

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Program Appeals, Mediation, and Litigation
1-APP (Revision 2)

Amendment 8

Approved by: Administrator



Amendment Transmittal

A Reason for Amendment

Subparagraphs 13 A, 13 B, 14 C, 16 D, 24 B, 31 B, 115 A, and Exhibit 8.5 have been amended to add the newly established Senior Farm Loan Officer (SFLO) position references.

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B Letter Content

Use plain and simple language and terminology, with a minimum of acronyms and abbreviations that participants and others can easily understand.

Decision letters should contain as much information as possible summarizing all pertinent information and program provisions that could be relevant to the determination. A good decision letter:

- is a letter that adequately summarizes and explains everything that matters about a case
- should require little additional information to explain what is really at issue in a case.

The decision letter is the starting point for the next administrative review authority.

See Exhibits 8 and 15 for examples of adverse decision letters.

13 Appeal and Review Options in FSA’s Informal Appeals Process

A Options to Give Participants in Appealable Adverse Decisions

When notifying a participant of an adverse decision, use the applicable language in paragraph 14 to provide the right to request reconsideration, appeal, or mediation according to the following table.

Note: This does **not** apply to:

- matters that do **not** fall within the scope or jurisdiction of 7 CFR Parts 11 and 780 (paragraph 10)
- decisions that are **not** appealable (paragraph 15).

IF the adverse decision is made by...	THEN provide the right to...
COC employee	appeal to COC.
COC	reconsideration, appeal to STC, mediation, and appeal to NAD.
*--STO employee (not FLO, FLM, SFLO, or SED)	
FLO	reconsideration, mediation, and appeal to NAD.
FLM	
SED	
Exception: SED relief determinations have no review or appeal rights.	
SFLO--*	
STC	appeal to NAD.
National Office official	

Exhibit 8 provides examples of some decisions made by various FSA officials or committees.

--Exhibit 8.5 provides an example of an FLP reconsideration decision.--

13 Appeal and Review Options in FSA’s Informal Appeals Process (Continued)

B Options to Give Participants in Reconsideration Decisions

When notifying a participant of an adverse reconsideration, use the applicable language in paragraph 14 to provide the right to appeal and request decision according to the following table.

IF the reconsideration decision is made by...	THEN provide the right to...
COC	appeal to STC, mediation, and appeal to NAD.
*--STO employee (not FLO, FLM, SFLO, or SED)	
FLO	mediation and appeal to NAD.
FLM	
SED	
Exception: SED relief determinations have no review or appeal rights.	
SFLO--*	
STC	

C Options to Give Participants in Appeal Decisions

When notifying a participant of an adverse appeal decision, use the applicable language in paragraph 14 to provide the right to appeal and request mediation according to the following table.

IF adverse appeal decision is made by...	THEN provide the right to...
COC	appeal to STC, mediation, and appeal to NAD.
STC	mediation and appeal to NAD.

Exceptions: Do **not** provide the right to mediation if FSA and the participant have previously mediated the issue or otherwise completed mediation.

For NRCS Title XII determinations, follow Part 4.

14 Mandatory Language to Insert in Adverse Decision Letters**A Language Requirements**

The applicable **mandatory** language in subparagraphs B through F shall be used, as applicable pursuant to paragraph 13, in **all** adverse decision letters.

Exceptions: For farm loan servicing actions, the forms and exhibits provided in pertinent FLP directives or regulations **must** be used when notifying participants of adverse decisions.

For NRCS * * * determinations, follow Part 4.

Exhibit 8 provides examples of some decisions made by various FSA officials or committees.

B Appeal to COC

The following language shall be used, as applicable pursuant to paragraph 13:

“You may appeal this determination to the County Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the County Committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you appeal this determination to the County Committee, you may later appeal an adverse determination of the County Committee to the FSA State Committee or the National Appeals Division. To appeal, write to the County Committee at the following address and explain why you believe this determination is erroneous. (*Insert COC address.*)”

14 Mandatory Language to Insert in Adverse Decision Letters (Continued)**C Reconsideration**

The following language shall be used, as applicable pursuant to paragraph 13:

*--“You may request that the (*insert COC, FLO, FLM, SED, SFLO, or STC, as applicable*) reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice according to FSA’s appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing with (*insert COC, FLO, FLM, SED, SFLO, or STC, as applicable*) that you or your representative may attend personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to (*insert STC or NAD, as applicable*). To request reconsideration, write to (*insert COC, FLO, FLM, SED, SFLO, or STC, as applicable*) at the following address and explain why you believe--* this determination is erroneous. (*Insert applicable address.*)”

D Appeal to STC

The following language shall be used, as applicable pursuant to paragraph 13:

“You may appeal the County Committee’s determination to the State Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the State Committee, you have the right to an informal hearing that you or your representative may attend either personally or by telephone. If you choose to appeal to the State Committee, you may later appeal the determination of the State Committee to the National Appeals Division. If you appeal an initial decision of a County Committee to the State Committee, you waive your right to reconsideration by the County Committee of that decision. To appeal, write to the State Committee at the following address and explain why you believe this determination is wrong. (*Insert STC address.*)”

14 Mandatory Language to Insert in Adverse Decision Letters (Continued)

--E Mediation--

States **without** a USDA Certified State Mediation Program shall use the following:

“Mediation is available as part of FSA’s informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the timeframe in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address. *(Insert SED address.)*” * * *

States **with** a USDA Certified State Mediation Program shall use the following:

“Mediation is available as part of FSA’s informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the timeframe in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the *(insert State name)* State mediation program at the following address and provide a copy of your request for mediation to FSA. *(Insert mediation program address or other address as agreed on by the State certified mediation program and FSA State Office.)*” * * *

16 Time Limits for Issuing Adverse Determinations and Filing Requests for Appealability, Reconsideration, Mediation, or Appeal (Continued)**D Requests Not Timely Filed**

[7 CFR 780.15(d)] Notwithstanding the time limits in paragraphs (b) and (c) of this section, a request for an appealability review, reconsideration, mediation, or appeal may be accepted if, in the judgment of the reviewing authority with whom such request is filed, exceptional circumstances warrant such action. A participant does not have the right to seek an exception under this paragraph. FSA's refusal to accept an untimely request is not appealable.

--SED, FLM, SFLO, FLO, COC, or STC as reviewing authority, may consider a request for-- appealability, appeal, mediation, or reconsideration that is **not** filed timely if the circumstances warrant such action. The reviewing authority **must** document, in writing, the reasons for accepting a late-filed request.

Note: Even though requests for mediation may be made by participants directly to the State mediation program according to paragraph 13, it remains FSA's responsibility to determine if the request for mediation was timely filed. FSA's authority to render a decision about the timeliness of any request for mediation is **not** delegated to any State mediation program. FSA reserves the right to refuse to accept any untimely request for mediation.

See subparagraph F for instructions on processing late-filed requests for appealability, reconsideration, mediation, or appeal.

See paragraph 25 for cases **not** meeting the late-file policy of subparagraph F.

16 Time Limits for Issuing Adverse Determinations and Filing Requests for Appealability, Reconsideration, Mediation, or Appeal (Continued)

E Misdirected Requests

If a request for appealability, reconsideration, mediation, or appeal is filed with an improper reviewing authority:

- acknowledge the request
- advise the appellant that the request is being referred to the proper authority for consideration.

Unless there is documentary evidence to show that the misdirected request for appealability, reconsideration, mediation, or appeal was itself **not** timely, do **not** deny appealability requests or requests for reconsideration, mediation, or appeal because of misdirection. Appealability decisions, reconsideration, mediation, or appeal should **not** be denied merely because the misdirection delayed receipt by the proper reviewing authority.

F Processing Late-Filed Requests for Appealability, Reconsideration, or Mediation or Appeal

Subparagraph D specifies that a participant does **not** have a right to an exception to the time limit set for filing requests for appealability, reconsideration, mediation, or appeal within FSA. FSA's authority and discretion, under subparagraph D and 7 CFR 780.15(d), to accept late filed requests, is **not** and should **not** be considered to be a relief determination giving rise to further appeals. An FSA decision **not** to accept a late-filed FSA appeal is final and **not** subject to further review or appealability review.

--If written requests for appealability, reconsideration, mediation, or appeal are received 1 to 14 calendar days beyond the time period specified in subparagraph B and 7 CFR 780.15,-- the FSA reviewing authority shall notify the participant that the request (for appealability, reconsideration, mediation, or appeal) was 1 of the following:

- **not** filed timely with FSA and; therefore, will **not** be further processed (Exhibit 10)
- considered **not** timely filed, but that the participant has 7 workdays to provide FSA a written explanation of why the late-filed request (for appealability, reconsideration, mediation, or appeal) should be accepted for further processing (Exhibit 11)
- accompanied by a satisfactory written explanation for such late-filing will be processed (paragraph 17).

--If written requests for appealability, reconsideration, or appeal are received more than 14 calendar days beyond the time period specified in subparagraph B and 7 CFR 780.15, follow paragraph 25.--

24 **Withdrawing FSA Adverse Decisions (Continued)**

B Examples of Withdrawing Decisions

The following table describes some instances when FSA adverse decisions may be withdrawn. The table is **not** intended to include all situations.

IF an adverse decision was rendered by...	THEN the decision may be withdrawn by...	IF...
COC employee	COC employee (same person who issued adverse decision), CED, COC, SED, STC, or National Office official	<ul style="list-style-type: none"> • information becomes available to show that the adverse decision is seriously flawed or was based on incorrect information • the decision clearly does not conform with program procedure or regulations • it would be in FSA’s best interest to withdraw the decision and reissue a decision that is factually correct and that is according to prescribed procedure or regulations.
COC	COC, authorized FSA appeal representative, SED, STC, or National Office official	
DD	DD, Farm Loan Chief, SED, STC, FSA appeal representative, or National Office official	
FLC	Farm Loan Chief, authorized FSA appeal representative, or National Office official	
FLP Specialist	FLP Specialist, authorized FSA appeal representative, or National Office official	
FLO	FLO, FLM, authorized FSA appeal representative, or National Office official	
FLM	FLM, authorized FSA appeal representative, or National Office official	
SED	SED or National Office official Exception: SED equitable relief determinations may be withdrawn only by SED.	
--SFLO	SFLO, authorized FSA appeal representative, or National Office official--	
STC	STC, authorized FSA appeal representative, or National Office official	
National Office official	National Office official or authorized FSA appeal representative	

25 Finality of Administrative Decisions and Reopening FSA Appeals Cases**A Finality of Administrative Decisions**

[7 CFR 780.15] To the extent practicable, no later than 10 business days after an agency decision maker renders an adverse decision that affects a participant, FSA will provide the participant written notice of the adverse decision and available appeal rights.

Notwithstanding the time limits of 780.15(b) and (c), a participant's request for appealability review, reconsideration, or appeal by FSA may be accepted if, in the judgment of the reviewing authority with whom such request is filed, exceptional circumstances warrant such action. A participant does not have the right to seek an exception under 780.15(d). FSA's refusal to accept an untimely request is not appealable or subject to appealability review.

[7 CFR 780.16] To the extent practicable, no later than 30 calendar days after an agency decision becomes a final administrative decision of USDA, FSA will implement the decision.

[7 CFR 11.13] A final determination of the National Appeals Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

An applicant may not seek judicial review of any agency adverse decision appealable under 7 CFR part 11 without receiving a final determination from the Division pursuant to the procedures of 7 CFR part 11.

FSA's appeal regulations provide for the finality of FSA decisions. NAD Rules of Procedure provide for finality of NAD determinations.

Various rules and regulations require FSA to act and issue decisions within prescribed timeframes. Generally, upon receiving a decision, a participant has 30 calendar days in which to exercise review, appeal, and mediation options that may be available. If a participant chooses, for whatever reason, to not exercise an available option of review or appeal, the FSA decision becomes administratively final.

If a participant elects **not** to appeal an FSA decision to either FSA or NAD, the participant **cannot** later seek judicial review of the matter.

--Follow subparagraph 16 F for processing late-filed requests for appealability, reconsideration, mediation, or appeal received 1 to 14 calendar days after the deadline mentioned in subparagraph 16 B and 7 CFR 780.15.--

Part 3 Field Office Actions

31 Handling Requests for Reconsideration

A Submitting Requests for Reconsideration

[7 CFR 780.7(a)] A request for reconsideration under this part must be submitted in writing by a participant or by a participant's authorized representative and addressed to the FSA decision maker as may be instructed in the adverse decision notification.

B Waiving Reconsideration

[7 CFR 780.7(b)] A participant's right to request reconsideration is waived if, before requesting reconsideration, a participant has:

- (1) requested and begun mediation of the adverse decision;**
- (2) appealed the adverse decision to a higher reviewing authority in FSA; or**
- (3) appealed to NAD.**

[7 CFR 780.7(c)] Provided a participant has not waived the right to request reconsideration, FSA will consider a request for reconsideration of an adverse decision under these rules except when a request concerns a determination of NRCS appealable under the procedures in 780.11, the decision has been mediated, the decision has been previously reconsidered, or the decision maker is the Administrator, Deputy Administrator, or other FSA official outside FSA's informal appeals process.

***--Reconsideration is available to a participant only once, for any COC, FLM, SFLO, FLO,--* SED, or STC decision. FSA may either on its own volition or in response to an agreement made in mediation, agree to allow a reviewing authority to further consider additional or new information generated in mediation. Participants have **no** right to reconsideration, mediation, or appeal to NAD of a COC employee's determination.**

31 Handling Requests for Reconsideration (Continued)

C Withdrawn Reconsiderations

[7 CFR 780.7(d)] A request for reconsideration will be deemed withdrawn if a participant requests mediation or appeals to a higher reviewing authority within FSA or requests an appeal by NAD before a request for reconsideration has been acted upon.

D Federal Rules of Evidence

[7 CFR 780.7(e)] The Federal Rules of Evidence do not apply to reconsiderations. Proceedings may be confined to presentations of evidence to material facts, and evidence or questions that are irrelevant, unduly repetitious or otherwise inappropriate may be excluded.

E Reconsideration Decisions

[7 CFR 780.7(f)] The official decision on reconsideration will be the decision letter that is issued following disposition of the reconsideration request.

[7 CFR 780.7(g)] A decision on reconsideration is a new decision that restarts the applicable time limitation periods under 7 CFR 780.15 and part 11 of this title.

Follow subparagraph 13 B for adverse reconsideration decisions.

114 Misdirected NAD Appeal Determinations**A Unofficially Received NAD Appeal Determinations**

For the reasons discussed in paragraph 113, FSA offices and employees are prohibited from relying on or using any copy of a NAD appeal determination that was **not** received from NAD by FSA according to paragraph 113.

If an FSA employee or office receives a copy of what appears to be a NAD appeal determination that did **not** come from ALS, the employee or office shall:

- immediately contact the State Office and confirm whether the copy is an officially received copy
- disregard the document if it is determined **not** to have been officially received by FSA according to paragraph 113
- not further distribute unofficial copies of the unofficial document.

B Questionable Documentation

FSA has an agreement with NAD about receiving NAD appeal determinations. If an FSA employee or office receives what appears to be a NAD appeal determination, retain **all** envelopes and any other material for further review by ALS. Contact ALS, by phone at 202-690-3297, immediately.

115 Receiving, Disseminating, Analyzing, and Processing Hearing Officer Determinations

A Receiving NAD Hearing Officer Determinations and Actions Required

The following table summarizes actions State Offices shall take when official copies of NAD hearing officer determinations are received from ALS according to paragraph 113.

<p>IF the NAD determination or appeal summary received in a State Office from ALS shows...</p>	<p>THEN the State Office receiving the determination shall...</p>
<p>an incorrect State name</p>	<p>immediately contact ALS by telephone at 202-690-3297 and advise that an incorrect State name was entered. If the State Office knows or has a guess of the correct State name for the appeal case, advise ALS accordingly.</p>
<p>an incorrect Deputy Administrator designation</p>	<ul style="list-style-type: none"> • pen and ink the correct Deputy Administrator designation (such as DAFP, DAFLP, or DACO). Advise ALS by telephone at 202-690-3297 of the correct Deputy Administrator designation <p>Note: When contacting ALS about any NAD appeal determination, always provide the NAD case number.</p> <ul style="list-style-type: none"> • distribute copies of the NAD determination to field offices, employees, and other agencies who should receive a copy of the *--determination, such as County Office, FLM, SFLO, DD,--* State Office FLC’s and program specialists, and NRCS, if the appeal was of an NRCS decision appealed to FSA • be alert and advise recipients of copies of the hearing officer determination to be alert to potential appellant-filed requests for NAD Director review so that an appropriate FSA response can be timely filed by FSA.
<p>the correct State name and Deputy Administrator designation and an indication from ALS that FSA’s decision was either “upheld” or “not in error”</p>	<ul style="list-style-type: none"> • distribute copies of the NAD determination to field offices and employees, and other agencies, such as County Office, FLM, *--SFLO, DD, State Office FLC’s and program specialists, and--* when appropriate, NRCS • be alert and advise recipients of copies of the hearing officer determination to be alert to potential appellant-filed requests for NAD Director review so that an appropriate FSA response can be timely filed by FSA.

115 Receiving, Disseminating, Analyzing, and Processing Hearing Officer Determinations (Continued)

A Receiving NAD Hearing Officer Determinations and Actions Required (Continued)

<p>IF the NAD determination or appeal summary received in a State Office from ALS shows...</p>	<p>THEN the State Office receiving the determination shall...</p>
<p>the correct State name and Deputy Administrator designation and an indication from ALS that FSA’s decision was “reversed,” or was “in error”</p>	<ul style="list-style-type: none"> • distribute copies of the NAD determination to field offices and employees, and other agencies who should receive a copy, such *--as County Office, FLM, SFLO, DD, State Office FLC’s,--* program specialists, and NRCS • be alert and advise recipients of copies of the hearing officer determination to be alert to potential appellant-filed requests for NAD Director review so that an appropriate FSA response can be timely filed by FSA <p>Note: In cases where FSA’s decision was reversed or found to be in error, either in part or entirely by a NAD hearing officer, FSA officials must coordinate any response to appellant-filed requests for NAD Director review according to paragraph 117.</p> <ul style="list-style-type: none"> • within 5 workdays, prepare an analysis according to paragraph 116 in anticipation of being contacted by ALS about whether FSA should seek NAD Director review of the hearing officer determination. <p>Note: Offices shall not wait until they are contacted by ALS to begin work on the analysis. Additionally, ALS may require a complete copy of the administrative record including documents submitted by appellant to NAD in connection with the appeal. Offices shall be prepared to send, by overnight mail or FAX, requested documents to ALS immediately upon hearing from ALS (paragraph 116).</p>

B NAD Director Review Requests

It is imperative that requests for NAD Director review are handled promptly according to paragraph 117 and Section 4.

116 Hearing Officer Determinations Finding Error or Reversing FSA**A Required Analysis of NAD Hearing Officer Determinations Reversing FSA or Finding Agency Error**

In most cases, the only information on a case that is available to ALS or the Administrator is information that is contained in the NAD hearing officer determination. In view of this, and because FSA has a limited amount of time (15 workdays from date of receiving the hearing officer determination) to seek NAD Director review, FSA offices and employees **must** be prepared to assist ALS and the Administrator in meeting the NAD Director review request deadline (paragraph 112).

Within 5 workdays of receiving a NAD hearing officer determination reversing FSA's determination or finding agency error, the State Office shall perform a written analysis of the hearing officer determination. The analysis shall include, but is **not** limited to:

- the NAD case number
- the case background, including important and relevant facts
- a detailed discussion and input about each of the hearing officer's findings, analysis, and conclusions, by number, pointing out accuracies and inaccuracies
- an estimate of the total dollar amount of program benefits at issue
- a summary recommendation of whether or not a request for NAD Director review should be made by the Administrator; the recommendation **must** be accompanied by an explanation.

B Copies to ALS

Do **not** submit a copy of the complete appeal case file to ALS unless ALS requests the file. However, have a copy ready to send to ALS immediately, if ALS requests a copy.

Note: The provisions of this paragraph and the need for an analysis of NAD hearing officer determinations, that reverse FSA or find FSA error, apply to all FSA decisions, including National Office decisions. While State Offices should advise ALS if the FSA decision appealed was the result of a National Office decision, such as Deputy Administrator, the State Office remains responsible for providing the required analysis of the case to ALS, unless other arrangements have been approved.

The analysis and recommendation shall be considered **confidential** internal FSA communications, **not** subject to release outside FSA, without express written ALS concurrence.

--Example Determination Letter for an FLM/SFLO Reconsideration--

The following example is for illustration purposes only and is not intended to be an accurate description of program or eligibility provisions.

Mrs. Brenda Op Op Farms Partnership HCR 3 Box X Anywhere, PA 44865	Date
Dear Mrs. Op:	
This letter is in response to the request for reconsideration you filed on behalf of Op Farms Partnership with Ima Employee, Farm Loan Manager, regarding a denial of primary loan servicing and the Farm Service Agency's (FSA's) plan to accelerate farm loans.	
BACKGROUND	
In June 2008, Op Farms Partnership's direct loan payments to FSA became 90 days past due. FSA advised Op Farms Partnership of the availability of primary loan servicing options such as consolidation, rescheduling, reamortization, limited resource rates, deferral, and writedown. Op Farms Partnership timely filed an application for loan servicing. In October 2008, FSA determined Op Farms Partnership eligible for loan servicing. FSA planned to reschedule Op farms Partnership's direct FSA debt and obtain a lien on all assets (partnership and personal). Op Farms Partnership accepted FSA's terms in November 2008. Soon thereafter, Op Farms Partnership and Brenda Op objected to the condition that it offer all assets (partnership and personal) for lien. Op Farm Partnership argued that offering all assets to FSA would prevent it from obtaining future credit to operate its farm. In December 2008, FSA withdrew its offer of loan servicing because Op Farms Partnership would not agree to the terms of FSA's offer of loan servicing. On or about this same time, FSA became aware that Op Farms Partnership was delinquent in its FSA guaranteed loan payments. In January 2009, OP Farms Partnership requested that FSA reconsider its decision.	
ISSUES	
1. Considering Op Farms Partnership's delinquent guaranteed loan payments, is Op Farms Partnership's farm plan feasible?	
2. Does Op Farms Partnership's assertion that it is unable to pay guaranteed loan payments due to the poor economy show error in FSA's decision?	
3. Is Op Farms Partnership's unwillingness to offer a lien on all assets relevant to its eligibility for primary loan servicing?	
GENERAL PROGRAM PROVISIONS	
Regulations at 7 CFR Part 766, Subpart C, govern Loan Servicing Programs. A borrower must have at least a 100 percent debt servicing margin (income and expenses at least equal) for FSA to consider primary loan servicing.	

--Example Determination Letter for an FLM/SFLO Reconsideration (Continued)--

Mrs. Brenda Op and Op Farms Partnership
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OP FARMS PARTNERSHIP'S POSITION

Op Farms Partnership does not dispute that it is delinquent on its guaranteed loans. However, Op Farms Partnership asserts that it is the poor economy that prevents it from making timely payments. Op Farms Partnership recognizes that its inability to make timely payments adversely affects its ability to develop a feasible plan. Op Farms Partnership also argued that requiring it to offer a lien on all assets would prevent it from getting needed credit from private lenders to operate its farm.

FINDINGS OF FACT

1. Op Farms Partnership's two direct farm loans became at least 90 days past due effective June 2008. (Agency Record (AR) 6 – 16)
2. On June 25, 2008, FSA sent Op Farms Partnership Form FSA-2510, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due. (AR 17)
3. Following receipt of Op Farms Partnership's loan servicing application, FSA prepared a Debt and Loan Restructuring System (eDALR\$) Analysis Report. FSA completed eDALR\$ assuming that Op Farms Partnership's guaranteed loan payments were current. The eDALR\$ report showed Op Farms Partnership had a \$14,182 cash flow margin. (AR 59 – 86)
4. FSA sent Op Farms Partnership form FSA-2517, Offer of Primary Loan Servicing. The form indicated FSA planned to reschedule both direct loans and take a lien on all partnership and personal assets. FSA subsequently received Form FSA-2518, Acceptance of Primary Loan Servicing, showing Op Farms Partnership agreed to comply with the terms of FSA's offer within 45 days. (AR 37- 41)
5. Op Farms Partnership wrote FSA objecting to offering all assets for lien. The letter set off a series of correspondence culminating with FSA withdrawing its offer of primary loan servicing. (AR 47 – 59)
6. FSA sent Op Farms Partnership form FSA-2521, Denial of Primary Loan Servicing and Intent to Accelerate.
7. Op Farms Partnership is approximately \$30,000 past due on its guaranteed loan payments. (AR 25)

ANALYSIS

Considering Op Farms Partnership's guaranteed loan payments, Op Farms Partnership's farm plan is not feasible. When FSA first calculated Appellant's eDALR\$, Op Farms Partnership had a positive cash flow of \$14,182 based on the assumption that all debts were current. (Finding number 3) Factoring in the \$30,000 past due guaranteed loan payments (finding number 7), Op Farms Partnership has a -\$15,817 cash flow, which indicates a debt service margin less than 100 percent. Without a feasible plan of operation, Op Farms Partnership is not eligible for primary loan servicing.

Op Farms Partnership's assertion that it was unable to make timely loan payments on its guaranteed loan due to the poor economy does not show FSA error. The requirement to have at least 100 percent debt service margin is without exception (7 CFR §766.105(b)).

Op Farms Partnership's objection to offering a lien on all assets is not relevant to its eligibility for primary loan servicing. The requirement for additional security applies only to borrowers eligible for restructure. (7 CFR §766.112). FSA is not considering Op Farms Partnership for debt restructure at this time.

--Example Determination Letter for an FLM/SFLO Reconsideration (Continued)--

Mrs. Brenda Op and Op Farms Partnership
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DETERMINATION

The denial primary loan servicing was factually correct and in accordance with regulations.

If you believe that my decision is erroneous, you have the following options:

Mediation

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address: *(Insert SED address or Mediation Program address, as applicable.)*

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. *(Insert applicable NAD address.)*

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

(Insert name)

Farm Loan Manager/Senior Farm Loan Officer

