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 15

Approved by: Deputy Administrator, Farm Loan Programs

Chris P. Beyerhelm

Amendment Transmittal

A Reasons for Amendment

Subparagraph 100 B has been amended to require Exhibit 28.5 be sent and SED concurrence obtained before notifying borrowers of nonmonetary default.

Subparagraph 100 C has been amended to require a "Lack of Good Faith" determination be made by a State's OGC for loan servicing to be denied.

Exhibit 28.5 has been added to provide the borrower with an opportunity to correct or provide evidence to resolve a potential nonmonetary default.

Page Control Chart		
TC	**Text**	**Exhibit**
5	6-13, 6-14	1, pages 1, 2 28.5, page 1 (add)

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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)(1) through (b)(12) of this section** (subparagraph 117 A)**."**

The text "**paragraphs (b)(1) through (b)(12) of this section"** refers to 7 CFR 765.205 (b)(12). The non-bold 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.

IF the area of concern is about…	THEN see…
appeals and mediation	1-APP.
civil rights compliance and administration for FSA programs	18-AO.
common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX	1-CM.
direct loan making	3-FLP.
direct loan special servicing and inventory property management	5-FLP.
employee development and training	6-PM.
environmental requirements	1-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	3-FI.
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
State and county records management	25-AS.

Note: RD Instruction 1940-G must be used along with 1-EQ.

B Helpful Links

The Helpful Links web site at
https://indianocean.sc.egov.usda.gov/flp/InformationalLinks?Action=HelpfulLinks&caller=index
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.

Note: Additional State supplements may:

- **not** be issued to simply state verbatim, policies already established in the national handbook
- be issued:
  - when the national handbook does not provide complete guidance
  - to provide additional guidance for employees with limited experience
  - when State law requirements are not specifically addressed in the national handbook.--*

SED's shall:

- issue required supplements, and any additional supplements, according to 1-AS, paragraph 216
- obtain approval of State supplements according to 1-AS, paragraph 220.

3 FLP Forms

A Form References

Except as provided in this paragraph, this handbook refers to forms according to the new forms numbering system that becomes 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.

Form Number	Form Title
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://intra3.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

Forms do not include preprinted text for the Notary Acknowledgement because numerous States have State-specific laws establishing required text. Therefore, a fillable text area is provided under the "Acknowledgement" heading. SED's shall issue State supplements providing the appropriate Notary Acknowledgement text to be inserted.

D Applicant and Borrower Signatures

Forms completed by applicants or borrowers include a signature box to accommodate multiple signatures. Separate signature lines are not provided because the number of signatures required for an entity applicant or borrower cannot be determined in advance. Instructions for completing forms will provide guidance to applicants or borrowers on signature requirements.

Forms prepared by FSA for the applicant or borrower's signature include a fillable area instead of preprinted signature lines. County Offices shall insert a signature line and the name of each applicant, borrower, entity member, or other individual required to sign the form.

SED's shall issue a State supplement addressing State-specific signature requirements.

3 FLP Forms (Continued)

E State Office Modified National Forms

State and County Offices shall use national forms unless their use is prohibited by State law. If modification to a national form is required to comply with State law, the State Office shall submit a copy of the national form showing the necessary modifications, through the State Directives Management System.

Note: State-specific forms based on national forms will be made available on the FFAS Employee Forms/Publications Online Website at **http://intra3.fsa.usda.gov/dam/ffasforms/forms.html** with the same form number as the national form, followed by the State acronym.

F State-Created Forms

State Offices may create forms, as necessary, when a national form is not available. State-created forms shall be assigned a 5-digit number establishing linkage to the appropriate FLP handbook, followed by the State acronym, according to the following.

IF the form pertains to…	THEN the form number shall be…
more than one FLP handbook	FSA-2000-1 ST, FSA-2000-2 ST, FSA-2000-3 ST, etc.
1-FLP	FSA-2100-1 ST, FSA-2100-2 ST, FSA-2100-3 ST, etc.
2-FLP	FSA-2200-1 ST, FSA-2200-2 ST, FSA-2200-3 ST, etc.
3-FLP	FSA-2300-1 ST, FSA-2300-2 ST, FSA-2300-3 ST, etc.
4-FLP	FSA-2400-1 ST, FSA-2400-2 ST, FSA-2400-3 ST, etc.
5-FLP	FSA-2500-1 ST, FSA-2500-2 ST, FSA-2500-3 ST, etc.
6-FLP	FSA-2600-1 ST, FSA-2600-2 ST, FSA-2600-3 ST, etc.

Notes: "ST" represents the appropriate State acronym.

Before using State forms imposing information collections on 10 or more persons per year, State Offices shall work with the National Office to obtain OMB approval.

SED shall issue State supplements, as applicable, to address the use of all State-specific and State-created forms.

Exception: State-specific FSA-2029's do not require State supplement issuance.

*--G Other Sources of Forms

FSA does **not** provide forms that establish an agreement or contract between applicants/borrowers and third parties only, such as leases. Advise applicants/borrowers to obtain these forms from other sources, such as Extension Service, on-line services, attorney, etc.--*

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 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.

***--**Except as provided in subparagraph C, authority for granting approval of an exception is held only by the Administrator and DAFLP.

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

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

B Submitting Exception Requests

For exception requests that cannot be approved under subparagraph C, SED must submit an exception request to DAFLP by e-mail to **RA.dcwashing2.FSA-AdmException**. The e-mail subject should read "Administrator's Exception to (cite 4-FLP subparagraph) – (Borrower's Name and State)." An **encrypted** 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 interest of the Government
- additional information that SED thinks will be needed to review the case.

C Limited Exception Authority Delegated to SED

SED is authorized to approve exception to the following specific requirements:

- subparagraph 99 E *** * ***, for real estate surface leases greater than 3 or 5 years for either of the following:
  - nonfarm purposes, such as wind turbines or communication towers
  - unused agriculture property, such as milk barns, vacant houses, or real farm property located a significant distance from the primary operation or not utilized in the primary operation

    Example: 20 acres of pasture for a crop farmer.

•*****--paragraph 117 to permit:

- real estate subordination for:
  - nonlending purposes, such as wind turbines or communication towers
  - refinancing purposes
- releasing and refiling lien instruments instead of subordination.**--***

All other applicable requirements for the transaction set forth in this handbook must be met, or the request submitted to the National Office according to subparagraph B.

County Offices may submit requests by e-mail to SED with a carbon copy to FLC. The request must include the status of the account including all information outlined in subparagraph B.

Notes: The account status information must be **encrypted** if sent by e-mail.

SED's may notify County Offices of approval by e-mail.

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

6-15 (Reserved)

Part 2 (Reserved)

16-30 (Reserved)

Part 3 Limited Resource Loans

31 Reviewing a Borrower's Account

A Overview

This Part describes the process for routine interest rate review of limited resource loans.

B Borrower Account Reviews

[7 CFR 765.51(a)] A borrower with limited resource interest rate loans is required to provide the Agency annually 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 (1-FLP, paragraph 263).

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

Note: See 1-FLP, Part 8, Section 5 for more information on the year-end analysis.

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 32 A
- borrower makes a request to be removed from limited resource rates according to subparagraph 32 B
- borrower defaults on the loan agreements according to subparagraph 32 C.

*--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 Limited Resource Review workflow in DLS.

When a review is completed and no change is to be made to the borrower's interest rate, a Limited Resource workflow will be processed in DLS. The authorized agency official will document the review in the applicable FBP Credit Presentation.--*

32 Increasing and Decreasing Interest Rates

A 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 borrowers 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 borrowers 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 borrowers 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.

32 Increasing and Decreasing Interest Rates (Continued)

B 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.

C Loan Agreement Default

[7 CFR 765.51(c)] Except as provided in paragraph (d) (subparagraph D) **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)**.**

D 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.

33 Borrower Notification

A 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 20. 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 regular mail, or hand delivered, and a copy must be placed in**--
the borrower's 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.

B 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 20, the borrower will receive the lower of the 2 rates.

34-45 (Reserved)

Part 4 Borrower Graduation

46 Graduation Requirements

A General

The direct FLP is * * * a temporary source of credit. By statute, FSA periodically conducts graduation reviews to assess the borrower's ability to graduate to commercial credit. The borrower must provide FSA with all the information requested for the reviews. Borrowers whose financial condition has improved to a point they can refinance their debt with commercial credit will be asked to seek other financing and partially or fully payoff their *--FSA debt. A graduation of all program loans is considered a full graduation even though the borrower may still have NP's remaining.

The requirements of this part apply only to program borrowers, except CL-only borrowers, and borrowers with a combination of program loans and NP's.

B CL-Only Borrowers

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

Borrowers who have other program loans outstanding in addition to CL will be subject to graduation requirements on the other program loans only.**--***

C Graduation Criteria

[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.

46 Graduation Requirements (Continued)

C Graduation Criteria (Continued)

FSA will review provisions of individual promissory notes to ensure that graduation language is included. Some older promissory notes do not contain graduation clauses. These loans are not subject to the same graduation requirements.

D Reminding Borrowers to Graduate

--**Every January, FSA will send a letter similar to Exhibit 21 to all borrowers to remind them**-- of their obligation to graduate, if their financial condition improves to the point that they qualify for commercial credit.

Note: Borrowers who have only CL or NP loans will **not** be sent graduation reminder letters.

47 Graduation Review Process

A Obtaining Underwriting Criteria From Local Lenders

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 Exhibit 22, with any additional comments in narrative form, and placed in the county operational files FLP 2-2 “Agriculture Lender Contacts” and FLP 4-2 “Graduation”, according to 25-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 D

- lender’s rates, terms, fees, loan conditions, and policies for annual operating, term operating, and real estate loans.

47 Graduation Review Process (Continued)

B Obtaining Financial Data

[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.

The borrower will provide upon agency request, a current balance sheet, actual financial performance, and a projected farm budget at least every 2 years. Except for borrowers with only youth loans, only CL's or NP's, judgments, or CNC's, or whose accounts are flagged "BAP", "ACL", "FAP", "CAP", or otherwise as determined by OGC, the authorized agency official will send Exhibit 23 and the required forms to request current financial information from the borrower to evaluate the potential for refinancing to commercial credit. Exhibit 23 will be sent twice if the borrower does not supply the required information. The first time Exhibit 23 is sent, the borrower will be given 30 calendar days to supply the required information. The second Exhibit 23 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. If the borrower has provided the financial information required to conduct a year-end analysis, or current financial data is available for other reasons, this same information may be used in the graduation review process. The borrower's financial information will be used to classify accounts according to 1-FLP, Part 8.

C Screening Borrowers

At least every 2 years, the authorized agency official will conduct electronic screening of all borrowers using the Graduation Review Workflow in DLS. All borrowers classified as a "1" or "2" (commercial or standard) are required to be screened and reviewed in DLS on an
--**annual basis. Borrowers with limited resource interest rates, youth loan only, nonprogram only, judgment, CL, and CNC accounts, will be excluded from graduation regardless of**--
the classification code. If the financial information provided indicates that the borrower cannot meet local underwriting criteria, the authorized agency official shall 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 Graduation 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 D.

47 Graduation Review Process (Continued)

D 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 24
- send Exhibit 24 to commercial lenders.

Exhibit 24 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 24 and sends it to a lender, a copy of Exhibit 24 will be sent to the borrower with a cover letter with language similar to:

> "Enclosed, please find Exhibit 24. This exhibit has been sent to several lenders in the area so they could review your financial information and consider refinancing your FSA account."

E 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.

47 Graduation Review Process (Continued)

E 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 25 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.

F Transferring and Assigning 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.

Lien instruments may be assigned to the new lender by SED with the concurrence and as directed by Regional OGC.

48 Borrower Noncompliance of Graduation

A Borrower Noncompliance 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 noncompliance, FSA's intent to accelerate the loans, 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 the acceleration and liquidation process.

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, cash, 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.

When FSA receives a payment, the authorized agency official must record and process the payment according to 3-FI. Any subsequent correction of applications will be processed using FSA-2429 according to 3-FI.

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

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;

(4) Cash proceeds of insurance claims received on Agency security, if not being used to repair or replace the 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 (Continued)

E Canceling Undisbursed Loan Funds

After a loan has been closed, FSA-2425 will be used 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 FSC, FLOO at the following address:

USDA, FSA, FSC, FLOO, FC-533
PO BOX 200003
--ST LOUIS MO 63120-0003.--

The original FSA-2425 with the borrower's signature will be stapled to the original promissory note in the locking-type, 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 FLOO.--*

FSC, FLOO's record of the loan will indicate the loan amount was reduced after deobligation. Keeping the 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 FLP direct loans 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 FSC, FLOO 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.

62 Regular Payments (Continued)

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-2060 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-2060 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-2060. Only SED's may approve this application of funds. The authorized agency official will forward the completed FSA-2060 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-2060 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) Administrative costs and protective advances plus interest;
(b) Deferred non-capitalized interest;
(c) Accrued deferred interest;
(d) Interest accrued to date of payment; and
(e) Loan principal.

B Distribution

Distribute payments according to the following.

IF the loan...	THEN...
number is identified correctly on the payment information	FSC, FLOO 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.

C Notification of Account Activity and Status

***--**FSC, FLOO 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 FSC, FLOO 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.

- 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.--*

B Supervised Bank Accounts

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.

C Overpayment

[7 CFR Part 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.

The authorized agency official sends any borrower requests for refund of overpayments to FSC, FLOO and forwards refunds issued by FSC, FLOO to the borrower.

65 Final Payments (Continued)

D Underpayment

[7 CFR Part 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.

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) Cash;
(ii) U.S. Treasury check;
(iii) Cashier's check; or
(iv) 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 and DLS, and all information in the borrower's file.

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 25-AS, paragraph 89. Any assignments held by FSA will be terminated using Exhibit 27 and satisfaction of liens will be recorded on FSA-2433.

When the final payment of an insured farm ownership account is paid in full and the note and security instrument are held by the lender, FSA-2434 will be completed and sent to the borrower with the promissory note marked "Paid in Full". SED will be consulted for consultation with OGC if the security is under a trust assignment or declaration of trust.

65 Final Payments (Continued)

G Final Payoff * * * Letter

Within 30 calendar days of all proceeds being credited to the account by the Finance Office and the release of all security, the County Office will forward a letter (Exhibit 34) to the former borrower. This letter acknowledges the success of the relationship of the farmer and FSA. It is **not** to be sent to present borrowers, and it will not mark the end of an unsuccessful venture or difficult time period. Therefore, this letter should **not** be used if the payoff was related to:

- partial graduation
- bankruptcy
- offset
- voluntary conveyance
- foreclosure, judgment, or any other type of legal action
- *--debt settlement or Current Market Value Buyout--*
- any other circumstances in which the Agency thinks it would be inappropriate.

66-95 (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.

96 Servicing Policy (Continued)

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.

--**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.

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 the running record of the borrower's case file 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.

--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
- charged-off notes
- cost voucher documents
- court ordered or debt settlement documents
- promissory notes
- NRBRA's
- FSA-2543's
- suspension agreements.

***--Note:** Many of these documents are considered essential FLP records that require maximum protection and must be filed in locking-type, fire-resistant file cabinets, according to 25-AS, subparagraph 82 E.--*

--97 Maintaining Debt Instruments (Continued)--

B Conducting Yearly Debt Instrument Inventory

In March of each year, FSC, FLOO provides County Offices with RC 830A listing all borrowers who should have debt instruments maintained in the County Office.

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, NRBRA's, 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 coordinator's will send completed FSA-2446's to FLOO by:

  - FAX to:

    - ***--**314-679-6815 for States 01 through 32
    - 314-679-6816 for States 33 through 64--*****

  - mail to:

    USDA-FSA-FSC-FLOO
    PO Box 200003
    St. Louis, MO 63120

  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 4-1, "Reports" according to 25-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 25-AS.

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 the running case record.

C Obtaining New FSA-2028's

FSA obtains new FSA-2028's when:

- a security interest is taken in crops
- FSA obtains additional security
- 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 new FSA-2028 based on State law.

98 Maintaining * * * Security Instruments (Continued)

D 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.

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.

98 Maintaining * * * Security Instruments (Continued)

E 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.

F 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.

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) Noncompliance 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 FSA when making eligibility determinations for future requests for assistance and may adversely impact such requests;

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

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

(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.

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

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.

(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;

(d) The borrower has leased the security according to § 765.252(a)(2) (subparagraph E)**; and**

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

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

(e) 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 Security Leases

[7 CFR 765.252(a)] The borrower may lease real estate security provided the following conditions are met:

(1) The Agency approves the borrower's request;

(2) The term of consecutive leases does not exceed 3 years or 5 years if the borrower and the lessee are related by blood or marriage;

(3) The lease does not contain an option to purchase; and

(4) The requirements of § 765.253 have been met (subparagraph D)**.**

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 nonmonetary 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 Agency loans.

(1) For loans secured by real estate before December 23, 1985, the Agency has a security interest in any mineral rights the borrower has on the real estate pledged as collateral.

(2) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in any mineral rights if the mineral rights were included in an 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 subpart G of 7 CFR part 1940.

H Chattel Security Leases

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

FSA immediately notifies the borrower of nonmonetary 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 Borrower Noncompliance With Loan Agreements

A Documenting Noncompliance

To be eligible for any kind of FSA loan servicing options, the borrower must be in compliance with loan agreements. The authorized agency official will fully document a borrower's noncompliance (such as the failure to report using security proceeds) in the borrower's case file. Documentation must include, but is not limited to:

- type, nature, circumstances, and reasons for noncompliance
- any actions taken by the borrower to correct the noncompliance.

According to paragraph 99, FSA may deny loan servicing actions to a borrower who has a significant noncompliance history, even if the borrower later resolved the issues.

B Borrower's Noncompliance Notification

Borrowers in noncompliance will be given the opportunity to correct the matter whenever
***--**possible. The borrower will be contacted and provided the opportunity to explain the potential noncompliance using Exhibit 28.5. Any response received from the borrower will be documented in the case file and any materials will be included in the case file. The authorized agency official will review the borrower's response and determine if the potential noncompliance has been satisfactorily resolved. If the issue is resolved, the case file will be documented and no further action will be taken.

If the authorized agency official determines that the potential noncompliance has not been resolved, the account will referred to SED for concurrence. FSA-2551 will be prepared by the local office and must include all pertinent information, evidence, and any responses provided by the borrower about the potential noncompliance. FSA-2551 and all documentation will be forwarded to SED for concurrence of nonmonetary default determination according to 5-FLP, paragraph 66 and notification according to 5-FLP, subparagraph 67 A. SED concurrence is also required before any civil action or criminal action is considered according to 5-FLP, Part 11.

C Lack of Good Faith

If loan servicing is to be denied based on "lack of good faith", a determination must be made by OGC as explained in detail on FSA-2551. OGC only needs to concur with nonmonetary defaults that involve "lack of good faith". FSA-2551 will be prepared by the local office and must include all pertinent information, evidence, and any responses provided by the borrower. FSA-2551 and all documentation will be forwarded to SED for concurrence and submission to OGC.**--***

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 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 nonmonetary 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.

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 case file 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. 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 express concurrence of the Administrator.

[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.

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.

103 FSA Responsibilities Under Third Party Actions

A County Office Responsibility

The authorized agency official will immediately send the borrower notice to cure the nonmonetary 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.

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-2001 with the following completed:

- Part A, item 1
- Part C, items 1 and 5A
- Part D, items 4A and 4B
- Part E, items 18A and 18B.

FSA-2060 will also be required for 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, FSA-2038, 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 subpart G of 7 CFR part 1940;

AD-1026 *** * ***.

[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

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

***--**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.

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

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.

117 Conditions for Real Estate Subordinations

A Real Estate Security

[7 CFR 765.205(b)] For loans secured by real estate, the Agency will approve a request for subordination if all of the following conditions are met:

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

(2) The loan will be used for an authorized Agency loan purpose or is made in conjunction with a guaranteed loan;

Note: Direct loan security may only be subordinated to a guaranteed loan according to 2-FLP, paragraph 279.

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

(4) 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;

(5) The Agency 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;

(6) The borrower is not able to graduate on any program except for CL;

(7) 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 Agency loan purpose may be approved when it is needed for the entity member to finance a separate farming operation, provided the subordination does not cause the unpaid principal and interest on the Agency loans to exceed the value of loan security or otherwise adversely affect the security;

(8) The borrower must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter (1-CM)**;**

(9) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718 (1-CM)**:**

(10) 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 subpart G of 7 CFR part 1940;

117 Conditions for Real Estate Subordinations (Continued)

A Real Estate Security (Continued)

(11) There is no other subordination outstanding with another lender in connection with the same security;

(12) The subordination is limited to a specific amount, the loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;

(13) In the case of real property purchase or exchange, the Agency will obtain a valid mortgage and the required lien position on the real 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)**;**

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

(15) Subordination of SAA mortgages may only be approved when there is no increase in the debt which is prior to the SAA debt; and

(16) If a borrower has only a Non-program loan, the Agency does not permit subordination. The Agency may subordinate Non-program security when it is also security for a program loan with the same borrower in accordance with this section.

***--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 after the refinancing is completed.

  SED will consult OGC, as needed, to obtain instructions in protecting FLP's lien position.**--***

117 Conditions for Real Estate Subordinations (Continued)

*--B Releasing and Refiling Lien Instruments Instead of Subordination (Continued)

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

  Note: 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.**--***

118 Conditions for Chattel Subordinations

A Chattel Security

[7 CFR 765.205(c)] (1) For loans secured by chattel, the subordination must meet conditions contained in paragraphs (b)(1) through (12) of this section (subparagraph 117 A)**.**

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 the:

- 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
- borrower's case file contains an existing appraisal that is less than 1 year old and FSA determines the appraisal to still be sufficiently accurate.

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 appraisal is less than 1 year old and the authorized agency official determines it to be adequate (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 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 approval authority for the type of loan being subordinated. 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.

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

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

An authorized agency official will approve or deny requests under this section using FSA-2060, FSA-2455, or other formats required in State supplements as necessary to meet State legal requirements.

Once an authorized agency official approves or denies a request, 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:

- ***--**for chattels, FSA-2001 with the following completed:
  - Part A, item 1
  - Part C, items 1 and 5A
  - Part D, items 4A and 4B
  - Part E, items 18A and 18B
- FSA-2060 for real estate cases (FSA will assist the borrower in completing FSA-2060)
- 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.

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 Agency 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

The authorized agency official will approve a severance request by executing FSA-2060 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. SED's may issue State supplements on approving severance agreements, as appropriate.

137-145 (Reserved)

146 Release Without Monetary Consideration

A 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 case file.

B Release Because of No Evidence of Indebtedness

The authorized agency official may release a borrower's mortgage or lien, if the records of State and County Offices and FSC, FLOO 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 Housing and Rural Development Finance Offices.

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:

- **only** be exercised as follows:
  - for the borrower to convey title of the property to a third party
  - if the Government is liquidating the security
  - because of litigation.
- **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
- 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 case file and submit it to SED for review.

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 security.

The borrower must comply with the requirements in subparagraphs B through H.

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 Agency 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 Agency 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 Annual Agreement for Disposition of Normal Income and Basic Chattel Security

A Annual Agreement

[7 CFR 765.302(a)] The borrower and the Agency will execute an agreement for the use of proceeds for each production cycle, including proceeds from the sale of milk, crops on hand or in storage, planned proceeds from Government payments, crop insurance and insurance proceeds derived from the loss of security.

[7 CFR 765.302(b)] The agreement for the use of proceeds will remain in effect until the proper disposition of all listed chattel security has been accomplished, or the remaining chattel security has been transferred to a new agreement for the use of proceeds.

FSA will assist the borrower in completing FBP and FSA-2040 that describes how the borrower will dispose of security and use sale proceeds. The agreement is completed at least annually.

B Annual Agreement Usage

[7 CFR 765.302(c)] The borrower must report any disposition of basic or normal income security immediately to the Agency.

[7 CFR 765.302(d)] If a borrower wants to dispose of chattel security not listed or in a way different than provided on the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition.

[7 CFR 765.302(e)] If the borrower sells 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 Annual Agreement for Disposition of Normal Income and Basic Chattel Security (Continued)

B Using the Annual Agreement (Continued)

When the borrower sells chattel security, the authorized agency official must complete the "Actuals" column of the agreement to record the:

- quantity of security sold
- way in which the security was sold (such as to wholesaler, to neighbor)
- date of sale
- amount of proceeds received
- use of proceeds.

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 Section 2.

C Borrower Recordkeeping Requirements

[7 CFR 765.302(h)] The borrower must maintain records of dispositions of chattel security and the actual use of proceeds. The borrower must make these records available to the Agency at the end of the period covered by the agreement for the use of proceeds.

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

D 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 Annual Agreement for Disposition of Normal Income and Basic Chattel Security (Continued)

E Modifying and Updating Annual Agreements

[7 CFR 765.302(f)] The borrower must provide the Agency with the necessary information to update the farm operating plan and the agreement for the use of proceeds in accordance with § 761.102 (1-FLP) **of this chapter.**

[7 CFR 765.302(g)] 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 Agency debt;

(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.

163 Using Proceeds From Chattel Security (Continued)

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.

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.

(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 Agency debt, must at least equal the value of the Agency lien on the old security.

164, 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-2040.

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.

The authorized agency official must document an unapproved disposition of chattel security
***--**on FSA-2040 and in the borrower's case file running record. A copy of the running record will be filed in the District Director Oversite Review file according to 25-AS, Exhibit 40.5. The DD will review this information as a part of the Quarterly Review and ensure that all unauthorized dispositions are addressed according to this Section.

Note: 25-AS will be revised at a future date to include reference to filing the running record of unapproved disposition of security.**--***

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.

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 nonmonetary 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 case file.

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 Noncompliance

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 nonmonetary 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.

184-195 (Reserved)

Section 3 Real Estate Security Partial Releases

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.

Note: Borrowers must use FSA-2060 to request partial release of real estate security.

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) The amount received for the security being disposed of or the rights being granted is not less than the market value;**

Note: Release of real estate security to be retained by the borrower is not authorized except in conjunction with an approved debt settlement action.

[7 CFR 765.351(a)] (4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;

[7 CFR 765.351(a)] (5) The transaction must not interfere with the borrower's farming operation;

[7 CFR 765.351(a)] (6) 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;

196 Requirements (Continued)

B Conditions for Approval (Continued)

***--[7 CFR 765.351(a)] (7) The environmental requirements of subpart G of 7 CFR part 1940 must be met;**

[7 CFR 765.351(a)] (8) The borrower cannot graduate to other credit on any program except for CL; and

[7 CFR 765.351(a)] (9) 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, or Other Minerals

[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 Agency loan will be considered a disposition of a portion of the security.

(ii) For loans secured by real estate before December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources and the sale by unit or lump sum payment will be considered a disposition of security.

(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products 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)(10)] 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 (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
- judgment liens
- 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.

E Pending Liquidation

[7 CFR 765.352(b)] After acceleration, 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 $25,000.

[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 to be:

- transferred or released will be obtained when the authorized agency official believes it necessary to protect the financial interests of the Government or when the transaction involves more than $25,000

- 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.

Appraisal reports under this section may show the current market value of the property being transferred or released, and the property being retained, 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.

[7 CFR 765.353(c)] Appraisals, when required, will be conducted in accordance with § 761.7 of this chapter (1-FLP, Part 6)**.**

199 Approving or Denying Partial Releases

A Approval Authority

Approval officials may approve partial releases 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.

--**Processing and tracking a request for partial release will be done in DLS.**--

200-210 (Reserved)

Section 4 Transferring Quotas

211 Requirements

A Basic Policy

FP regulates how quotas may be moved from farm to farm. However, when FSA is the lienholder on allotments or quotas tied to FSA real estate collateral, FSA treats quotas as any other basic security. See paragraph 196. The authorized agency official must protect FSA's security interest in a borrower sale or lease of allotments or quotas that affect borrower security, operational feasibility, or both.

Borrowers must use FSA-2060 to apply for consideration under this Part.

B Quota Sales

[7 CFR 765.351(e)(2)] The sale of an allotment must comply with all conditions of this subpart.

FSA considers a sale of an allotment as a sale of a portion of the security.
See paragraph 196.

C Quota Leases

[7 CFR 765.351(e)(1)] The Agency will not approve any crop allotment lease that will adversely affect its security interest.

The authorized agency official may approve a quota lease for a period not to exceed 1 year, if the terms of the lease will not adversely affect the loan. DD's may approve quota leases that exceed 1 year. FSA requires the borrower to assign the rental proceeds to FSA. Allotment leases may be for all or a portion of the total allotment.

D Allotment/Quota Transfers

[7 CFR 765.351(e)(3)] The borrower may transfer crop allotments to another farm owned or controlled by the borrower. Such transfer will be treated as a lease under § 765.252 (subparagraph 99 E)**.**

The authorized agency official should process allotment/quota transfers according to subparagraph C.

212 TTPP Payments

A Future TTPP Payments to Borrowers

FLP has a lien on future TTPP payments made to FLP borrowers. This lien is established by FSA-2028, real estate mortgage, deed of trust, or any instrument granting FSA a lien on such proceeds or payments.

If borrowers retain TTPP contracts and receive payments annually, the annual TTPP payments are normal income security and should be projected on FBP and shown on FSA-2040.

B Releasing Payments to Purchasers

If borrowers want to sell a contract to a third party investor, the purchaser must make the payment payable jointly to the borrower and FSA to obtain a lien release from FSA. The proceeds distribution will be recorded on FSA-2040 according to the following.

For borrowers who are current on all FLP loans:

- the proceeds will be applied to the borrower's next annual FLP installment on all loans according to Part 5
- any remaining funds will be released as normal income security or applied as an extra payment on the borrower's FLP debt as the borrower wants.

For borrowers who are past due on any FLP loan, proceeds will be applied according to the following:

- first to past due loans until they are current
- second to the next annual FLP installment on all loans according to Part 5
- any remaining funds will be released as normal income security or applied as an extra payment on the borrower's FLP debt as the borrower wants.

--**After delivery of the funds to FSA for application, FLM or SFLO will prepare FSA-2470**-- according to subparagraph 166 B or other format approved by OGC and required by State law, releasing only the specifically identified TTPP payments to the purchaser.

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 on FSA-2080, it 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

  - 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 RD Instruction 1956-B.

If the borrower is delinquent, FSA will consider FSA-2080's according to 5-FLP, subparagraph 84 D.

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 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 for the new entity 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
- a new member wants to join the borrower entity
- an entity member withdraws when remaining entity members are not personally liable for the debt.

Note: For the purposes of this Part and Part 8, 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.

*--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.--*

246 Transfer of Security and Assumption of Debt (Continued)

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.

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.

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.**

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 may include:

- 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-2060
- FSA-2080, if applicable
- FSA-2476
- FSA-2489
- additional documents such as UCC1's, FSA-2028's, and mortgages as required.

247 Types of Transfers and Assumptions (Continued)

B Adding a New Member to a Borrower Entity

To add new 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.

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
- new FSA-2026's, if needed
- FSA-2476
- security instruments, as appropriate.

247 Types of Transfers and Assumptions (Continued)

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-2026, FSA-2489, or both
- FSA-2080, if applicable
- FSA-2476
- new security instruments, as appropriate.

247 Types of Transfers and Assumptions (Continued)

D 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;

(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.

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 that is 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 members, partners or joint operators when the entity received the original loan.

(3) A corporation, including limited liability company, or cooperative, the transferee must:

(i) Have been a corporate stockholder or a cooperative member when the Agency made the original loan or will be an entity comprised solely of people who were corporate stockholders or cooperative 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 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 51 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 or Denying the Transfer and Assumption

The authorized agency official will use FSA-2025 to document approval of a transfer and assumption.

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 complete a "1M", "4A", or "4D" transaction in DLS, as applicable, to record the transfer and assumption of the loan(s).**--

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 25-AS.

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.

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.

251 Determining Transferor Liability After Closing (Continued)

C Authority

The authorized agency official 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.

If the account is not paid in full, assumed, or the liable parties fail to continue farming, the estate will be sent a servicing packet according to 5-FLP, paragraph 66.

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 SCIMS 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 Net Recovery Buyout Agreements and FSA-2543's

If an unmatured net recovery buyout agreement or FSA-2543 exists at the time of the borrower's death, see 5-FLP, subparagraph 342 A or 361 B.

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 begin processing according to 5-FLP, paragraph 66.

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 SCIMS 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 Act Impact

The Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 both affect FSA loan servicing. The Servicemembers Civil Relief Act of 2003 authorization affects FLP borrowers on active duty at all times whereas the requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 are only implemented during a time of a war or national emergency as declared by the President or Congress.

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 a notification letter to the borrower stating that the interest rate on their 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.

Adjustments to the interest rate based on military service must be processed by FSC, FLOO only; therefore, the authorized agency official should send a memorandum to FSC, FLOO 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 SCIMS *** * *** 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.

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.

SED's shall issue State supplements for acceptable powers of attorney.

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 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 **www.defense.gov/faq**.

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-1956-22's with code "07" in item 14A to FSC, FLOO at 314-457-4539.**--***

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 FSC, FLOO. This letter instructs FSC, FLOO 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 existing FLP payments of borrowers on active duty (National Guard members must be on duty at least 30 calendar days to be considered on active duty) will be deferred 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. The due dates of all payments due during and after such active duty will be 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, 2009, annual payment on January 1) and a FO (matures February 15, 2030, annual payment on January 1) enters active duty on October 1, 2006, and is discharged on April 1, 2007 (182 days).

- Interest will not accrue from October 1, 2006, to April 1, 2007.
- The payments on both loans will be due on September 30 each year (April 1, 2007 + 182 days = September 30).

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 payments will be deferred and interest will not accrue during time of active duty
- FSC, FLOO a courtesy copy by FAX to:

  - *****--314-679-6815 for State coded 01 through 32
  - 314-679-6816 for State coded 33 through 64.--*****

283 Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (Continued)

B Reinstating Annual Payments and Interest Accrual

The payment deferral 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
- FSC, FLOO a courtesy copy by FAX to:

  - *****--314-679-6815 for State coded 01 through 32
  - 314-679-6816 for State coded 33 through 64.--*****

C 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 3 months, thereafter.

Note: 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).

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 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 case file.

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 Servicing Borrowers With Both FSA and RD Loans

301 General Servicing Procedures

A Payoff Requests

If a borrower with both FSA and RD loans requests payoff information from FSA, the agency official shall:

- provide the payoff information according to paragraph 65
- remind borrower of the RD loans
- provide information on how to request payoff information from RD.

B Graduation and Classification

For graduation requirements see Part 4. For classification requirements see 1-FLP, Part 8, Section 4.

Note: Copies of financial statements, cash flows, and other related documents may be shared by FSA and RD.**--***

*--301 General Servicing Procedures (Continued)

C Partial Release, Subordination, and Consent

A request for partial release, subordination, and consent (for FSA this is FSA-2060) for security instruments that describe both the FSA and RD loan must be approved by both agencies. The agency receiving the request shall take the lead in processing the request.

Note: Borrowers may submit 1 request only.

The agency receiving the request will obtain any appraisals needed. Appraisal for farm tracts must meet the requirements of 1-FLP, Part 6, and appraisals for nonfarm tracts must meet RD requirements. Authority to execute these actions will be based on the established policies and procedures of each agency. FSA's policies and procedures are set forth under 1-FLP, Parts 6 and 7.

Response to the borrower's request will be issued by the agency that received the request.

If both agencies cannot approve the borrowers' request, the request will be denied and appeal rights provided. The denial will be issued by the lead agency. If only 1 agency cannot approve the borrowers' request, that agency will send the denial letter and provide appeal rights according to the agency's established procedures.

Note: Adverse decision letters issued by FSA must comply with 1-APP.--*

***--301 General Servicing Procedures (Continued)**

D Releasing Joint Security Instruments

FSA and RD State Office approval is required to release security instruments that describe both an FSA and RD loan. If all the security cannot be released because of outstanding obligations by the other agency, then do the following.

Step	Action	
1	**IF…**	**THEN…**
	FSA's debt is paid in full or satisfied first	FSA will send the original joint security instruments to RD with a letter indicating satisfaction of FSA debt.
	RD's debt is paid in full or satisfied first	RD will send FSA a letter indicating satisfaction of RD debt.
2	Return the promissory notes according to applicable agency procedures. FSA may return promissory notes to the borrower according to subparagraph 65 F.	
3	Attach a copy of the releasing agency's letter, if applicable, to the original security instruments.	
4	The remaining agency will release the security instruments when appropriate. After all debt against the security instrument has been paid in full or satisfied, FSA may release the security instrument according to subparagraph 65 F.	

E Determining Lien Position When Both FSA and RD Loans Were Made at the Same Time

The lien position is shared by both FSA and RD when the FSA FLP and RD loans were made at the same time, or the security was taken at the same time, and included on the same mortgage or deed of trust. The amount of the lien is proportionate to the total amount of debt owed on these loans. See 5-FLP, Exhibit 79 for calculating the proportionate share of security value for sales by borrower or losses covered by insurance.--*****

*--301 General Servicing Procedures (Continued)

F Losses Covered by Insurance

If insurance proceeds will be used to repair or replace joint security property, the agencies must decide which agency will oversee and approve the repairs and replacements and make all required inspections. Normally, the agency holding the greatest proportion of security value will be responsible for seeing that any repairs or replacements are completed. However, these duties may be shared by both agencies to the extent that FSA may handle all farm property and RD may handle all single family housing property. Copies of development plans and inspections shall be shared with the other agency. If FSA is responsible for supervision of repairs, see 1-FLP, Part 5.

Insurance proceeds to be applied against the debt will be applied based on lien priority according to subparagraph 301 E. Both agencies must approve any release of insurance proceeds of joint security property.

G Labor Housing Loans

If the security is the same for both FSA and/or Labor Housing loan, servicing will be handled according to this paragraph.--*

Reports, Forms, Abbreviations, and Redelegations 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-1956-22	Update to TOP and Cross-Servicing Information		282
FSA-2001	Request for Direct Loan Assistance		116, 126
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
FSA-2038	Farm Business Plan – Income and Expenses		116
FSA-2040	Agreement for the Use of Proceeds/Release of Chattel Security		61, 162, 166, 181, 212
FSA-2044	Assignment of Income		281
FSA-2060	Application for Partial Release, Subordination, or Consent		Text
FSA-2065	Annual Statement of Loan Account		64, Ex. 25.5
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-2425	Request to Cancel Undisbursed Loan Funds		61
FSA-2429	Request for Change in Application		61
FSA-2433	Satisfaction of Lien		65
FSA-2434	Consent and Release of Interest of United States		65
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
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 Nonmonetary Default Determination		100
FSA-2585	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1098	Mortgage Interest Statement		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
UCC1	National Financing Statement		247, 291, Ex. 2

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
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
GL	guide letter	2
NP	nonprogram loan	16, 46, 62, 266, 248
NRBRA	Net Recovery Buyout Recapture Agreement	97
PF	Payoff Balance	65
PIN	personal ID number	63
RC	report code	Text, Ex. 25.5
SAA	Shared Appreciation Agreement	117, Ex. 2
ST	softwood timber loan	16, 196, 246
TDCLCR	Term Debt and Capital Lease Coverage Ratio	32
VRU	Voice Response System	63

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.

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.

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.).

Conveyance

Conveyance is the transfer of property to a third party.

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.

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.

Deed

A deed is a signed instrument legally conveying real estate.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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.

Direct Loan

Direct loan is a loan funded and serviced by the Agency as the lender.

Entity

An entity is 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.

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.

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.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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.

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 primary loan servicing programs, 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 Buyout Recapture Agreement

A net recovery buyout recapture agreement is an agreement that requires a borrower who bought out a loan at the net recovery value of the security to pay FSA any appreciation if the borrower sells or otherwise disposes of the security during the 10 years following the buyout.

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.

Nonmonetary Default

A borrower is in nonmonetary default when the borrower has broken the loan agreement for a reason other than being delinquent.

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.

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/Lienholder

A prior lien is a lien that is recorded in front of an FSA lien on the same security. The individual or entity that has filed this lien is the prior lienholder.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Prospectus

<u>Prospectus</u> 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 <u>protective advance</u> 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.

Security

<u>Security</u> is property or a 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

<u>Security instrument</u> includes any document given the Agency a security interest on real or personal property.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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 in favor of another creditor, providing the other creditor with a priority right to collect a debt of a specific dollar amount from the sale of the same 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.

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.**--***

State Supplements

The following table lists required State supplements.

Subparagraph	Required State Supplement
3 C	Guidance on notary acknowledgement.
3 D	Guidance on signature requirements.
3 F	Using State-specific and State-created forms.
65 F	Loan security instruments releases.
98 C	Obtaining new FSA-2028's.
98 D	Continuing financing statements.
98 E	Obtaining assignments.
98 F	Obtaining real estate security instruments.
101 A	Payment of a borrower's real estate taxes.
*--102 B	Potential purchaser notification.--*
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.

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 **http://intranet.fsa.usda.gov/dam/ffasforms/forms.html**, CLICK "Find Current Forms Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 20", and CLICK "Submit".
***--**

4-FLP, Exhibit 20

(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.).

[Insert mediation, reconsideration, and appeal rights from 1-APP unless borrower request the change under subparagraph 32B.]

☐ unless borrower request change under subparagraph 32B,

[(1) Insert mediation, reconsideration, and appeal rights from 1-APP and (2) Insert ECOA Notice and USDA Nondiscrimination Statement from 1-FLP, subparagraph 41C.]

Sincerely

--*

Notice of Time Restrictions on Eligibility for OL and FO Programs and the Graduation to Private Credit Requirement

--**The following is an example of the letter that FSA will send every January to all borrowers to**-- remind them of their obligation to graduate if their financial condition improves to the point that they qualify for commercial credit, and of their remaining eligibility terms. 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 21", and CLICK "Submit". ***--**

4-FLP, Exhibit 21

(Use Agency Letterhead format with local return address.)

NOTICE OF TIME RESTRICTIONS ON ELIGIBILITY FOR OL AND FO LOAN PROGRAMS AND OF THE GRADUATION TO PRIVATE CREDIT REQUIREMENT

Dear:

We are taking this opportunity to remind you of the following requirements that affect all Farm Service Agency's (FSA) Farm Loan Programs (FLP) borrowers**.**

1. Under current laws and regulations, there is a limit on the number of years that FSA borrowers are eligible to receive farm ownership (FO) and farm operating (OL) loans.

Our records indicate that you (Insert applicable text. The following examples may be used as a guide.)

- Are no longer eligible to receive a direct FO loan.
- Have until _____ to receive a direct FO loan(s).
- Have _____ calendar years of direct OL loan eligibility remaining. FSA may grant you a 1-time waiver of the direct OL loan limitation for 2 years on a case-by-case basis if certain conditions have been met.

2. FSA is a temporary source of credit and all program borrowers must refinance their loans whenever they are able to obtain commercial credit, with or without a FLP loan guarantee. We will assist you in this process with market placement activities, which can facilitate obtaining commercial credit by means of a FLP loan guarantee.

Please contact this office if you would like to discuss your individual situation in more detail.

Sincerely,

--*

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.

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

Request for Graduation Information

The authorized agency official will send a letter similar to the following to the borrower to request current financial information *** * ***. Go to **http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html**, CLICK "Find Current Forms Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 23", and CLICK "Submit".

4-FLP, Exhibit 23

(Use Agency Letterhead format with local return address.)

REQUEST FOR GRADUATION 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 obtain the credit you need to refinance and pay off your FSA loan (also called "Graduation").

Agency regulations require that we complete a review of your financial status and the progress you are making. 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; and

3) Projected income/expense for next year (a copy of your current year's is also acceptable).

Enclosed are forms you can use to provide us with the requested information, or you can provide us with copies of the actual records as indicated above. This information or other information in your case file may be provided to lenders to determine if they can refinance your Farm Loan Programs debt. (Please provide this information to our office by:)

(1st mailing) [insert date 30 days from letter].
(2nd mailing) [insert date 15 days from letter].

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. Graduation is mandated by law.

If you have any questions, or need help putting this information together, let us know and we will help.

Sincerely,

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 **http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html**, CLICK "Find Current--* Forms Using Our Form Number Search", and in the "Form Number" block, type, "4-FLP Exhibit 24", and CLICK "Submit".
*--

4-FLP, Exhibit 24

(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 Guar. YES NO	Total Amount Existing FSA Term Loan(s)	Estimated Production Loan Needed	Lender Use Refer	Lender Use Do Not Refer

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. Interest assistance of 4 percent is also available to qualified applicants and borrowers. Guaranteed loan fees (1.5%) are waived whenever interest assistance is approved for that loan, and in cases where at least 50 percent of the guaranteed loan amount is composed of FSA debt that is being refinanced 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 "Refer" or " Do Not Refer" wishes indicated. We are always available to answer questions you may have.

Sincerely,

Attachments

--*

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 **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 25", and CLICK "Submit".

4-FLP, Exhibit 25

(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 (type of loan, FO, OL, etc.) loan(s) in full.

The 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. (List 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,

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

*--60-Day Annual Installment and Payment Due Reminder Letter

The following is the 60-Day Annual Installment and Payment Due Reminder Letter. To obtain an electronic copy, go to **http://intranet.fsa.usda.gov/dam/ffasforms/forms.html**, CLICK "Find Current Forms Using Our Form Number Search", type "4-FLP Exhibit 25.4" in the "Form Number" block, and CLICK "Submit".

4-FLP, Exhibit 25.4

(Use Agency Letterhead with local return address)

60-DAY ANNUAL INSTALLMENT AND
PAYMENT DUE REMINDER LETTER

Borrower Name
Borrower Name Cont./Borrower Address
Borrower Address Cont.
City, State, Zip

According to Farm Service Agency (FSA) records, you have agreed to make annual installments on your loans. This is a reminder that you have loans with payments due within 60 days. If you have other loans with annual installments due on other dates, you will be notified by another letter as they come due.

The following loans have payments coming due:

1. Loan Number	2. Loan Date	3. Amount of Loan	4. Installment Due Date	5. Installment Amount	6. Payment Due

NOTE: This reminder does not include any cost items that may have been incurred on your loans. Cost items are immediately due and payable.

Please continue to submit payments through your local FSA office. If your payment due has already been submitted through a payment or assignment, please disregard this notice. You may call 1-888-518-4983 in order to check the current status of your account. For more information or if you have any questions, please contact (this office or specific office name) at (County office address) or telephone (telephone number).

7A. Authorized Agency Official Name	7B. Signature	7C. Title

Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please contact your local office.

Privacy Act – A privacy Act statement required by 5 U.S.C. §552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index/html), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

--*

***--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 along with the letter mailed to the borrower, as applicable.

Note: FLOO 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	IRS 1098: • is attached to FSA-2065 for the annual yearend reporting • applies only to loans secured by real estate only or secured by real estate and chattel.
1099-A	IRS 1099-A is sent to IRS and the affected FLP borrowers: • whose security property was acquired as a full or partial satisfaction of their debt during the calendar year • reported on FSA-2585 during the calendar year. **Note:** Use FSA-2585 as a substitute for IRS 1099-A when State and County Offices become aware of an abandonment and the acquisition **will not** be processed within 6 months. The borrower receives 1 copy and FLOO receives the other copy no later than the **first workday in January**. The information on the FLOO copy is data converted and merged with the IRS 1099-A acquisition data reported to IRS in February. It is **critical** that all spaces on FSA-2585 be completed. 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.

--*

***--IRS Forms, Corrections, and Reports (Continued)**

A IRS Forms (Continued)

IRS Form	Explanation
1099-C	IRS 1099-C is provided to each borrower with a direct loan that had debt discharged through a writeoff, shared appreciation write-down, net recovery buyout, or writeoff of a lease account during the calendar year. Writeoffs processed with a class of writeoff code "5", which are CNC (borrower is **not** released from liability), and equity receivable **writeoffs** are **not** 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: • deferred interest • deferred noncapitalized interest • interest discharged from the note and advance • noncapitalized interest • principal discharged from the note and advance. County Offices receive RC 970 that identifies each borrower and the amount of discharged debt reported to IRS and the borrower.
1099-G	IRS 1099-G will be provided to **all** recipients of grant funds during the calendar year. Grant disbursements with current year check dates will be reported. 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.
1099-INT	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. **Note:** FLOO mails a copy to the borrower and the County Office. IRS 1099-INT is sent to borrowers who **must** 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.
1099-MISC	IRS 1099-MISC is provided to IRS for individuals who received payments **from FSA** for a nonclass action, discrimination claim settlement. A copy is mailed to the individual and the County Office. These forms are prepared manually.

--*

***--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.

Report	Title
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://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html**, CLICK "Find Current Forms--* Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 26", and CLICK "Submit".
*--

4-FLP, Exhibit 26

(Use Agency Letterhead format with local return address.)

NOTIFICATION OF PAYOFF AMOUNT

Dear,

The estimated payoff amount is: _____

Borrower's Name: _____

Borrower's Address: _____

Case Number *(last 4 digits)*: ____ As of: _____

Principal Balance: _____ Interest Balance: _____

Other *(installment set-aside, deferral, equity receivable, etc.)*:
_____

Total *(all loans)*: _____ Daily Interest Accrual: _____

Sincerely,

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 25-AS, paragraph 89. 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

Purchasers Name, Address, and Telephone Number

Borrowers Name, Address, and Telephone Number

The subject borrower has fully repaid the debt secured by the farm products described in:

□ 1. Consent to Payment or 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: _____.

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 in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

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 **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 28", and CLICK "Submit".
***--**

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,

--*

***--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 **http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html**, CLICK "**Find Current Forms Using Our Form Number Search**" in "Form Number", ENTER **"4-FLP Exhibit 28.5"**, and CLICK "**Submit"**.

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,

--*

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 **http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html**,**--*** CLICK "Find Current Forms Using Our Form Number Search", in the "Form Number" block, type, "4-FLP Exhibit 29", and CLICK "Submit".
***--**

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

Page 1

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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: Follow applicable directives providing for protection of PII.

4-FLP, Exhibit 29

LIST OF FARM SERVICE AGENCY BORROWERS

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		

Page 2

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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,

Attachment

Notification of Unauthorized Use of Proceeds

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using the following. 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 31", and CLICK "Submit".

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) 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,

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

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 **http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html**, CLICK "Find Current--* Forms Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 32", and CLICK "Submit".
*--

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]

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 **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 33", and CLICK "Submit".
***--**

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

--*

***--Final Payoff Letter**

The following is the Final Payoff Letter that FSA will send to former borrowers who are successful and pay all FSA FLP loans in full. To obtain an electronic copy, go to **http://165.221.16.90/dam/ffasforms/html**, CLICK "Find Current Forms Using Our Form Number Search", and in the "Form Number" block, type, "4-FLP Exhibit 34", and then CLICK "Submit".

4-FLP, Exhibit 34

(Use Agency Letterhead format with local return address.)

FINAL PAYOFF LETTER

Dear:

The Farm Service Agency's (FSA) records indicate that you recently paid off your direct loan. I would like to take this occasion to congratulate you on your success and thank you for the opportunity to assist with your operation's financing needs. It was a pleasure working with you.

As the lender of first opportunity, FSA makes direct loans to beginning family farmers who meet certain eligibility requirements to start and continue farming businesses. Also, FSA provides a safety net to established farmers who have suffered financial setbacks or natural disasters. If you know of any other farmers or ranchers who you believe would benefit from FSA's services, please tell them about us.

I wish you continued success with all your future plans, and thank you again for the opportunity to assist you.

Sincerely,

--*

Denial of Non-Program Assistance

If an application for non-program assistance cannot be approved, it will be denied with this exhibit. 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 51", and CLICK "Submit".

4-FLP, Exhibit 51

(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:

(Insert 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,

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Borrowers Entering Active Duty

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 the following, informing them that payments will be deferred and interest will not accrue during time of active duty

- FLOO a courtesy copy by FAX to:

  - ***--**314-679-6815 for State Offices coded 01 through 32
  - 314-679-6816 for State Offices coded 33 through 64.--*

Note: This exhibit may only be revised by SED.

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 52", and CLICK "Submit".

***--**

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 payments will not be required (will be deferred) on your 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. Principal payments due during or after active duty will be deferred for the length of time you are on active duty.

The beginning date of the deferred and non-accrual status is _____. The deferral 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.

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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
- FLOO a courtesy copy by FAX to:

  - ***--**314-679-6815 for State Offices coded 01 through 32
  - 314-679-6816 for State Offices coded 33 through 64.**--***

Note: This exhibit may only be revised by SED.

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 53", and CLICK "Submit".

***--**

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 payments were deferred on your 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 your FLP loans and payments must resume. Your payments are deferred for a period of time equal to the time of your active duty. The period of time has, therefore, been added to the term of your FLP loans.

The beginning date of the deferred and non-accrual status was _____. The ending date of the deferral and non-accrual status was _____. The time period for your active duty, therefore, was _____.

Within the next 12 months, the following payments are due on your FLP loans:

Loan Number	Date Due	Amount

Please do not hesitate to contact this office if any further information is required.

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