”, “Partnership”, and interest paid of \$10.01 or more. These forms are prepared manually.</p>
1099-MISC	<p>IRS 1099-MISC is provided to IRS for individuals who received payments <b>from FSA</b> for a nonclass action, discrimination claim settlement. A copy is mailed to the individual and the County Office. These forms are prepared manually.</p>

**\*--IRS Forms, Corrections, and Reports (Continued)**

**B Corrections**

All activity processed after the loan activity cutoff date, which affects amounts initially reported to IRS, may result in the generation of corrected IRS 1098, IRS 1099-A, IRS 1099-C, or IRS 1099-G. The corrected IRS form may require the borrower to file an amended tax return.

**Notes:** If borrowers request assistance in filing their tax return, advise them to contact a tax consultant.

See 1-FLP, subparagraphs 49 E and 52 J for current year's loan activity cutoff dates.

Corrections to initial calendar yearend IRS reporting will be issued in April, July, October, and January (the month **after** the end of each quarter in the calendar year). Accounting activity **not** included on calendar yearend IRS reporting, because of the loan activity cutoff date in January, will be on the first quarter correction forms.

**Note:** There is **no** correction process for FSA-2065's. Any current year and previous years' corrections processed to the borrower's account after the cutoff date will be reflected on the next year's FSA-2065's.

**C Reports**

For each quarterly IRS corrections cycle, reports are generated to notify offices of IRS forms produced for IRS and mailed to borrowers for the activity processed after the loan activity cutoff. The following reports are sent to applicable offices.

<b>Report</b>	<b>Title</b>
RC 951	Inquiry Listing of IRS Form 1098, Mortgage Interest Payments for Current and 2 Prior Years Reporting
RC 961	Inquiry Listing of IRS Form 1099-A, Acquisition and Abandonment of Secured Property
RC 971	Inquiry Listing of IRS Form 1099-C, Cancellation of Debt
RC 981	Inquiry Listing of IRS Form 1099-G, Certain Government Payments

--\*



# Notification of Payoff Amount

Final payoffs shall be verified by 2 agency officials to lessen the possibility of an incorrect payoff amount being provided. The following letter will be sent to the borrower only if the request for payoff is made before the day of payment in full. Go to <http://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using OUR Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 26”.

\*--

<b>4-FLP, Exhibit 26</b>					
<p>(Use Agency Letterhead format with local return address.)</p> <p style="text-align: center;"><b>NOTIFICATION OF PAYOFF AMOUNT</b></p> <p>Dear,</p> <p>Borrower's Name: _____</p> <p>Borrower's Address: _____</p> <p>Case Number (<i>last 4 digits</i>): _____ As of: _____</p> <p>Principal Balance: _____ Interest Balance: _____</p> <p>Other (<i>installment set-aside, deferral, equity receivable, etc.</i>): _____</p> <p>Total Estimated Payoff (<i>all loans</i>): _____ Daily Interest Accrual: _____</p> <p>Sincerely,</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 20px;"> <tr> <td style="width: 40%; height: 40px; vertical-align: bottom;">Signature</td> <td style="width: 40%; height: 40px; vertical-align: bottom;">Title</td> <td style="width: 20%; height: 40px; vertical-align: bottom;">Date</td> </tr> </table> <p style="font-size: small; margin-top: 20px;">In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.</p> <p style="font-size: small;">Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.</p> <p style="font-size: small;">To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a>. USDA is an equal opportunity provider, employer, and lender.</p>			Signature	Title	Date
Signature	Title	Date			

--\*



## Notice of Termination of Security Interests in Farm Products

After verifying that the loans are paid in full and the payment has cleared, the authorized agency \*--official will close the case files and return the documents to the borrower according to 32-AS, paragraph 173. Any assignments held by FSA will be terminated using the following letter and--\* satisfaction of liens will be recorded on FSA-2433. Go to <http://165.221.16.90/dam/ffasforms/forms/html>, CLICK "Find Current Forms Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 27", and CLICK "Submit".

### 4-FLP, Exhibit 27

(Use Agency Letterhead format with local return address.)

#### NOTICE OF TERMINATION OF SECURITY INTERESTS IN FARM PRODUCTS

[Purchaser's Name, Address, and Telephone Number]

[Borrower's Name, Address, and Telephone Number]

The subject borrower has fully repaid the debt secured by the farm product describe in:

- ☐ 1. Consent to Payment of Proceeds from Sale of Products (FSA-2042) dated: \_\_\_\_.
- ☐ 2. Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest (FSA-2043) dated: \_\_\_\_.
- ☐ 3. Assignment of Proceeds from the Sale of Products (FSA-2041) dated: \_\_\_\_.

Therefore, the Farm Service Agency (FSA) or its successor agency, no longer has a security interest in such farm products, and the payment to FSA under such consent or assignment should be discontinued.

United States of America

By \_\_\_\_\_

Title \_\_\_\_\_

*The U. S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).*

*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.*



**\*--Notice for Preauthorized Debit (Use Official Letterhead)**

Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 27.5.

**4-FLP, Exhibit 27.5**

(Use Agency Letterhead format with local return address.)

**SAMPLE LETTER FOR PREAUTHORIZED DEBIT**

(Date)

(Customer Name)

(Address)

(Address)

Dear (Customer Name),

We are writing to inform you that your Farm Service Agency (FSA), Farm Loan Program payments may now be made through preauthorized debit.

You may use preauthorized debit to have your payments withdrawn electronically from your financial institution and applied toward your annual loan payment. Payment may be withdrawn weekly, bi-weekly, monthly, quarterly, semi-annually or annually.

You may initiate preauthorized debit by working with your financial institution to complete Rural Development form RD 3550-28, “Authorization Agreement for Preauthorized Payments” (attached). This form will need to be completed and submitted to your local service center for each loan. If your financial institution has a “filter” on the account, you will need to provide the financial institution with the following information: Origination ID: 1220040804, Agency Name: USDA RD DCFO.

Preauthorized debit is offered to you by FSA at no cost. You will need to discuss any potential costs with your financial institution. Preauthorized debit has no expiration date, but you may cancel it at any time by submitting a written request to your local service center. If a preauthorized debit agreement receives three payment rejections within a three month period, the preauthorized debit agreement will be cancelled by FSA. The payment amount and due date of your loan is not affected by a cancellation of preauthorized debit. You are responsible to ensure your full payment is made by the due date.

If you have questions on preauthorized debit, please contact (name and title) at (phone number).

Sincerely,

(Name)

(Title)

Attachment: Rural Development form RD 3550-28

--\*



**\*--Notice for Preauthorized Debit (Use Official Letterhead) (Continued)**

**4-FLP, Exhibit 25.4**

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

--\*

## Request for Continuation Statement Filing Fee

The borrower must pay fees for executing, filing, or recording financing statements, continuation statements or other security instruments, unless State law requires FSA to pay these fees. This letter will be used to inform the borrower of any fees required. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 28”.

\*--

4-FLP, Exhibit 28

(Use Agency Letterhead format with local return address.)

### REQUEST FOR CONTINUATION STATEMENT FILING FEE

Dear:

With regard to the loans you received from FSA, a financing statement was filed or recorded in the office of \_\_\_\_\_.

Under the Uniform Commercial Code, FSA financing statement is effective for a period of five years from the date of filing or recording. From a review of our records, we note that the five year period is almost up in your case and it is necessary for us to file a continuation statement. The security agreement you signed provides that you will pay the cost for filing and recording the continuation statement.

The cost is \$ \_\_\_\_\_. Please send this amount to the above address in the form of a check or money order made payable to: \_\_\_\_\_ by \_\_\_\_\_ or FSA will charge this amount to your account and your loans will be in default.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

(Name)  
(Title)

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

--\*



## Request for Continuation Statement Filing Fee (Bankruptcy Borrower)

The borrower must pay fees for executing, filing, or recording financing statements, continuation statements or other security instruments, unless State law requires FSA to pay these fees. This letter will be used to inform the borrower of any fees required. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 28.4”.

4-FLP, Exhibit 28.4  
(Bankruptcy)

(Use Agency Letterhead format with local return address.)

### NOTICE OF FSA’S RIGHT TO FILE A UCC CONTINUATION STATEMENT

Dear:

With regard to the loans you received from FSA, a financing statement was filed or recorded in the office of \_\_\_\_\_. Under the Uniform Commercial Code, FSA’s financing statements are effective for a period of five years from the date of filing or recording. From a review of our records, we note that the five-year period is almost up in your case and it is necessary for FSA to file a continuation statement.

When you signed FSA’s security agreement, you agreed to pay all filing or recording fees for instruments necessary to perfect, continue, service, or terminate FSA’s security interest. Because you are currently under bankruptcy protection, FSA is providing you with the choice of either paying the filing fee now, or allowing FSA to pay the fee and charge the amount to your account, which will accrue interest at the rate set out in your oldest outstanding promissory note associated with that security.

**PLEASE NOTE:** This informational notice is not intended as an act to collect or recover any debt from you for which your personal liability was previously discharged.

The cost for filing a UCC continuation statement is \$ \_\_\_\_\_. If you choose to pay the fee, please send this amount to the above address in the form of a check or money order made payable to: \_\_\_\_\_ no later than \_\_\_\_\_. If FSA does not receive a check or money order from you by that date, FSA will pay the filing fee on your behalf and charge the amount to your account.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

[Authorized Agency Official’s Name and Title]

cc: [Debtor’s Attorney]

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

\* \* \*

**\*--Notification of Potential Nonmonetary Default**

Upon noting an apparent nonmonetary default other than conversion, FSA will notify the borrower using the following before beginning the Primary Loan Servicing process. Go to **<https://inside.fsa.usda.gov/>**. CLICK **“Employee Forms”** at the top of the page and CLICK **“Find Current Forms Using Our Form Number Search”**. For “Form Number” ENTER “4-FLP Exhibit 28.5”.

4-FLP, Exhibit 28.5

(Use Agency Letterhead format with local return address.)

**NOTIFICATION OF POTENTIAL NON-MONETARY DEFAULT**

Dear:

Upon a review of your Farm Loan Programs (FLP) account, it appears that you may be in non-monetary default on your FLP loan(s). This reason that you may be in default is that:

(Provide a detailed description of the reasons that the account may be in non-monetary default)

We have made you an appointment on \_\_\_\_\_ to discuss this issue. If you are unable to come to the office on this date, we can discuss the issue by phone. If you believe the information we have provided above is not correct, or if you have additional information the agency should consider, please provide all information you have addressing the reason you are not in non-monetary default to this office at the meeting or contact the office by phone. If you do not respond, or if our review of the information you submit still indicates that you are in non-monetary default, we will send you the forms you need to file a primary loan servicing application. The forms to file a primary loan servicing application will provide you with appeal rights.

Please contact this office if you have any questions about this letter.

Sincerely,

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.



## Notification Letter to Potential Purchasers

### A Example of Notification Letter

In States without CFS, FSA follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. FSA will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses listed by the borrower on FSA-2040 that buy or sell chattels or crops. The notification to potential purchasers will be mailed using \*--the following letter. Go to <https://inside.fsa.usda.gov/>. CLICK "Employee Forms" at the top of the page and CLICK "Find Current Forms Using Our Form Number Search". For "Form Number" ENTER "4-FLP Exhibit 29". --\*

4-FLP, Exhibit 29

(Use Agency Letterhead format with local return address.)

#### NOTIFICATION LETTER TO POTENTIAL PURCHASERS

To :

Date:

Dear Buyer,

The United States of America, through the Farm Service Agency, has made loans to borrowers living in your vicinity to enable them to carry on their farming operations. As security for such loans, the borrowers have executed in favor of the United States, (1) mortgages on crops, livestock, and farm equipment in chattel mortgage states, or (2) financing statements and security agreements on crops, livestock, supplies, other farm products, farm equipment and inventory and on the proceeds and products thereof in Uniform Commercial Code States. The appropriate instruments are filed or recorded in the place and manner prescribed by law. As you are a buyer of certain types of property on which the Farm Service Agency takes liens, we are attaching a list of the names and addresses of some of the borrowers, residing in the County indicated on the list, who have executed security instruments on such property in favor of the United States.

**This list is sent to you to comply with the notification requirements under 7 U.S.C. 1631 (protection for purchasers of farm products).** It does not relieve you of any responsibility you may have of keeping informed of recorded lien instruments covering the property you purchase. It should be treated as confidential.

If you have questions concerning any particular transaction involving any of the property on which the Farm Service Agency holds a lien, please contact \_\_\_\_\_.

Sincerely,

[Authorized Agency Official's Title]

Attachment

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited basis will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotope, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.

Page 1

**Notification Letter to Potential Purchasers (Continued)**

**B List of FSA Borrowers**

Complete the following list and attach to the Notification Letter to Potential Purchasers.

**\*--Note:** As required by the Food Security Act, 7 U.S.C. 1631(g), the full SSN of each debtor or, in the case of a debtor doing business other than as an individual, the full IRS TIN is required when completing this notification. Follow applicable directives providing for the protection of PII when providing this notification to potential purchasers.--\*

4-FLP, Exhibit 29		
<b>LIST OF FARM SERVICE AGENCY BORROWERS</b>		
1. Name and Address of Person Indebted to Secured Party	2. Debtor's Tax I.D. or Social Security Number (9 Digits)	
3A. Description of Farm Product(s)		
3B. Approximate Quantity	3C. Crop Year	3D. County Where Located
4. Checks Jointly Payable Any check you may draw in payment for the farm products described in this notice must be made payable both to: FARM SERVICE AGENCY (FSA) AND _____		
5. Any Other Payment Obligations		
1. Name and Address of Person Indebted to Secured Party	2. Debtor's Tax I.D. or Social Security Number (9 Digits)	
3A. Description of Farm Product(s)		
3B. Approximate Quantity	3C. Crop Year	3D. County Where Located
4. Checks Jointly Payable Any check you may draw in payment for the farm products described in this notice must be made payable both to: FARM SERVICE AGENCY (FSA) AND _____		
5. Any Other Payment Obligations		
1. Name and Address of Person Indebted to Secured Party	2. Debtor's Tax I.D. or Social Security Number (9 Digits)	
3A. Description of Farm Product(s)		
3B. Approximate Quantity	3C. Crop Year	3D. County Where Located
4. Checks Jointly Payable Any check you may draw in payment for the farm products described in this notice must be made payable both to: FARM SERVICE AGENCY (FSA) AND _____		
5. Any Other Payment Obligations		

The information on the list of Farm Service Agency borrowers contains personally identifiable information (PII) that is protected from unauthorized use and/or unauthorized disclosure by Federal statutes to include the Privacy Act of 1974 (5 U.S.C. § 552a - As Amended). Unauthorized use and/or unauthorized disclosure of protected data may result in civil or criminal penalties for failure to comply with Federal statutory requirements and/or for wrongful use/disclosure of confidential information.

Page 2



## Change in List of FSA Borrowers

This notification, or Exhibit 29 at the discretion of FLM or SFLO, will be updated at least annually as required, to ensure that purchasers are aware of the Government's security interests. Go to <http://165.221.16.90/dam/ffasforms/forms.html>, CLICK "Find Current Forms Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 30", and CLICK "Submit".

\*--

### 4-FLP, Exhibit 30

(Use Agency Letterhead format with local return address.)

#### CHANGE IN LIST OF FARM SERVICE AGENCY BORROWERS

Dear Buyer,

With regard to the List of Farm Service Agency Borrowers forwarded to you on \_\_\_\_\_, please add or delete the names as noted below. Attached, please find complete information on those borrowers being added

Add

Delete

As security for such loans, these borrowers have executed in favor of the United States (1) mortgages on crops, livestock, and farm equipment in chattel mortgage states, or (2) financing statements and security agreements on crops, livestock, supplies, other farm products, farm equipment and inventory and on the proceeds and products thereof in Uniform Commercial Code States. The appropriate instruments are filed or recorded in the place and manner prescribed by law.

Please contact this office if you have any questions.

Sincerely,

[Authorized Agency Official's Title]

Attachment

*The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited basis will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).*

*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.*

--\*



## Notification of Unauthorized Use of Proceeds

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using the following. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 31”.

\*--

4-FLP, Exhibit 31

(Use Agency Letterhead format with local return address.)

### NOTIFICATION OF UNAUTHORIZED USE OF PROCEEDS

United States Department of Agriculture Farm Service Agency [Location].

Dear :

It is our understanding that on or about [date] you [sold, traded, exchanged] the following described property: \_\_\_\_\_ for \$ \_\_\_\_.

Such property is covered by a (financing statement and security agreement or chattel mortgage, as appropriate) which secures your indebtedness owed to the Farm Service Agency (FSA).

Since you did (not use the property) (not account for the proceeds) in accordance with your security instruments and signed agreement dated \_\_\_\_\_, we demand that you either pay the FSA the above described amount or replace the property with property of equal or greater value within 30 days.

If you believe you possess information that will show this demand is in error, you should contact the County Office at [Telephone number, include area code] within 10 days to arrange an appointment to discuss this matter and present such information.

If you do not comply with this demand we will declare your loans to be in default, recommend referral of this claim to the United States Attorney for appropriate action, and make demand upon the purchasers of the property.

Sincerely,

[Authorized Agency Official's Title]

*The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited basis will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).*

*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.*

--\*

**\*--Notification of Unauthorized Use of Proceeds (Bankruptcy Borrower)**

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using the following. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 31.5”.

**4-FLP, Exhibit 31.5  
(Bankruptcy)**

(Use Agency Letterhead format with local return address.)

**NOTIFICATION OF UNAUTHORIZED USE OF PROCEEDS**

Dear :

It is our understanding that on or about [date] you [sold, traded, exchanged] the following described property: \_\_\_\_\_ for \$ \_\_\_\_\_.

Such property is covered by a security agreement and financing statement which secures your indebtedness owed to the Farm Service Agency (FSA). As you are aware, the security instruments executed by you in favor of FSA are not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debtor.

Since you did not account for the proceeds in accordance with your security instruments and signed agreement dated \_\_\_\_\_, we request that you submit to FSA the above-described amount or replace the property with property of equal or greater value within 30 days.

**PLEASE NOTE:** this informational notice is not intended as an act to collect or recover any debt from you for which your personal liability was previously discharged.

If you believe you possess information that will show this demand is in error, you should contact the County Office at [Telephone number, include area code] within 10 days to arrange an appointment to discuss this matter and present such information.

If you do not comply with this demand we will recommend referral of this claim to the United States Attorney for appropriate action, and make demand upon the purchasers of the property.

Sincerely,

[Authorized Agency Official's Name and Title]

cc: [Debtor's Attorney]

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

--\*



## Initial Notification of Third-Party Purchaser

With SED concurrence, the authorized agency official will send the following notification to third-party purchasers when the:

- disposition cannot be approved
- third party has purchased collateral for an FSA loan
- borrower is unable or unwilling to make restitution and has been notified according to 5-FLP, Part 3.

\*--Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 32”.

### 4-FLP, Exhibit 32

(Use Agency Letterhead format with local return address.)

#### INITIAL NOTIFICATION OF THIRD-PARTY PURCHASER

Dear:

It is our understanding that on or about \_\_\_\_\_, you purchased the following property from \_\_\_\_\_ for \$ \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_

All of the above property you purchased is covered by a \_\_\_\_\_ ([financing statement, security agreement, chattel mortgage, etc., as appropriate]) held by the Farm Service Agency (FSA) and executed by our borrower, \_\_\_\_\_. The [financing statement, security agreement, chattel mortgage, etc., as appropriate] \_\_\_\_\_ was filed in \_\_\_\_\_ on \_\_\_\_\_ and is number \_\_\_\_\_.

The borrower \_\_\_\_\_ ([failed to apply any part, or applied only \$ \_\_\_\_\_]) of the proceeds of this sale on their FSA account. The lien on this property has not been released.

By this letter, we are notifying you of our interest in the property and making demand upon you to return the property to the borrower or pay its market value (at the time it was purchased by you) to the FSA within 30 days. This matter has been forwarded to the FSA State Office.

Please feel free to contact this office at \_\_\_\_\_ if any further information is required.

Sincerely,

[Authorized Agency Official's Title]

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited basis will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.



## SED Notification of Third-Party Purchaser

If no response to Exhibit 32 has been received within 30 calendar days, the following will be forwarded to the purchaser by SED. If satisfaction is not made within 15 calendar days, SED will \*--forward the account to OGC. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 33”.--\*

4-FLP, Exhibit 33

(Use Agency Letterhead format with local return address.)

**STATE EXECUTIVE DIRECTOR  
NOTIFICATION OF THIRD-PARTY PURCHASER**

Dear:

Our records show that on \_\_\_\_\_ you were contacted by our local office and demand was made upon you in connection with the property you purchased from \_\_\_\_\_. This property remains under lien by the Farm Service Agency.

Since you have not met this demand, we are preparing the case for submission to the United States Attorney. If you do not comply with the demand within 15 days, this office will request that Office of the General Counsel of the United States Department of Agriculture refer the matter to the Department of Justice.

Sincerely

State Executive Director

*The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.*

*The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)*

*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or e-mail at [program.intake@usda.gov](mailto:program.intake@usda.gov).*

*Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish). Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotope, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).*



## Denial of Non-Program Assistance

If an application for non-program assistance cannot be approved, it will be denied with this exhibit.

**Note:** Exhibit 35 is available in a fillable format. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our \*--Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 35”.

4-FLP, Exhibit 35

(Use Agency Letterhead format with local return address.)

### DENIAL OF NON-PROGRAM ASSISTANCE

Dear:

After careful consideration we were unable to take favorable action on your application/request for Farm Service Agency (FSA) services for the following reasons:

[Enter specific reasons for the adverse action]

If you think FSA is in error, you may submit evidence within 15-calendar days to the undersigned documenting why FSA's decision is in error. Your request will be forwarded to the next level supervisor within FSA for consideration. This review will be based solely upon the record including your case file. Applicable statutes and regulations and the documentation you submit to support your position will be considered by the next level supervisor.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

[Authorized Agency Official's Title]

*The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.*

*The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)*

*If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or e-mail at [program.intake@usda.gov](mailto:program.intake@usda.gov).*

*Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish). Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotope, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).*

--\*



## Service Members Civil Relief

When information is received that a borrower has entered active duty, or is scheduled to enter active duty, the County Office shall send:

- the borrower information required in paragraph 282
- \*--the RD Business Center, FLB a courtesy copy by FAX (1-FLP, subparagraph 5 B).--\*

The County Office may use this exhibit without change, or draft a similar letter to address the borrower's specific circumstances.

**Note:** Exhibit 51 is available in a fillable format. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 51”.

### 4-FLP, Exhibit 51

(Use Agency Letterhead format with local return address.)

#### SERVICE MEMBERS CIVIL RELIEF

Dear:

It has come to the attention of FSA that you may have entered active military duty, or may be entering active military duty in the near future.

If so, there are certain benefits you may be able to receive pursuant to the Servicemembers Civil Relief Act of 2003. These benefits may include a reduced interest rate if your current rate is above 6%; and if your account is delinquent, suspension/termination of collection through the Treasury Offset Program and cross-servicing program.

Please provide a copy of your military orders so FSA may provide all applicable benefits to you as quickly as possible.

If you are currently on active military duty and there is a pending FSA foreclosure sale scheduled for the property pledged as collateral for your FSA farm loans, please respond to this letter immediately via phone, or e-mail, or letter, so that the sale can be suspended.

If FSA does not receive a copy of your military orders to verify active duty status within 30 days of this letter, FSA will have no choice but to continue to service your account as if you are not on active military duty and FSA will not be able to provide any Servicemembers Civil Relief benefits until the required documentation is received.

If you have a military power of attorney already prepared and executed pursuant to 10 U.S.C. 100b, and would like FSA to work with that person, please provide a copy of that document. Please note that FSA is unable to prepare or help you prepare a power of attorney. We would encourage you to work with your attorney, military recruiter, or military chain of command for assistance with a power of attorney.

In addition, if you are on active duty during a time period that is declared by the President or Congress to be a war or national emergency, there are additional benefits you may be able to receive pursuant to the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005. You will receive separate notification concerning these benefits if they apply to you.

Please do not hesitate to contact this office if any further information is required.

**Borrowers Entering Active Duty in Times of War or National Emergency**

When information is received by the County Office that a borrower has entered or is entering active duty, the County Office shall send:

- the borrower the following, informing them that payments will be suspended, and interest will not accrue during time of active duty
- \*--the RD Business Center, FLB a courtesy copy by FAX (1-FLP, subparagraph 5 B).--\*

**Note:** This exhibit may only be revised by SED.

**\*--Borrowers Entering Active Duty in Times of War or National Emergency (Continued)--\***

**Note:** Exhibit 52 is available in a fillable format. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 52”.

4-FLP, Exhibit 52

(Use Agency Letterhead format with local return address.)

**BORROWERS ENTERING ACTIVE DUTY**

Dear:

On October 28, 2004, the President signed into law the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (the Act). As per the Act, while you are on active duty, interest will not accrue and annual payments will not be required (will be suspended) on your existing Farm Service Agency (FSA) Farm Loan Program (FLP) loans while the United States is at war or during a national emergency as declared by the President or Congress. Payments due during or after active duty will be suspended or deferred for the length of time you are on active duty. New loans are not covered by the Act.

The beginning date of the suspension and non-accrual status is \_\_\_\_\_. The suspension and non-accrual status will end on the earlier of when your active duty ends or the war or national emergency is concluded.

FSA is committed to providing service to assist our borrowers who are impacted by military deployment. Please continue to keep this office apprised of your current duty status so your account can be updated in a timely manner once you are relieved from active duty (with a copy of your release orders) or the national emergency has ended.

Please do not hesitate to contact this office if any further information is required.

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW*



**Borrowers Leaving Active Duty**

When information is received that the war or national emergency is over, or the borrower has been released from active duty, the County Office shall send:

- the borrower the following, informing them that suspension and nonaccrual status has ended
- \*--the RD Business Center, FLB a courtesy copy by FAX (1-FLP, subparagraph 5 B).--\*

**Note:** This exhibit may only be revised by SED.

## Borrowers Leaving Active Duty (Continued)

**Note:** Exhibit 53 is available in a fillable format. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 53”.

\*\_\_

4-FLP, Exhibit 53

(Use Agency Letterhead format with local return address.)

### BORROWERS LEAVING ACTIVE DUTY

Dear:

On October 28, 2004, the President signed into law the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (the Act). As per this Act, interest did not accrue and annual payments were suspended on your existing Farm Service Agency (FSA) Farm Loan Program (FLP) loans when the United States was at war or during a national emergency and you were on active duty. As we understand these conditions no longer exist, interest is now accruing on all your FLP loans. Your payments will be deferred for a period of time equal to the time of your active duty. This period of time has, therefore, been added to the term of your FLP loans impacted by the Act.

**NOTE:** Loans made after you went on active duty are not subject to the Act.

The beginning date of the suspension and non-accrual status was \_\_\_\_\_. The ending date of the suspension and non-accrual status was \_\_\_\_\_. The time period for your active duty was \_\_\_\_\_; therefore your post deployment deferral period ends \_\_\_\_\_.

Estimated daily interest accrual on loans with post deployment deferral are set forth below:

Loan Number	Principal Balance	Interest Rate	Daily Interest Accrual
-------------	-------------------	---------------	------------------------

Your total daily interest accrual is \$ \_\_\_\_\_. If annual payments are not made during the post deployment deferral period, your total estimated interest accrual will be \$ \_\_\_\_\_. Voluntary payments during the deferral period will reduce the overall amount of interest accrual because payments are applied to accrued interest first, then to principal.

Please do not hesitate to contact this office if any further information is required.

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*

--\*



