

FSA
HANDBOOK

Regular Direct Loan Servicing

For State and County Offices

SHORT REFERENCE

4-FLP

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

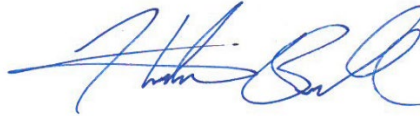
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Regular Direct Loan Servicing
4-FLP**

Amendment 50

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraphs 1 C, 19 B, 61 D, 99 G, 118 A, 136 A, 146 D, 161 A, 161 B, 161 C, 163 C, 181 A, 248 G, and Exhibit 25.3 have been amended to change “chattel” to “personal property”.

Subparagraph 5 C has been amended to remove obsolete programs.

Subparagraph 16 B has been amended to clarify exceptions for triennial operational reviews.

Subparagraph 19 E has been amended to refer to FSA-2418.

Subparagraph 19 G has been amended to add a note clarifying assigning liens.

Subparagraph 19.5 B has been amended to:

- update CFR language
- add a reference to FSA-2423.

Subparagraph 21 A has been amended to:

- update the CFR requirement for limited resource reviews to at least every 3 years
- clarify review of limited resource accounts.

Subparagraph 22 A has been amended to update analyses policy.

Paragraph 23 has been withdrawn because it is obsolete.

Subparagraph 61 D has been amended to update CFR language on identifying regular and extra payments.

Subparagraph 62 A has been amended update CFR language on applying regular payments.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 64 A has been amended to remove deferred non-capitalized interest.

Subparagraphs 67 A, 67 C, and 67 E have been amended to change “RDBSCO” to “RD Business Center”.

Part 6 Title has been amended for clarification

Subparagraph 99 D has been amended to add language on requests for consent to borrower ceasing to operate.

Subparagraph 99 E has been amended to update language on real estate surface leases.

Subparagraph 99 F has been amended to:

- clarify servicing incomplete applications
- update environmental references to 7 CFR Part 1b.

Subparagraph 99 G has been amended to clarify personal property security leases procedure.

Subparagraph 99 H has been removed to delete reference to the incomplete application processing.

Subparagraph 116 A has been amended to:

- update environmental references to 7 CFR Part 1b
- clarify application and feasibility requirements.

Subparagraphs 116 B has been amended to update requirements for multi-year subordinations.

Subparagraph 117 A has been amended to:

- update environmental references to 7 CFR Part 1b
- clarify eligibility and feasibility requirements.

Subparagraph 117 B has been amended to update subordination requirements.

Subparagraph 118 A has been amended to update CFR language.

Subparagraph 118 B has been amended to update requirements for multi-year subordinations.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 118 C has been amended to:

- update CFR language
- clarify second subordinations.

Subparagraph 120 A has been amended to update subordination requirements.

Subparagraphs 126 A and 126 B have been amended to update:

- incomplete applications instructions
- operational review requirements.

Subparagraph 126 D has been removed to delete reference to the incomplete application processing.

Subparagraph 136 C has been removed to delete reference to the incomplete application processing.

Subparagraph 146 D has been amended to:

- clarify CFR payment eligibility requirements
- remove CFR appraisal requirement for security being released
- add CFR non-monetary default eligibility requirements
- update operational review requirements for graduation.

Subparagraph 146 F has been amended to:

- clarify CFR payment eligibility requirements
- update valuation requirements
- add CFR non-monetary default eligibility requirements
- update operational review requirements for graduation.

Subparagraph 162 D has been amended to reinstate using FSA-2450.

Subparagraph 181 B has been amended to refer to 1-FLP, paragraph 63 for Lexis Nexis searches.

Subparagraph 196 A has been amended to:

- update servicing incomplete applications
- refer to paragraph 198 for market value determination.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 196 B has been amended to:

- update CFR environmental references to 7 CFR Part 1b
- address operational review requirements.

Subparagraph 196 C has been amended to update a subparagraph reference.

Subparagraph 196 H has been amended to update servicing cases of eminent domain.

Subparagraph 196 I has been amended to update servicing SNDA requests.

Subparagraph 198 A has been amended to update determining market value for security proposed for disposition.

Subparagraph 231 B has been amended to update servicing incomplete applications.

Subparagraph 231 C has been removed to delete reference to the incomplete application processing.

Paragraph 246 has been amended to update transfer of security and assumption of debt.

Paragraph 246.5 has been added to provide application for transfer and assumption procedure.

Paragraph 247 has been amended to clarify types of transfers and assumptions.

Paragraph 248 has been amended to clarify assumption terms.

Paragraph 249 has been amended to clarify processing transfer request.

Subparagraph 250 A has been amended refer to FSA-2487.

Subparagraph 250 B has been added to address closing transfers of non-program loans.

Exhibit 23 has been withdrawn and replaced with FSA-2418.

Exhibit 24.5 has been withdrawn and replaced with FSA-2423.

Exhibit 25.3 has been amended to update the Loan Payment Reminder – Annual Installment Due Letter.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Page Control Chart		
TC	Text	Exhibit
1-4 5	1-1, 1-2 1-9, 1-10 2-1, 2-2 2-5, 2-6 2-7, 2-8 2-8.5 through 2-8.8 2-9, 2-10 2-13, 2-14 5-1 through 5-4 5-4.5, 5-4.6 5-5, 5-6 5-11 through 5-14 6-1, 6-2 6-10.5, 6-10.6 6-11, 6-12 6-12.5, 6-12.6 6-31, 6-32 6-32.5, 6-32.6 6-33 through 6-46 6-47 through 6-60 6-61 through 6-70 6-71, 6-72 6-72.3 through 6-72.6 6-72.7, 7-72.8 (add) 6-73, 6-74 7-1, 7-2 7-5 through 7-8 7-31, 7-32 7-44.5, 7-44.6 7-45, 7-46 7-46.5, 7-46.6 7-47, 7-48 7-51, 7-52 8-1, 8-2 8-3 9-1, 9-2 9-2.5 and 9-2.6 (add) 9-3 through 9-14 9-15 12-3	1, pages 1-4 2, pages 1-2 pages 5-6 pages 6.5, 6.6 (add) pages 7-12 23, pages 1-2 (remove) 24.5, page 1 (remove) 25.3, page 1

Table of Contents

Page No.

Part 1 Introduction and Purpose

1	Purpose and Sources of Authority	1-1
2	Related References.....	1-2
3	FLP Forms	1-4
4	FSA Exception Authority	1-7
5	Introduction to Direct Loan Servicing (Regular).....	1-9
6	ECOA Requirements for Actions Involving Real Estate Security	1-10
7	Non-procurement Debarment Suspension	1-10
8	Processing Incomplete Regular Direct Loan Servicing Applications.....	1-11
9-15	(Reserved)	

Part 2 Operational Reviews

16	Reviewing a Borrower's Account.....	2-1
17	Updating the Assessment.....	2-3
18	Updating Account Classification	2-5
19	Graduation Review	2-5
19.5	Non-Compliance with Graduation Requirements.....	2-8.5
20	Agreement for Using Proceeds	2-9
21	Limited Resource Review.....	2-10
22	Analysis.....	2-14
23	(Withdrawn--Amend. 50)	2-14
24-30	(Reserved)	

Part 3 (Withdrawn--Amend. 35)

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

Part 4 (Withdrawn--Amend. 35)

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

Part 5 Borrower Payments

61	General.....	5-1
62	Regular Payments	5-4
63	Extra Payments	5-5
64	Distributing Payments to Loans.....	5-5
65	Final Payments.....	5-7
66	(Withdrawn--Amend. 46)	
67	Managing Pre-Authorized Debit (PAD)	5-11
68	Completing IRS W-9	5-15
69-95	(Reserved)	

Table of Contents (Continued)

Page No.

Part 6 Managing FSA's Security Interests

Section 1 General Security Preservation and Lien Protection

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

Section 2 Subordinations

116	Requesting Subordinations	6-31
117	Conditions for Real Estate Subordinations	6-32.5
118	Conditions for Personal Property Subordinations	6-35
119	Appraisal Requirements	6-36
120	Approving or Denying Subordination Requests	6-37
121-125	(Reserved)	

Section 3 Junior Liens

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

Section 4 Severance Agreements

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

Section 5 Release of Real Estate and Personal Property Security Liens Without Monetary Compensation

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

Table of Contents (Continued)

Page No.

Part 7 **Disposition of Security**

Section 1 Disposition of Normal Income and Basic Personal Property Security

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

Section 2 Unapproved Disposition of Security

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

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

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

Section 4 (Withdrawn--Amend. 28)

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

Part 8 **Withdrawing Existing Party**

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

Table of Contents (Continued)

Page No.

Part 9 Transfer of Real Estate and Personal Property Security

246	Transfer of Security and Assumption of Debt	9-1
246.5	Application for Transfer and Assumption	9-2.5
247	Types of Transfers and Assumptions.....	9-3
248	Assumption Terms	9-8
249	Processing Transfer Request.....	9-12
250	Closing the Transfer.....	9-13
251	Determining Transferor Liability After Closing.....	9-14
252-265	(Reserved)	

Part 10 Deceased Borrowers

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

Part 11 Borrowers Entering the Armed Forces

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

Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities

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

Part 13 (Withdrawn--Amend. 38)

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

Table of Contents (Continued)

Exhibits

1	Reports, Forms, Abbreviations, and Redelegations of Authority
2	Definitions of Terms Used in This Handbook (7 CFR 761.2(b))
3	(Reserved)
4	State Supplements
5-18	(Reserved)
19	Graduation Flowchart
20	(Withdrawn--Amend. 49)
21	(Withdrawn--Amend. 20)
22	(Withdrawn--Amend. 49)
23	(Withdrawn--Amend. 50)
24	(Withdrawn--Amend. 49)
24.5	(Withdrawn--Amend. 50)
25	(Withdrawn--Amend. 49)
25.3	Example of Loan Payment Reminder – Annual Installment Due Letter
25.4	(Withdrawn--Amend. 43)
25.5	IRS Forms, Corrections, and Reports
25.6	Examples of How to Complete FSA-2061
26	(Withdrawn--Amend. 49)
27	(Withdrawn--Amend. 49)
27.5	(Withdrawn--Amend. 46)
28	(Withdrawn--Amend. 46)
28.4	(Withdrawn--Amend. 46)
28.5	(Withdrawn--Amend. 37)
29	(Withdrawn--Amend. 49)
30	(Withdrawn--Amend. 49)
31	(Withdrawn--Amend. 49)
31.5	(Withdrawn--Amend. 49)
32	(Withdrawn--Amend. 49)
33	(Withdrawn--Amend. 49)
34	(Withdrawn--Amend. 30)
35	(Withdrawn--Amend. 49)
36-50	(Reserved)
51	(Withdrawn--Amend. 49)
52	(Withdrawn--Amend. 49)
53	(Withdrawn--Amend. 49)

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(d)] (1) For loans secured by personal property, the subordination must meet conditions contained in--* paragraphs (b)(3)(i) through (b)(3)(xiii) of this section (subparagraph 117 A).”

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

2 Related References

A Related FSA Handbooks

The following FSA handbooks concern FLP.

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.
highly erodible land conservation and wetland conservation provisions	6-CP
debt collection and resolution	7-FLP.
direct loan making	3-FLP.
direct loan special servicing and inventory property management	5-FLP.
disaster designations	1-DIS.
employee development and training	6-PM.
environmental requirements	1-EQ.
environmental risk management	2-EQ
general and administrative regulations governing FLP, and implementing NAD final determinations	1-FLP.
guaranteed loan making and servicing	2-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, Land Contract Guarantee Program, and servicing of minor loan programs	6-FLP.
personnel management, such as employee conflict of interest	3-PM.
policies and procedures for the acquisition of supplies, equipment, and services	27-AS.
procedures for collecting, maintaining, or disclosing data or information concerning an individual	3-INFO.
procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
processing collections and canceling loan checks and payments	*--FPAC NRRS Guide--*
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
State and county records management	32-AS

B Helpful Links

The Handbook Link web site at <http://intranet.fsa.usda.gov/dam/handbooks/handbooks.asp> provides links to useful web sites.

2 Related References (Continued)

C State Supplements

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

* * *

3 FLP Forms

A Form References

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

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

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

- the common name of the form

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

- purpose or the information collected.

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

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

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://intranet.fsa.usda.gov/dam/ffasforms/forms.html> and are numbered FSA-2029 “ST”.

Notes: “ST” represents the appropriate State acronym.

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

C Notary Acknowledgement

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

D Applicant and Borrower Signatures

See 1-FLP, subparagraph 3 D.

E State-Modified National Forms

See 1-FLP, subparagraphs 3 E and H.

F State-Created Forms

See 1-FLP, subparagraphs 3 F and H.

G Other Sources of Forms

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

4 FSA Exception Authority

A General

[7 CFR 765.501] On an individual case basis, the Agency may consider granting an exception to any regulatory (or 4-FLP handbook) requirement or policy of this part if:

(i) The exception is not inconsistent with the authorizing statute or other applicable law; and

(ii) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Agency's financial interest.

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

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

B Submitting Exception Requests

*--Only SED or Acting SED have the authority to submit an exception request, and the request must be submitted to DAFLP by e-mail to **SM.FSA.DCWa2.AdmException** or adminexception@usda.gov. The e-mail subject should read "Administrator's Exception--* to (cite 4-FLP subparagraph) – (Borrower's Name and State)." State Office FLP staff must be involved in the development of the Exception Request. An attachment must fully describe the status of the account, including:--*

- a brief background on the case
- total outstanding FSA indebtedness; loan types and amounts
- current status of the account; if it is delinquent, where it is in Primary Loan Servicing
- *--type of security (personal property or real estate) and estimated value--*
- prior liens
- proposed plan of action that warrants the exception request

4 FSA Exception Authority (Continued)

B Submitting Exception Requests (Continued)

- what procedure is to be waived
- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- discussion of graduation
- *--how the action is in the best financial interest of the Government
- additional information that SED thinks will be needed to review the case
- a Farm Business Plan credit action pertaining to the requested exception, including but not limited to:
 - updated farm assessment
 - appropriate environmental review, if needed
 - credit presentation demonstrating all other feasibility, eligibility, and security requirements are met for the request.--*

5 Introduction to Direct Loan Servicing (Regular)

A Purpose

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

B Servicing Actions

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

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

C Loans Covered

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

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

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

6 ECOA Requirements for Actions Involving Real Estate Security

A Release of Real Estate Appraisals

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

7 Non-Procurement Debarment and Suspension

A Covered Transactions

[2 CFR 417.10] This part adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USDA policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part.

[2 CFR 417.210] All non-procurement transactions, as defined in section 417.970 are covered transactions unless listed in section 417.215.

[2 CFR 417.970] (a) “Non-procurement transaction” means any transaction, regardless of type (except procurement contracts), including, but not limited to . . .

(6) Loans.

[2 CFR 417.215] (a) Transactions not covered:

(1) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(7) Permits, licenses, exchanges and other acquisitions of real property, rights of way and easements under natural resource management programs.

--Assumption of Debt (see Part 9, 3-FLP, paragraph 75, and 1-FLP, paragraph 43) is a--
non-procurement transaction in this handbook not covered by exceptions.

7 Non-Procurement Debarment and Suspension

B System for Award Management (SAM) Exclusions

[2 CFR 417.500] SAM exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

[2 CFR 416.595] (a) Federal agency officials use SAM Exclusions to determine whether to enter into a transaction with a person, as required under section 180.430 of this title.

Before offering an applicant an assumption of debt, the agency approval official will ensure that 3-FLP, paragraph 75 and 1-FLP, paragraph 43 are followed.

A copy of this search will be placed in position 3 of the case file. If a borrower or applicant has been excluded or disqualified, the transaction will not be offered. Appeal rights will be provided as set forth in Parts 6 or 9. See 1-FLP paragraph 43.

*--8 Processing Incomplete Regular Direct Loan Servicing Applications

A Determining if Application is Complete

Except for operational reviews and graduation under Part 2, subordinations under Part 6, and transfers and assumptions under Part 9, incomplete regular servicing applications will be processed under this paragraph. Upon receiving FSA-2061, the Agency official will:

- insert date application was received on FSA-2061
- determine whether the application is complete
- enter application information in DLS.

B Initial Notification of Incomplete Regular Direct Loan Servicing Application

Within 7 calendar days of receipt of an incomplete regular servicing application, the agency official will use the FSA-2091 to provide the applicant written notice of any additional information which must be provided. The applicant must provide additional information within 30 calendar days of the date the FSA-2091 is sent.

If the 30th calendar day is a Saturday, Sunday, Federal holiday, or any other day the office is closed, FSA will accept the applicant's additional application information the next business day.

FSA-2091 will:

- list the additional information needed
- state that the application cannot be processed until all required information is received
- offer assistance to the applicant if they do not understand what is required or are having difficulty obtaining the required information
- establish a due date for receiving the information of 30 calendar days from the date of FSA-2091.--*

***--8 Processing Incomplete Regular Direct Loan Servicing Applications (Continued)**

C Final Notification of Incomplete Regular Direct Loan Servicing Application

If a complete regular servicing application is not received within 30 calendar days of the FSA-2091, the application will be withdrawn and the borrower notified using the FSA-2092. The FSA-2092 will state the reason for withdrawal and that the application is withdrawn as of the date of the letter.

Note: A borrower may voluntarily withdraw an application at any time in writing. FSA-2092 will be sent when an application is voluntarily withdrawn.

Once a servicing application is withdrawn, it may not be reactivated. A new servicing application may be filed, and any information that is still current from the withdrawn application may be included with the new application. Information that is less than 90 days old, unless otherwise noted, is considered current.--*

9-15 (Reserved)

Part 2 Operational Reviews

16 Reviewing a Borrower's Account

A Overview

--Full operational reviews will be completed at least every 3 years on each account except as-- noted in subparagraph B. More frequent operational reviews may be completed at the agency official's discretion or in conjunction with an analysis according to 1-FLP, subparagraph 263 A.

An operational review is performed to:

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

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

16 Reviewing a Borrower's Account (Continued)

B Requesting Information

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

- (1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, and all other loan-related requirements and documents**
- (2) Submit financial information and an updated farm operating plan when requested by the Agency**
- (3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.**

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

At least every 3 years, each borrower will be sent FSA-2401 requesting information to assist the Agency in completing the operational review.

Exceptions to completing the operational review every 3 years.

- Accounts whose cash flow has been significantly impacted by disasters should be prioritized for completion of operational reviews regardless of the timing of the last review.
- Accounts which have been 90 days past due at any time during the current or past FY must be reviewed regardless of the timing of the last review.

***--Note:** Borrowers at least 90 days past due who submit an application for PLS will receive an assessment as part of the PLS process.--*

- Operational reviews of accounts subject to assessment requirements of 1-FLP paragraph 263 *--must be completed as required by subparagraph 22 A.--*

* * *

When the authorized agency official determines that a scheduled operational review will not be completed, the operational review workflow will remain in place, but the reminder will be paused.

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

16 Reviewing a Borrower's Account (Continued)**B Requesting Information (Continued)**

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

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

--FSA-2401 will be sent twice in a 30-day period if the borrower does not supply the required information. The first time FSA-2401 is sent, the borrower will be given 30 calendar days to supply the required information. The second FSA-2401 will be sent on day 15, only if the-- required information has not been submitted and will give the borrower 15 calendar days to submit the required information.

Borrowers who fail to respond will be serviced according to subparagraph 19.5 A, for graduation review, or 21 D, if subject to limited resource interest rates.

16 Reviewing a Borrower's Account (Continued)**C Developing Farm Operating Plan**

The agency official will use the financial information provided by the borrower as requested *--by FSA-2401 for the most recent operating cycle to develop a farm operating plan--* according to 1-FLP, Part 8, Section 3. This farm operating plan will be used to complete the components of the operational reviews described in this part.

If the review reflects that the operation will be financially distressed, the account will be serviced according to 5-FLP, Part 3.

17 Updating the Assessment**A Objective of Annual Review**

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

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

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

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

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

~~*--During the triennial operational review, information obtained from FSA-2401 will be used--*~~ to update the annual assessment.

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

- changes in operations or goals, including current production cycle goals and long-term development goals
- status of progress toward goals, including progression to commercial credit and accumulation of a reasonable amount of working capital reserves and savings, including savings for retirement and education of family members
- need for additional borrower training
- term limits
- remind borrower to review farm transition and estate planning documents.

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

Except for the triennial operational review, the annual review may be completed in the form of an office visit, field visit, letter, or phone conversation and documented in FBP.

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

C Documentation

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

The documentation must address only new or changed information.

18 Updating Account Classification

A Action

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

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

19 Graduation Review

A General

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

See Exhibit 19 for a graduation flowchart.

B Graduation Criteria

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

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

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

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

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

***--(1) In a partial graduation, all FLP loans of one type (i.e. all personal property 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 personal property and real estate purposes will be categorized--* according to how the majority of the loan's funds are expended.**

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

19 Graduation Review (Continued)

C Obtaining Underwriting Criteria from Local Lenders

Each October, the authorized agency official will contact local lenders to obtain their underwriting criteria for making agricultural loans. Information gathered from these contacts *--will be summarized on FSA-2417, with any additional comments in narrative form, and placed in the county operational files FLPF-4-B "Graduation," according to 32-AS. FLC may provide the authorized agency official with information obtained from regional or statewide lenders, including information obtained under 20FLP, Part 4. At a minimum, the narrative--* for each lender will contain the following:

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

D Screening Borrowers

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

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

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

Borrowers classified a "1" or "2" should be evaluated to determine if the classification score is due, in part, to higher TDCLR or liquidity ratio resulting from the accumulation of a reasonable amount of working capital reserves and savings. The non-essential asset provisions of 3-FLP, subparagraph 66 A will be considered, including recognition that working capital reserves and savings in excess of the greater of \$30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity, as well as funds held by the applicant or borrower which are accumulated for specific farm related capital purchases to be realized in the next operating cycle.

19 Graduation Review (Continued)

D Screening Borrowers (Continued)

Similarly, borrowers are unlikely to meet local underwriting criteria if they are or recently were financially distressed, have recently received primary loan servicing, or whose current repayment schedules include deferrals, interest-only or reduced principal payments.

If the borrower's financial information indicates that the borrower meets local underwriting criteria, the borrower's prospectus will be forwarded according to subparagraph E.

19 Graduation Review (Continued)

E Sending Prospectus

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

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

- include the borrower's name, loan type, balance sheet, and projected cash flow on *--FSA-2418
- send FSA-2418 to commercial lenders.

FSA-2418 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 FSA-2418 and sends it to a lender, a copy of FSA-2418 will be sent to the borrower with a cover letter with language similar to: "Enclosed, please find FSA-2418. This exhibit has been sent to several--* lenders in the area so they could review your financial information and consider refinancing your FSA account."

F Applying for Commercial Credit

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

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

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

See 2-FLP for information on guaranteed loans.

19 Graduation Review (Continued)

F Applying for Commercial Credit (Continued)

If any lenders are interested in refinancing FSA, the authorized agency official will send the borrower a letter similar to FSA-2419 listing lenders that are interested in refinancing the borrower's FSA loans.

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

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

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

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

G Transfer and Assignment of FSA Liens

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

***--Note:** This regulation was implemented specifically to assist commercial lenders in Texas obtain a "purchase money interest" in real estate that was originally purchased with FSA loan funds and subsequently refinanced by the commercial lender. Only a lender with a purchase money interest may take a lien on property designated by the borrower as subject to Texas homestead protection law.--*

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

--19.5 Non-Compliance with Graduation Requirements*A Borrower Non-compliance with Graduation Requirements**

[7 CFR 765.102(a)] Borrower failure to fulfill all graduation requirements, including failure to submit information as specified 7 CFR 765.101(c), within the time-period specified by the Agency constitutes default on the loan. Except as provided in paragraph (b) of this section, the Agency will accelerate the borrower's loan without offering servicing options provided in 7 CFR Part 766 (5-FLP) if any outstanding direct loan was closed prior to September 25, 2024.

If the borrower with an outstanding direct loan closed prior to September 25, 2024, fails to provide requested financial information or to graduate when able to do so, the authorized agency official will notify the borrower and all entity members of the non-compliance by sending FSA-2420 that provides FSA's intent to accelerate the loans with appeal rights according to 1-APP and informing the borrower(s) of their option to make a written request for conversion of their loan(s) to NP status according to subparagraph 19.5 B.

FSA-2420 must be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address.

Special Servicing will be initialized in DLS utilizing Chart 4 "Borrower in Non-Monetary or Monetary and Non-Monetary Default".

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

19.5 Non-Compliance with Graduation Requirements (Continued)

B Conversion to NP Rates and Terms in lieu of Acceleration

[7 CFR 765.102(b)] If all outstanding direct loans were closed after September 25, 2024, or when the borrower, or borrowers in the case of an entity, that has at least one outstanding direct loan closed on or before that date, makes a written request in response to the Agency's notification of intent to accelerate within provided timeframes, the Agency will convert the debt to a non-program loan under the following conditions:

- (1) It is in the interest of the Agency;**
- (2) The debt will be subject to the interest rate for non-program loans in effect at the time of default;**

See 1-FLP, Exhibit 17 for NP interest rates.

- (3) The debt will be serviced as a non-program loan; and**

- (4) The term of the non-program loan will be:**

- (i) For FOs, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security, or 25 years.**

- (ii) For OLs, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security or 5 years.**

- *--(iii) For EMs secured by real estate, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security, or 25 years.**

- (iv) For Ems secured only by personal property, the Agency will reschedule repayment in equal installments over the less of the remaining number of years on the loan, the useful life of security, or 5 years.--***

Note: Conversion to NP terms will not be used to extend the maturity date of the original note. For example, a 7-year OL that is currently in year 5 will be scheduled for repayment with equal installments for the remaining 2 years.

19.5 Non-Compliance with Graduation Requirements (Continued)

B Conversion to NP Rates and Terms in lieu of Acceleration (Continued)

If the borrower with all outstanding direct loans closed on or after September 25, 2024, fails to provide requested financial information or to graduate when able to do so within provided timeframes, the authorized agency official will notify the borrower and all entity members of the non-compliance and intent to convert their loan(s) to NP status by sending FSA-2421 with appeal rights according to 1-APP. If the borrower does not appeal, the loan official will convert the loan(s) to NP status, documenting the action in FBP with a credit action approved by the authorized agency official, and send FSA-2422 to the borrower informing them of the new provisions of the loan(s). The date of the conversion to NP status will be the date the notification is signed by the authorized agency official. The borrower will be given a copy of the addendum at closing. A copy of the notification will be attached to the original promissory note.

Borrowers with an outstanding direct loan closed prior to September 25, 2024, that fail to provide requested financial information or to graduate when able to do so within provided timeframes, will be sent FSA-2420. Should the borrower and all entity members request in writing conversion of their loan(s) to NP status within prescribed timeframes, the authorized agency official will convert the loan(s) to NP status, documenting the action in FBP with a credit action approved by the authorized agency official. All liable parties must sign

--FSA-2423 providing the new provisions of the loan(s). The date of the conversion to NP-- status will be the date the notification is signed by the authorized agency official. The borrower will be given a copy of the addendum at closing. A copy of this notification will be attached to the original promissory note.

See 1-FLP, Part 2, for levels of authority for approval of NP loans. SED has unlimited approval authority for NP loans.

C Final Processing

Contact LSPMD for guidance on processing the conversion to NP rates and terms in the event that a borrower fails to graduate at **SM.FSA.DCWa7.DirectLoans** or fsa-directloans@usda.gov.

20 Agreement for Using Proceeds**A Planning**

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

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

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

For borrowers with:

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

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

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

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

21 Limited Resource Review

A Borrower Account Reviews

***--[7 CFR 765.51(a)] At least every 3 years, a borrower with limited resource interest rate--* loans is required to provide the Agency the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information provided in accordance with §761.105 of this chapter.**

--The authorized agency official will usually review limited resource accounts during the operational review and analysis. The limited resource interest rate review process will be-- documented in FBP and tracked and monitored within DLS Operational Review workflow.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D Loan Agreement Default

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

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

E Deferred Loans

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

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

The authorized agency official must notify a borrower of any decision to change an interest rate with FSA-2424. FSA-2424 must inform the borrower of:--*

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

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

G Change in Regular Interest Rate

If the rate is being changed to the regular rate, and as of the effective date the regular rate of interest is something other than the rate noted in FSA-2424, the borrower will receive the--* lower of the 2 rates.

22 Analysis

*--A Analysis Requirements

See 1-FLP, paragraph 263 for analysis requirements for borrowers:

- being considered for a new direct loan, except for AFT
- who are financially distressed or delinquent

Note: Analysis will be completed for borrowers who submit a complete application for PLS under 5-FLP, Part 3.

- who have a loan currently on full or partial deferral under PLS

Note: An annual operational review and analysis is required while a borrower is under deferral.

- who are receiving limited resource interest rates (see paragraph 21).--*

* * *

23 (Withdrawn--Amend. 50)

24-30 (Reserved)

Part 3 Withdrawn--Amend. 35

31-33 (Withdrawn--Amend. 35)

34-45 (Reserved)

Part 4 Withdrawn--Amend. 35

46-48 (Withdrawn--Amend. 35)

49-60 (Reserved)

Part 5 Borrower Payments

61 General

A Purpose

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

B Acceptable Payment Forms

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

Note: Cash payments are limited to no more than \$100 per transaction. Payments over \$100 can be made in the form of ACH, check, debit card, money order, or wire transfer.

PML is a self-service application for borrowers to make payments on their direct loans. To use the feature, borrowers must have a farmers.gov account. To create an account, borrowers will need to visit **farmers.gov/account**. * * *

C Processing Payments

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

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

When FSA receives a payment, the authorized agency official must record and process the *--payment according to FPAC NRRS Guide.--*

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

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

SED's are authorized to make changes in past calendar years or after IRS-1098's have been prepared using FSA-2429. This authority may not be redelegated. If this authority is *--exercised, date, State, borrower name, case number, corrective action and mitigation of--* errors must be documented and an annual report must be completed by February 1 of each year according to Exhibit 1. Reports are required to be submitted by email to **SM.FSA.DCWa7.DirectLoans** or fsa-directloans@usda.gov.

61 General (Continued)

D Identifying Regular and Extra Payments

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

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

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

***--[7 CFR 766.104(a)(2)] (5-FLP, subparagraph 102 E) The borrower does not have non-essential assets for which the net recovery value is sufficient to resolve the financial distress or pay the delinquent portion of the loan.**

If a borrower is delinquent or financially distressed, proceeds from the sale of non-essential assets may be applied as regular payment. If a borrower is not delinquent or financially distressed, proceeds from the sale of non-essential assets must be applied as an extra payment unless an exception is granted.--*

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

--(1) Sale of personal property security other than normal income security;--

such as farm equipment and breeding livestock.

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

Note: As required in the FPAC NRSS Guide, page 345, collections for refinancing are coded as "Y" in NRSS.

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

61 General (Continued)

D Identifying Regular and Extra Payments (Continued)

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

(5) Any transaction that results in a loss in the value of any Agency basic security;

**(6) Refunds of duplicate program benefits or assistance to be applied on CL or EM loans;
or**

(7) Refunds of unused loan funds.

E Canceling Undisbursed Loan Funds

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

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

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

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

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

DLS will be updated as required.

62 Regular Payments

A Applying Regular Payments

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

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

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

B Regular Payments From Real Estate Sale Security With SED Approval

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

When FSA becomes aware that the borrower is selling all or a portion of the real estate security, FSA-2061 (See Exhibit 25.6 for examples of how to complete FSA-2061) for a partial sale should be requested from the borrower. When FSA receives the payment from the sale of real estate security, the authorized agency official must consult FSA-2061 to determine the loan to which the payment should be applied, generally in the order of lien priority.

62 Regular Payments (Continued)**A Applying Regular Payments (Continued)**

Notes: Only items 1 through 5 of the FSA-2061 are required if the transaction results in FSA debts being paid in full.

If the borrower requests that payments resulting from the sale or exchange of real estate security be applied to current, delinquent, or unmatured loan installments; the borrower, with the assistance of the authorized agency official, must complete and submit FSA-2061. Only SED's may approve this application of funds. The authorized agency official will forward the completed FSA-2061 and any other materials required to SED for review. The authorized agency official will inform the borrower of the decision and provide appeal rights according to 1-APP, if FSA-2061 is not approved. See 1-FLP, subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

63 Extra Payments

A Applying Extra Payments

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

64 Distributing Payments to Loans

A Order

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

(a) Recoverable costs and protective advances plus interest;

* * *

*--(b) Accrued deferred interest;

(c) Interest accrued to date of payment; and

(d) Loan principal.--*

B Distribution

Distribute payments according to the following.

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

64 Distributing Payments to Loans (Continued)**C Notification of Account Activity and Status**

*--The RD Business Center, FLB sends the borrower:

- Exhibit 25.3 sixty calendar days before the installment due date

Note: Exhibit 25.3 shows the installments due on each loan. A copy is provided to the local FSA office.

- FSA-2065 annually, which shows the loan status and all transactions completed during the calendar year.

Notes: Exhibit 25.3 and FSA-2065 provide the VRU telephone number (1-888-518-4983).--* VRU is a secure, automated system that requires a PIN number, and guides borrowers in obtaining the status of their loans at any time. If further loan information is needed, such as a payoff amount, borrowers are directed to call the FSA office.

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

- borrower calls toll free number
- after being asked for their ID, the system checks to see if a PIN is present
- if so, the borrower will be asked to enter the PIN
- if they enter the incorrect PIN they will be given the option to PRESS “1” to re-enter it, or PRESS “2” to change it
- after pressing 2, they will ne walked through the process of changing their PIN.

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. FSA-2406 should be used to verify calculations. Both officials will initial the AI and PF Status Screens and any other documentation used to certify the amount. FSA-2407 will be sent to the borrower only if the request for payoff is made--* before the day of payment in full.

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

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

B Supervised Bank Accounts and Undisbursed Loan Funds

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

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

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

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

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

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

--See FPAC NRRS Guide, page 262 for more information on FLP refunds.--

D Underpayment

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

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

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

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

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

65 Final Payments (Continued)

E Borrower Refunds

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

F Security Instrument Releases

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

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

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

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

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

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

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

After verifying that the loans are paid in full and the payment has cleared, the authorized agency official will close the case files and return the documents to the borrower according to 32-AS.

FSA-2071 shall be attached with the documents sent to the borrower with a copy

--placed in the case file. Any assignments held by FSA will be terminated using FSA-2408-- and satisfaction of liens will be recorded on FSA-2433.

66 (Withdrawn--Amend. 46)

67 Managing Pre-Authorized Debit (PAD)**A PAD Payments and Receipts**

FSA FLP has discontinued the establishment of new PAD agreements for direct loans.

--RD Business Center will continue to service existing PAD agreements unless changes are-- required. Modifications to PAD agreements including changes to banking information will trigger an automatic termination of PAD. Terminated PAD agreements may not be reinstated. This is not an appealable decision.

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

B Dealing With Non-Payment

When the FI cannot post the PAD transaction to the designated borrower's account, the FI is instructed by CB to reject the transaction. A rejected transaction will trigger an automatic termination of the PAD agreement. A terminated PAD agreement may not be reinstated. This is not an appealable decision.

C Restructures and Assumptions

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

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

--Note: The RD Business Center CB FAX number is 314-457-4370@fax.usda.gov.--

67 Managing Pre-Authorized Debit (PAD)

D Final Payments

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

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

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

E Canceling PAD

A borrower may voluntarily cancel PAD by submitting a written request to the County Office. Within 5 workday of receipt of borrower's request to cancel PAD, County Office should notify CB to terminate PAD by detailed letter. A copy of the borrower's request and County Office's letter will be kept in the case file. A terminated PAD agreement may not be reinstated. This is not an appealable decision.

***--Note:** The RD Business Center CB FAX number is 314-457-4370@fax.usda.gov.--*

F Additional Information

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

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

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

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

--67 Managing Pre-Authorized Debit (PAD)--**F Additional Information (Continued)**

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

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

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

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

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

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

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

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

***--G PAD Alternatives**

Incremental decommissioning of the PAD service represents a potential hardship for producers for making timely payments. County Office staff are encouraged to offer suggestions for alternative methods of payment to affected producers. Most banking institutions offer a bill pay service which could be set up to send payments to FSA without manual user intervention on a recurring basis. Additionally, FSA's introduction of the PML portal provides customers with the option to make their payment online. The ability to establish recurring payments is not currently available in PML. Payments continue to be accepted in person and via telephone at any County Office location.--*

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

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

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

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

69-95 (Reserved)

--Part 6 Managing 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.

The requirements of 4-FLP, subparagraph 196 B apply to all decisions affecting real estate security.

C Security Inspections

Personal property will be inspected at least every 3 years.

Exception: If the account has been 90 days past due at any time in the current or last FY, an inspection is required to be completed annually. More frequent inspections may be required according to subparagraph 183 A.

These security inspections will be scheduled after a new loan has been closed by creating a new Farm Visit workflow in DLS.

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

96 Servicing Policy (Continued)**C Security Inspections (Continued)**

The authorized agency official:

- will inspect real property security at least once every 5 years
- should conduct more frequent inspections for a delinquent borrower * * *.

The purpose of inspections is to:

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

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

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

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

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

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

Note: See Part 7 for guidance on handling discrepancies.

D Documenting Reviews Not Completed As Scheduled

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

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

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

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

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

97 Maintaining Debt Instruments (Continued)

B Conducting Yearly Debt Instrument Inventory

Service centers must conduct yearly debt instrument inventory reviews on all loans that originated within the past calendar year. All other loans, which originated before the previous calendar year, must be reviewed once every 3 years.

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

RC 830A includes the following for each borrower:

- name and case number
- fund code and loan numbers
- date of loan
- interest rate
* * *
- principal loan amount
- account flag.

When RC 830A is received, County Offices must complete the following to conduct a debt instrument inventory review:

- 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 should 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 * * * is more than \$100
 - interest rate must be corrected

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

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

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

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

97 Maintaining Debt Instruments (Continued)

C Conducting Yearly Debt Instrument Inventory for CNC Accounts

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

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

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

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

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

98 Maintaining Security Instruments

A Maintaining Security Documents

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

--An FSA UCC Security Guide for guidance on perfecting and maintaining interest in non-real estate security is available from the FSA Deputy Administrator for Farm Loan Programs Hub Site at <https://usdagcc.sharepoint.com/sites/FSA-DAFLP/SitePages/programbased.aspx>. Under “Training and Guides”, CLICK “Program Based Trainings” to access “Common Program Guides”.--

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

98 Maintaining Security Instruments (Continued)

B Maintaining Current Information

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

C Obtaining Subsequent FSA-2028's

*--FSA obtains new FSA-2028's when:

- FSA obtains new or additional security through a new loan request, or a request for regular or special loan servicing
- modifications to the security listed on the working copy of current FSA-2028's have been made.

Exception: FSA Security Agreements, FSA-2028, with a revision date of September 25, 2024, (and those for ML only customers with a revision date before August 21, 2025) do not include a blanket security interest in all equipment now owned or later acquired. Therefore, it is necessary for the FSA-2028 to be reviewed and updated regularly to ensure it accurately reflects FSA security interests in specific collateral. Should specific items of equipment be replaced, for example, FSA must notate the changes on the working copy of the FSA-2028. However, FSA should not execute a new FSA-2028 in these specific cases unless the borrower has subsequently requested a new loan or loan servicing.

SED will issue a State supplement to specify when to obtain a subsequent FSA-2028 is needed for other reasons 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.

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

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

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

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

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

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

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

98 Maintaining Security Instruments (Continued)

F 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.

G Real Estate Security Instruments

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

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

99 Borrower Responsibilities for Complying With Loan Instruments

A General Policy

[7 CFR 765.202] The borrower must:

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

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

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

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

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

[7 CFR 765.202] The borrower must:

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

***--Notes:** FSA-2409 will be used to inform the borrower of any fees required.

FSA-2410 will be used for borrowers in bankruptcy.--*

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

C Requirement to Operate Security

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

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

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

D Conditions for FSA Consent to Borrower Ceasing to Operate

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

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)**D Conditions for FSA Consent to Borrower Ceasing to Operate (Continued)**

--Requests for consent to cease operating the security will be submitted on FSA-2061. An operational review must be completed according to Part 2 to support that the action is in the Agency's best interest and that the borrower is unable to graduate. Incomplete applications will be processed according to paragraph 8.--

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

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

This section applies to borrower requests to cease operating all of the farm. For requests to continue operating while leasing out a portion of the current farming operation, see subparagraph E.

FLC's have the primary authority to approve a borrower's request or action to cease operating the security under this section.

If FSA cannot grant the borrower consent to cease operating security, FSA will immediately notify the borrower of non-monetary default according to 5-FLP, paragraph 66.

* * *

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

E Real Estate Surface Leases

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

***--Note:** The borrower will submit FSA-2061 to request prior approval for a lease.--*

(1) The lease will not adversely affect the Agency's security interest;

(2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage. However, the term of surface leases for farm property no longer in use, such as old barns, or for nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

Note: If it is determined that an extended lease term is in the agency's best financial interest, an Administrator's Exception request may be submitted.

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

(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met (subparagraph D). Leases for nonfarm enterprises, such as solar farms, which take significant acreage of the Agency's security out of agriculture production are not authorized. Non-productive land may be considered for this type of lease; and

***--Note:** An operational review must be completed according to Part 2 to support that the action does not hinder the future operation or success of the farm.--*

(5) The lease and any contracts or agreements in connection with the lease must be reviewed and approved by the Agency.

FLC's have the primary authority to approve leases under this section. Approval of leases must be documented by executing either FSA-2061 or the electronic signature command in FBP. If the FLC reviews the lease and determines that legal clarification is necessary, State Office may request regional OGC opinion.

For requests that involve both a lease and a SNDA, the FLC is primary approval official. If FSA-2061 is utilized to document approval of the real estate lease, the recommendation or decision must be supported within Part D of FSA-2061. A satisfactory environmental review (FSA-850) for the action must also be completed before approval and placed in the physical file.

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)**E Real Estate Surface Leases (Continued)**

Regardless of the method chosen to document approval of the real estate lease, an operational review under Part 2 is required to be completed within FBP to ensure the request meets E (4). The borrower's remaining operation must be sufficient for the farm to continue on a sound basis.

If FSA cannot grant the borrower consent to lease the real estate security, FSA will immediately notify the borrower of non-monetary default according to 5-FLP, paragraph 66.

Incomplete applications will be processed according to paragraph 8 of this handbook.

F Mineral Leases

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

***--Note:** The borrower will submit FSA-2061 to request prior approval for a lease. Incomplete applications will be processed according to paragraph 8.--*

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

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

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

(i) The Agency's security interest; or

***--Note:** See subparagraph 196 C for additional details about the Agency's security interest in mineral rights.

(ii) Compliance with any applicable environmental requirements of part 1B of this title.

AD-1026 and any other environmental documentation required by the Agency.--*

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

G Personal Property Security Leases

***--[7 CFR 765.252(c)] The borrower must request prior approval to lease personal property security. The Agency will approve requests provided the following conditions are met:**

Note: The borrower will submit FSA-2061 to request prior approval for a lease. Incomplete applications will be processed according to paragraph 8.--*

- (1) The term of lease does not exceed 12 months and does not automatically renew;**
- (2) The lease does not contain an option to purchase;**
- (3) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met; and**

***--Note:** An operational review must be completed according to Part 2 to support that the action does not hinder the future operation or success of the farm.--*

(4) The lease must be in the best interest of the Agency as determined by the authorized Agency official;

(5) Leased security must be accessible and readily identifiable at all times. Leased livestock required to be branded, tagged or be otherwise specifically identifiable; and

The authorized agency official must consider the following factors in determining if the lease is acceptable:

- excessive wear and tear where the loss of value in the security that would not be economically feasible to repair or replace
- provisions for the return of the security and enforcement of those provisions
- provisions designating responsibility for repair or loss of security
- proposed location for the use of security and if that security will be comingled with other security
- the borrower will always maintain hazard insurance.

Note: The FSA borrower is responsible for the security at all times.

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)**G Personal Property Security Leases (Continued)**

(6) The lease and any contracts or agreements in connection with the lease must be reviewed and approved by the Agency.

Upon approval of the lease, the authorized agency official will notify the lessee of the Agency's lien on the borrower's security. The letter should state that payments for the lease will be issued jointly to FSA and the borrower unless otherwise agreed between the Agency and the borrower. All projected lease payments will be documented on the FSA-2040.

FSA immediately notifies the borrower of non-monetary default according to 5-FLP, paragraph 66 if determined a lease was previously approved.

* * *

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

I Allotments Leases

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

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

J Lease Proceeds

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

100 (Withdrawn—Amend. 37)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SED will issue a State Supplement on processing actions, procedures, and timing for the payment of a borrower's real estate taxes and on bidding at tax sales on accelerated accounts.--*

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

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

[7 CFR 765.203I] 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 personal property security. FSA-2411 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, at the discretion of the authorized agency official FSA-2412 or FSA-2411 will be updated at least annually. If there are any material changes or at the discretion of the authorized agency official, a new FSA-2411, FSA-2412, or both, should be sent.

If requests are made for notification beyond the listed requirements, they can only be sent by FSA-2411 to business firms in the trade area that buy personal property or crops or sell--* them for commission.

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

All checks, bank drafts, or money orders that the borrower receives from the sale of normal security must be made payable to the borrower and the Agency. After all Agency installments for the production cycle and past due installments have been made, the authorized agency officials may notify potential purchasers that proceeds may be made payable solely to the borrower.

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

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

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

103 FSA Responsibilities Under Third Party Actions (Continued)

B SED's Responsibility

SED's will:

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

104-115 (Reserved)

Section 2 Subordinations

116 Requesting Subordinations

A Borrower Application

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

Separate and distinct entities or operations that are not liable for outstanding obligations to the Agency are not considered eligible borrowers for subordinations, even if an agency borrower is involved.

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

FSA-2062 will be used for all personal property and real estate subordination requests under this paragraph.

Note: State Offices should contact LSPMD for guidance if a subordination request is received from a non-commercial lender. Commercial lenders are subject to State or Federal government oversight.

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

*--FSA-2037 or any other format approved by FSA containing the same information will be entered into FBP.

[7 CFR 765.205 (a)] (3) Documentation of compliance with the Agency's environmental regulations contained in part 1b of this title; and

AD-1026 and any other environmental documentation required by the Agency.--*

* * *

--[7 CFR 765.205 (a)] (4) Verification of all debts.--

116 Requesting Subordinations (Continued)

A Borrower Application (Continued)

*--See 3-FLP, subparagraph 42 A for the verification of debts

A credit report is required unless current credit information is already contained in the borrower's case file. Whenever possible, to avoid adversely impacting the borrower's credit score, the borrower should provide the credit report being used by the participating lender for the subordination. Otherwise, the credit report fee will be paid by FSA unless the borrower--* has also applied for an FLP loan.

* * *

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.

*--With subordination, FSA and the lender essentially partner in providing joint financing to the borrower. The authorized agency official should confirm with the lender the loan rate, term, purposes, and security requirements, and what the lender specifically requires from FSA.

According to FSA-2062, feasibility was determined by the commercial lender and the borrower. No other feasibility documentation is required. FBP will be used to document the collateral analysis and all other subordination requirements.--*

* * *

C Incomplete Applications

[7 CFR 765.205 (b)] Incomplete applications will be processed in accordance with 7 CFR 764.52 (3-FLP Paragraph 45).

DLS Workflow SI-Other should be utilized as a reminder tool for sending incomplete notifications or when to withdraw. DLS SI-Other for subordinations currently records an outcome for withdrawal.

Applicants will be notified that the application is complete according to 3-FLP, subparagraph 45 C.

117 Conditions for Real Estate Subordinations

A Real Estate Security

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

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

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

117 Conditions for Real Estate Subordinations (Continued)**A Real Estate Security (Continued)**

Separate and distinct entities or operations that are not liable for outstanding obligations to the agency cannot request subordination of agency security, even if an agency borrower is a member of the entity.

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

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

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

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

Exception: 2-FLP, subparagraph 279 A and related CFR allows a lender to obtain a direct loan subordination when they are making a guaranteed loan to refinance debt, regardless of whether the debt being refinanced is their own or that of another lender.

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

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

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

***--Example:** If there is an outstanding subordination on security to lender A, then a subordination to lender B on the same security is prohibited except as provided in subparagraph 118 C.--*

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

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

117 Conditions for Real Estate Subordinations

A Real Estate Security (Continued)

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

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

*** * ***

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

Note: An operational review must have been completed within the last 3 years as required by Part 2 to document the inability of the borrower to graduate.

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

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

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

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

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

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

(4) The Agency will approve a request for subordination of real estate to a lessee if the conditions in paragraphs (b)(3)(viii) through (b)(3)(xvi) of this section are met (subparagraph 117 A and subparagraph 196).

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

117 Conditions for Real Estate Subordinations (Continued)

B Releasing and Refiling Lien Instruments Instead of Subordination

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

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

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

- the borrower agrees to execute new security instruments

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

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

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

Notes: On a case-by-case basis, the SED may approve an increase in debt ahead of FSA if the requirements in subparagraph 117 A are met and it is determined to be in the best interest of the government.

Example: A borrower is seeking to refinance a first lien on a primary residence taken as additional security. However, they need to cash-out additional funds to make necessary real estate repairs and improvements which results in an increase in the value of FSA security such that the overall Agency security position is unchanged or improved.

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

See subparagraph 197 B for customary costs.

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

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

118 Conditions for Personal Property Subordinations

A Personal Property Security

***--[7 CFR 765.205(d)] The requirement for personal property subordinations are as follows:**

(1) For loans secured by personal property, the subordination must meet the conditions contained in paragraphs (b)(3)(i) through (xii) of this section (subparagraph 117 A).--*
Multi-year subordinations may only be approved according to OGC-approved State supplements.

B Multi-Year Subordinations

Multi-year subordinations for LOC may only be approved according to OGC-approved State supplements.

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

- borrower's inability to obtain credit without subordination, including guarantee
- borrower's inability to partially graduate.

--The additional following requirements must also be met according to State supplements for subordinations issued before issuance of Amend. 50:--

- borrower's ability to pay debt before funds are released for each production cycle
- advances for the subsequent years are not authorized without FSA's written consent.

* * *

***--C Second Subordinations to Another Lender on Personal Property**

As provided in 7 CFR 765.205(c)(3)(iv) (subparagraph 117 A) the agency may approve a request for a second subordination to another lender according to the following:--*

[7 CFR 765.205(d)(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 (c)(3)(i) through (xi) of this section (subparagraph 117 A).--

118 Conditions for Personal Property Subordinations (Continued)

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

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

- borrower's case file contains an existing appraisal that was completed within the previous 18 months and meets the requirements of 1-FLP, subparagraph 141 G.
- loan for which the borrower requests the subordination is:
 - to refinance an existing prior lien and the resulting prior lien will **not** be increased except for customary costs appropriate to the transactions

Note: See subparagraph 197 B for customary costs.

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

FSA does **not** require an appraisal for personal property security when either of the following criteria are met:

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

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

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

Except for SED's, approval officials may approve subordinations if the amount of the subordination, plus the principal balance of existing subordinations, is not more than their maximum approval authority according to 1-FLP, subparagraph 29 D. SED authority to approve subordinations is limited to \$1 million total EM indebtedness; otherwise, SED's may approve subordinations regardless of the amount. SED's may delegate their authority for approving subordinations to FLC, FLS, or DD.

Note: SED's are the only FSA officials with approval authority for subordinating real estate security for an operating-type loan purpose, which includes an annual line of credit and multi-year line of credit. This specific approval authority cannot be redelegated.

The authorized agency official may approve the subordination by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the local servicing official the responsibility to execute *--agency and required legal documents to complete the subordination. A copy of the approved credit presentation must be included in the physical case file.--*

* * *

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

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

B Appeal Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

121-125 (Reserved)

Section 3 Junior Liens

126 General Conditions for Junior Liens

A General Policy

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

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

- FSA-2061

***--Note:** Incomplete applications will be processed according to paragraph.--*

- a copy of the farm operating plan submitted to the junior lienholder
- *--information needed to complete an operational review according to Part 2--*
- 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.

***--Notes:** An operational review must be completed according to Part 2 to support that the action will not adversely impact FSA's financial interest and that the borrower is unable to graduate.--*

Approval authority rests with any authorized agency official.

C Unapproved Junior Liens

FSA will consider an unapproved junior lien on security when determining future borrower eligibility for FSA loan making 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 personal**
property acquired by the borrower will not become part of the real estate securing the--*
FLP debt. The Agency will consent to severance agreements if all of the following
conditions are met:

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

The requirements of subparagraph 196 B also apply.

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 personal property lien and, therefore, may be included in a severance agreement are:

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

* * *

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

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

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

The authorized agency official may approve the severance agreement by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO the responsibility to execute agency and required legal documents to complete the severance agreement. The authorized agency official must include in the physical case file, all components of FBP that require signatures as provided in the FPB User Guide, available at <https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index>.

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

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

--D Appeals Rights--

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

137-145 (Reserved)

Section 5 Release of Real Estate and Personal Property Security Liens Without Monetary Compensation

146 Release Without Monetary Compensation

A Approval

--SED, or delegated FLC, FLS, or DD, may approve a request for release by authorizing-- execution of FSA-2045, FSA-2061, FSA-2470, or other documents approved by OGC. Before approval of a release without monetary compensation, borrower's ability to graduate to commercial credit must be considered and documented. The SED or delegated official's authorization must be attached to the applicable executed documents.

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

B Release Because of Mutual Mistakes

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

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

C Release Because of No Evidence of Indebtedness

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

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

146 Release Without Monetary Compensation (Continued)

D Borrower Requested Personal Property Security Release

***--[7 CFR 765.305(c)] The Agency will release its lien on personal property security--* without compensation, after written request from the borrower provided all the following criteria are satisfied:**

Note: The borrower will submit FSA-2061 to request a release of security.

(1) The borrower is current on all loan accounts with FSA and has not received PLS, DBSA, or DSA on any loan within the last 36 months;

Borrowers:

- who currently have an installment that is less than 90 days past due are not considered current and do not meet this requirement
- requesting PLS, DSA, or DBSA at the same time they are requesting a release under this section do not meet this requirement
- that have executed a Conservation Contract without a PLS action may meet this requirement, as Conservation Contracts are not considered PLS.

(2) The borrower has paid in full direct term loan installments that include principal *--reduction not later than 90 days after the scheduled installment due date in each of the--* last 3 calendar years;

Notes: The borrower must demonstrate timely payment according to loan schedules of each direct loan installments over the most recent 36-month period. When evaluating payment history, payments made no later than 90 days of the scheduled due date are considered timely. Borrowers must still be current at the time of request, see D(1).

To meet this requirement, installments must have originally included scheduled principal reduction. Scheduled payments consisting of interest only * * * do not meet this requirement.

--Borrowers who have made several payments ahead of schedule may be considered for an Administrator's exception according to paragraph 14.--

A borrower who recently received a direct loan does not meet this requirement until they demonstrate timely payment of their installments (with principal reduction) over the most recent 36-month period for that new loan, regardless of their repayment history on prior FSA loans.

146 Release Without Monetary Compensation (Continued)

D Borrower Requested Personal Property Security Release (Continued)

(3) After the release, the security margin on each Agency direct loan will be 125 percent (or more, if it is not practicable to separate the property, if necessary to ensure the loan is fully secured for the life of the loan, or if the borrower requests only a portion of Agency security to be released). The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter (1-FLP, Part 6); however, well documented recent sales of similar properties can be used if the Agency determines a supportable decision can be made without current appraisals;

The authorized agency official with SED delegated authority to prepare personal property appraisals under 1 FLP, Exhibit 7, will adequately document the analysis and determination to release security as provided in this paragraph. In some cases, more than a 125 percent security margin may be required. For example, borrowers with a balloon installment, the authority agency official must ensure adequate security is available when the balloon installment comes due. The authorized agency official will not release to 125 percent if the balloon installment is under secured. Non-PMI security will be considered for release prior to considering the release of security with perfected PMI.

Note: The value of personal property security to be released does not need to be appraised or valued unless it is necessary to support the value of retained security; however, the value of security to be retained must be obtained and analyzed as instructed in D(3).

Livestock can only be released in whole by species. Individual animal units within a species cannot be released.

Example: A release of a borrower's beef cattle herd can be authorized, but the agency will retain its lien on the borrower's swine herd to maintain the 125 percent security margin.

A borrower may request to replace primary personal property security with real estate security to facilitate the release of personal property security under this section. The request must meet all applicable requirements. The real estate offered as primary security must meet the requirements of subparagraph 196 F(2) of this handbook regarding appraisals, title clearance and security.

146 Release Without Monetary Compensation (Continued)

D Borrower Requested Personal Property Security Release (Continued)

--In lieu of a subordination, individual units of equipment may be released using UCC-3.--

* * *

*--**Example 1:** FSA has a lien on three tractors, which include two John Deere tractors that were funded by FSA (PMSI) and a Kubota tractor that represents non-PMSI security. The borrower has asked to use the Kubota tractor as a security for a new loan and has requested that it be released. A release of lien on an individual tractor is authorized provided that a 125 percent security margin is maintained. The Kubota tractor is the first tractor considered for release as it represents non-PMSI security.

A borrower may request the agency file a UCC-3 to document release of specific items of equipment. In this instance, the borrower must pay FSA the cost for recording UCC-3.--*

(4) Any asset requested for release must serve only as security for term loan(s) that have been outstanding for at least the prior 36 months and cannot serve as adequate security for another existing Agency direct loan;

--Consideration should be given to whether the security to be released is adequate security for a direct loan at the time of release. Any security, whether primary or additional security at the time of loan making, may be considered for release subject to the requirements of this section. In some cases, it may not be feasible to distinguish the primary security from the additional. For example, with loans that were restructured multiple times, and each time additional security was taken, it may be difficult to determine what is primary security. In-- those cases, an Administrator Exception can be submitted for review according to paragraph 4.

146 Release Without Monetary Compensation (Continued)

D Borrower Requested Personal Property Security Release (Continued)

(5) Except for CL, the borrower is unable to fully graduate as specified in § 765.101 (Part 2).

*--An operational review must have been completed within the last 3 years as required in Part 2 to document the inability of the borrower to graduate.

(6) The borrower is not in non-monetary default.--*

The authorized agency official will prepare FBP credit presentation explaining how each of the applicable conditions above are met and submit the narrative along with supporting documentation to the State Office for review and concurrence. A satisfactory environmental review must be completed. The environmental review will typically meet exception L-CatEx 1K, unless extraordinary circumstances exist, which require a higher level of environmental review (see 1-EQ).

* * * Supporting documentation will include all calculations and copies of any well-documented recent sales, such as recent auctions, or other transactions in the area. * * * State Office officials will review the request and if they concur, submit the request to the SED for approval.

E Processing Release Requests

Incomplete applications for release without monetary compensation will be processed according to paragraph 8 of this handbook.

The authorized agency official will inform the borrower in writing of the approval and include a copy of the FSA-2061 executed by the authorized agency official.

Security released without monetary compensation will be documented on the FSA-2045 in accordance with the form instructions. A new security agreement, FSA-2028, must be obtained in accordance with subparagraph 98 C, detailing the specific FSA security.

FSA's blanket UCC-1 will not be amended to reflect the release of personal property security unless there is a specific category of security that is being released. For example, if all livestock security is released, the authorized agency official may file a UCC-3 to reflect the release, if determined necessary. SED will issue a State Supplement on amending financing statements after consulting with the Regional OGC, as appropriate, to satisfy State legal requirements.

Notes: If through a subsequent loan making action, an item of security that was released becomes FSA security again, that item(s) will be lined through on the FSA-2045, initialed and dated by an authorized loan official.

146 Release Without Monetary Compensation (Continued)

F Borrower Requested Real Estate Security Release

[765.351(f)] Real estate security may be released by FSA without compensation upon written request from the borrower when the requirements of paragraph (a) of this section (subparagraph 196 B), except paragraph (a)(3) of this section (subparagraph 196 B), are met, and all the following criteria are satisfied:

***--Note:** The borrower will submit FSA-2061 to request a release of security.--*

(1) The borrower is current on all loan accounts with FSA and has not received DBSA, DSA, or PLS within the last 36 months;

Borrowers:

- who currently have an installment that is less than 90 days past due are not considered current and do not meet this requirement.
- requesting PLS, DSA, or DBSA at the same time they are requesting a release under this section do not meet this requirement
- that have executed a Conservation Contract without a PLS action may meet this requirement, as Conservation Contracts are not considered PLS.

(2) The borrower has paid in full scheduled direct term loan installments that include

***--principal reduction not later than 90 days after the scheduled installment due date in--* each of the last 3 calendar years;**

Notes: The borrower must demonstrate timely payment according to loan schedules of each direct loan installments over the most recent 36-month period. When evaluating payment history, payments made no later than 90 days of the scheduled due date are considered timely. Borrowers must still be current at the time of request, see F(1).

To meet this requirement, installments must have originally included scheduled principal reduction. Scheduled payments consisting of interest only * * * do not qualify for release without monetary compensation.

--Borrowers who have made several payments ahead of schedule may be considered by an Administrator's exception according to paragraph 4.--

A borrower who recently received a direct loan does not meet this requirement until they demonstrate timely payment of their installments (with principal reduction) over the most recent 36 month period for that new loan, regardless of their repayment history on prior FSA loans.

146 Release Without Monetary Compensation (Continued)**F Borrower Requested Real Estate Security Release (Continued)**

- (3) The property released will not interfere with access to or operation of the remaining farm;**
 - (4) Essential buildings and facilities will not be released if they reduce the utility or marketability of the remaining property;**
 - (5) Any issues arising due to legal descriptions, surveys, environmental concerns, utilities are the borrower's responsibility and no costs or fees will be paid by FSA;**
 - (6) After the release, the security margin on each Agency direct loan will be 125 percent (or more if it is not practical to separate the property, if necessary to ensure the loan is fully secured for the life of the loan, or if the borrower requests only a portion of Agency security to be released). The value of the retained security will normally be based on appraisals obtained as specified in § 761.7 of this chapter (1-FLP, Part 6); however, well documented recent sales of similar properties can be used if the Agency determines a supportable decision can be made without current appraisals;**
- * * *** The 125 percent security margin applies to each direct loan on the account, including any proposed new loans.

146 Release Without Monetary Compensation (Continued)

F Borrower Requested Real Estate Security Release (Continued)

(7) Any asset requested for release must serve only as security for term loan(s) that have been outstanding for at least the prior 36 months and cannot serve as adequate security for another existing Agency direct loan;

Consideration should be given to whether the security to be released is adequate security for a direct loan at the time of release. Any security, whether primary or additional security at the time of loan making, may be considered for release, subject to the requirements of this section.

In some cases, it may not be feasible to distinguish the primary from additional. For example, with loans that were restructured multiple times and each time additional security was taken it may be difficult to determine what is primary security. In those cases, an Administrator Exception can be submitted for review according to paragraph 4.

(8) Except for CL, the borrower is unable to fully graduate as specified in § 765.101 (Part 2).

*--An operational review must have been completed within the last 3 years as required by Part 2 to document the inability of the borrower to graduate.

(9) The borrower is not in non-monetary default.--*

The authorized agency official will prepare a FBP credit presentation explaining how each of the applicable conditions above are met and submit the narrative along with supporting documentation to the State Office for review and concurrence. A satisfactory environmental review must be completed. The environmental review will typically meet L-CatEx 1K unless extraordinary circumstances exist which require a higher level of environmental review (see 1-EQ).

* * * Supporting documentation will include all calculations and copies of any well-documented recent sales, such as real estate comparables, recent auctions, or other transactions in the area. * * * State Office officials will review the request and if they concur, submit the request to the SED for approval.

G Appeals Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

147 Releasing Valueless Liens

A Conditions for Releasing Valueless Liens

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

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

SED authority may:

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

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

B Information Required to Release a Valueless Lien

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

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

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

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

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

147 Releasing Valueless Liens (Continued)

B Information Required to Release a Valueless Lien (Continued)

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

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

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

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

148-160 (Reserved)

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

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

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

B Fair Market Value

***--[7 CFR 765.301(b)] The borrower may not dispose of personal property 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 personal property security, unless the security is sold through a legitimate public auction.

C FSA Lien Release

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

161 General Requirements (Continued)

D Consent of Lienholders for Release of Proceeds

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

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

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

The authorized agency official may require:

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

E Disruption of Farming Operation

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

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

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

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

161 General Requirements (Continued)

F Furthering FSA Program Objectives

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

G Security Exchange or Replacement

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

H Proceeds Payable to Both the Borrower and FSA

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

--162 Agreement for Disposition of Normal Income and Basic Personal Property Security--

A Agreement for the Use of Proceeds

See paragraph 20 for information on the preparation of the agreement.

B Using the Agreement for the Use of Proceeds

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

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

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

***--162 Agreement for Disposition of Normal Income and Basic Personal Property Security
(Continued)--***

B Using the Agreement for the Use of Proceeds (Continued)

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

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

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

Normal income security dispositions listed on the FSA-2040 will continue to be reported and recorded until all annual installments due to FSA have been paid current. Basic security dispositions must be reported until FSA no longer has a lien against the security.

C Government Payments and Insurance

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

**162 Agreement for Disposition of Normal Income and Basic Personal Property Security
(Continued)**

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

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

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

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

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

--FSA-2450 should be used to temporarily release milk or other similar assignments.--

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 Personal Property Security--**A General Requirements**

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

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

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

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

(4) Security may be consumed as follows:

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

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

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

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

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

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

163 Using Proceeds From Personal Property Security (Continued)

B Releasing Normal Income Security for Essential Family Living and Farm Operating Expenses (Continued)

The borrower must contact FSA for approval if the borrower wants to use proceeds to pay for farm operating expenses for future operations not included in the current FBP, so that FSA may work with the borrower to develop a feasible FBP. When the borrower and FSA cannot agree on security releases for essential family living and operating expenses, the borrower must request the release in writing. If rejected, the authorized agency official will notify the borrower, in writing, why the requested release was denied, including why the expenses requested for release are not basic, crucial, or indispensable to the family, the farming operation, or both. Appeal rights will be included with the notification. See 1-APP for appeal procedures. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

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 personal property better suited to the borrower's--* farming 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.**

Exception: FSA Security Agreements, FSA-2028, with a revision date of September 25, 2024, (and those for ML only customers with a revision date before August 21, 2025) do not include a blanket security interest in all equipment or livestock now owned or later acquired. Therefore, it is necessary for the FSA-2028 to be reviewed and updated regularly to ensure it accurately reflects FSA security interests in specific collateral. Should specific items be replaced for example, FSA must notate the changes on the working copy of FSA-2028. However, FSA should not execute a new FSA-2028 in these specific cases unless the borrower has subsequently requested a new loan or loan servicing.

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

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

Multiple Releases for Farm Operating Expenses Within the Term of an Annual OL

A Review of Production Cycles

FSA may, on a case-by-case basis for annual OL's only, authorize normal income security releases for the purpose of reinvestment within a 12-month period in accordance with the farm business plan associated with the annual OL at the time of loan approval. These releases may be specifically beneficial for operations with multiple growing and marketing seasons within the term of the annual OL. These releases may be outside of other planned releases for authorized annual OL purposes (e.g., family living expense).

Example 1: A cattle feeder operation plans to purchase and feed three sets of calves within a 12-month period (1 set every 4 months with \$125,000 of associated credit needed for each rotation). FSA approves a \$125,000 direct annual OL request to purchase and feed the initial set of cattle. When the first set of calves are sold, FSA may release the sale proceeds in accordance with the approved farm operating plan and FSA-2040. The sale proceeds will be used to purchase the second set of calves and inputs. This may continue through the second set of calves. The sale proceeds from the third set of calves would be used to pay the direct annual OL in full.

According to 3-FLP, subparagraph 201 D, use of this provision is not authorized to finance production cycles that are projected to exceed a 12-month period from the date of loan closing. Loan maturities beyond 12 months will only be authorized to allow time to complete marketing and sale of commodities.

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

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

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

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

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

B Determination to Release

The authorized agency official will determine if, based on the results of the review of the previous production cycle and current projections, a release for reinvestment is authorized. The FBP "Ending Cash On Hand" must be positive for each production cycle under this subparagraph. If there are significant changes to the operation or projections from the original approved FBP cash flow budget, then an updated FBP cash flow projection may be necessary to demonstrate a feasible plan is still achievable. The agency official will discuss with the borrower the benefits of paying the outstanding accrued interest on the annual OL before releases for a subsequent production cycle. The agency will release only the amount necessary to fund the reinvestment as determined in the income/expense projection for the next production cycle. * * * Before releases for the final production cycle within the annual OL term, the income/expense review must show the borrower will be able to pay the direct OL loan installment due at annual OL maturity.

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

If a request for a release of proceeds under this paragraph is rejected, the authorized agency official will notify the borrower, in writing, why the requested release was denied. Appeal *--rights will be included with the notification. See 1-APP for appeal procedures. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.--*

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

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

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

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

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

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

167-180 (Reserved)

Section 2 Unapproved Disposition of Security

181 Initial FSA Actions Upon Discovery

A Unauthorized Personal Property Security Disposition Discoveries

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

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

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

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using FSA-2413.

Note: If a borrower has been discharged in bankruptcy of all FSA debt and security has not been liquidated when FSA discovers the unauthorized disposition, use FSA-2414.

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

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

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

With SED concurrence, the authorized agency official will send FSA-2415 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 personal property security on which FSA holds a first lien before making demand or taking civil action against third-party purchasers. FSA-2415 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, FSA-2416 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.

***--Note:** A LexisNexis search may help find a third-party converter address or assets. See 1-FLP, paragraph 63.--*

--182 Post-Approval of Personal Property 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 *--personal property disposition on the agreement and in the borrower's FBP.--*

B Denying Post-Approval Requests

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

C Determining the Disposed Security's Value

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

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

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

--183 Requirements for Handling Borrower Non-compliance--**A Future Eligibility Decisions**

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

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

184-195 (Reserved)

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

196 Requirements

A General

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

Note: This section also applies to:

- *--see subparagraph 196 F for 1031 exchanges--*

- subordinations and non-disturbance agreements made for non-lending purposes

Note: A lien waiver for Farm Programs is considered a subordination for non-lending purposes.

- conservation easements
- the sale of water and water rights
- transfer of security to a revocable trust (without assumption of debt) for estate planning purposes when both of the following apply:
 - the borrower and any spouse are the sole settlers or grantors of the revocable trust
 - the borrower and any spouse are the sole beneficiaries during the borrower's life.

196 Requirements (Continued)

A General (Continued)

The borrower must:

- complete and sign FSA-2061 with the assistance of the authorized agency official
- *--**Note:** Incomplete applications will be processed according to paragraph 8.--*
- provide a written contract or an agreement for the property indicating the price and terms of the transaction. A copy of the agreement with the qualified intermediary must be provided for 1031 exchanges. FLC should direct legal questions to the regional OGC.
- complete an operational review according to 4-FLP, Part 2, reflecting the proposed transaction. If the review reflects that the operation will be financially distressed, the account will be serviced according to 5-FLP, Part 3, if needed, to determine if conditions for approval under paragraph B can be met.
- *--sell the property for not less than the market value as determined by paragraph 198--* unless FSA is being paid in full.

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;

Note: Releases without compensation properly completed according to subparagraph 146 F, enhance the objectives for which the agency 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;

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

If there will be no significant changes to the operation, a new FBP is not required for release without compensation according to subparagraph 146 F.

Example: The release will permit an adult child of the borrower to build a house on 10 acres of unproductive land.

196 Requirements (Continued)

B Conditions for Approval (Continued)

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

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

Appraisals are required to determine market value of the right being granted, see paragraph 198. Conservation easements and rights-of-way granted to another federal agency still require appraisals to ensure that market value is being received.

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

***--Note:** An operational review must be completed according to Part 2 for transactions being considered under subparagraphs C (specifically sale of water or water rights), F, and G.--*

[7 CFR 765.351(a)] (5) The market value of the remaining security is adequate to secure the Agency loans, or if the market value of the security before the transaction was inadequate to fully secure the Agency loans, the Agency's equity in the security is not diminished;

***--[7 CFR 765.351(a)] (6) The environmental requirements of part 1b of this title must be met (1-EQ and 6-CP);**

AD-1026 and any other environmental documentation required by the Agency.--*

* * *

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

***--Note:** An operational review must have been completed within the last 3 years as required by Part 2 to document the inability of the borrower to graduate.--*

[7 CFR 765.351(a)] (8) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.

196 Requirements (Continued)**C Sale of Timber, Gravel, Oil, Gas, Coal, Other Minerals, Water, or Water Rights**

[7 CFR 765.351(b)] (1) Agency security instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate which secures an FLP loan will be considered a disposition of a portion of the security.

Note: When renewable annual sales of timber can be projected, the proceeds may be treated as normal income.

(ii) When the Agency has a security interest in oil, gas, or other minerals as provided by § 765.252(b) (subparagraph 99 G), the sale of such products will be considered a disposition of a portion of the security by the Agency.

The sale of water or water rights from real estate that secures an FLP loan will be considered a disposition of a portion of the security.

D Compensation for Damage to Real Estate Security

[7 CFR 765.351(b)(2)] Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage, and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders' consent, used for an authorized loan purpose.

E Disposition of Security for Outstanding ST's

[7 CFR 765.351(a)(9)] The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

Commodities produced by the property, such as when timber is thinned, can be sold without paying ST in full, as long as all proceeds are applied to ST.

196 Requirements (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.

See 3-FLP:

- Parts 7 through 10 for program objectives, purposes and limitations for the type of loan involved
- Part 6 for hazard and flood insurance requirements
- Part 16 for loan closing requirements--*

Notes: FLC may wave title insurance requirements for real estate previously acquired as additional security that is being substituted for primary security if a professional title search will provide adequate protection.

A new promissory note will not be completed for an exchange of security unless a new loan is closed.

- paragraph 95 for appraisal requirements.

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

Exception: For 1031 exchanges, the proceeds from the sale of the original property must be placed immediately with the qualified intermediary.

196 Requirements (Continued)

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.**

***--H Eminent Domain**

Eminent domain is the legal power of the government to seize private property for public use without the owner's consent. The government must prove the taking is for a valued public use and provide the owner with just compensation. The government entity must obtain a real estate appraisal to support compensation (fair market value).

SED will work with the borrower and regional OGC, as necessary, to ensure that the requirements of subparagraph 198 A are met in cases of eminent domain. The requirements of subparagraph 196 B do not apply to eminent domain.--*

196 Requirements (Continued)***--I Subordination, Non-disturbance, and Attornment Agreements (SNDA)**

See subparagraph 99 E for additional requirements for real estate leases.

Regarding the Agency version of an SNDA, FSA-2471:

- FSA-2471 provides a version of an SNDA that is acceptable to the Agency. It was originally designed to service requests from wind and cell tower companies. However, this form may be used in other contexts as determined by the regional OGC.
- FSA will not utilize or execute an SNDA created by an energy company because it will not meet Agency requirements.
- FSA must use FSA-2471 to service an SNDA request. However, FSA may also use a modified version of FSA-2471 or another type of agreement that has been approved by the regional OGC.
- Any modifications to FSA-2471 must be approved by the regional OGC. These modifications must continue to make any rights of first refusal and purchase options within the lease inoperative as long as FSA is the lender or retains a lien on the property.
- FSA-2471 is intended for typical SNDA requests, which involve leases and easements that are limited to a specific number of years. FSA-2471 is not appropriate and will not be used for requests involving permanent leases or permanent easements. Requests involving permanent easements or leases should be serviced as a standard partial release under Part 7, Section 3, or subordination under Part 6, as applicable.--*

197 Allowable Use of Proceeds From the Release of Real Estate Security**A Applying Proceeds to Liens**

[7 CFR 765.352(a)] Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

B Use of Proceeds for Paying Costs

[7 CFR 765.352(a)(2)] To pay customary costs appropriate to the transaction, which meet the following conditions:

(i) Are reasonable in amount;

(ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

Examples of customary costs may include:

- abstracts

* * *

- real estate broker's commissions
- real estate taxes that must be paid to complete the transaction
- reasonable attorney's fees
- surveys
- title examination
- title insurance.

197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)**C Use of Proceeds for Land Development**

With SED consent, proceeds may also be used for:

[7 CFR 765.352(a)(3)] For development or enlargement of real estate owned by the borrower as follows:

- (i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;**
- (ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;**
- (iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 (1 FLP, Part 4) of this chapter;**
- (iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;**
- (v) Construction and development will be completed in accordance with § 761.10 of this chapter.**

The authorized agency official must:

- require the borrower to prepare a development plan for the planned activity
- conduct a final inspection of the borrower's property after construction completion.

197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)

D Capital Gains Taxes

[7 CFR 765.352(a)(4)] To pay capital gains taxes on real estate transactions when the following conditions are met:

(i) The borrower is unable to obtain commercial credit at reasonable rates and terms to pay the capital gains taxes;

(ii) The Agency approves the amount to be retained to pay capital gains taxes;

(iii) The remaining Agency debt remains fully secured;

(iv) All other lienholders will:

(A) be fully satisfied from the sale, or

(B) consent to the use of proceeds to be used to pay capital gains taxes;

Note: Written confirmation from the other lienholders is required prior to approval.

(v) At the borrower's expense, funds will be held in escrow, or deposited in a supervised *--bank account in accordance with subpart B of part 761 of this chapter (1-FLP, Part 4); and--*

(vi) Funds that are not used within 18 months towards the capital gains taxes will be remitted to the Agency debt.

With SED consent, proceeds from the sale of real estate security may be used to pay capital gains taxes when determined to be in the best interest of the Government. It will typically be in the interest of the agency to authorize the release if the alternative method to cover capital gains taxes would require a new direct loan request. The authorized agency official should consider if a release of proceeds is preferable to extending additional credit through use of direct loan funds. Examples of when a release is preferable include when:

- the borrower is not concurrently considering a new loan request that could include financing of the capital gains taxes
- the sale of real estate is time sensitive and would not allow FSA to underwrite a new loan
- the cash flow margin would not support additional debt payments
- the borrower would exceed term limits or loan limits if a new loan was closed
- there are insufficient direct loan funds available for funding a new loan.

197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)**E Additional Proceeds Usage Requiring FSA Consent**

With SED's consent, proceeds may be applied to FSA as regular payments, according to paragraph 62. SED's should consider the following when providing consent:

- using real estate proceeds as regular payment should not be a re-occurring event
- FSA has significant excess security based upon current appraisals
- the security being sold is a non-essential asset
- the borrower has not received disaster set-aside or PLS within the past 3 years or have payments deferred
- *--the application of the payment is not being used to resolve non-monetary default or--* impending acceleration
- the borrower has been impacted directly by a disaster, is still in recovery, and the sale and application of the proceeds will allow the borrower to resume normal payments.

Note: SED's authority may be redelegated to FLC.

F Pending Liquidation

[7 CFR 765.352(b)] After acceleration, according to 5-FLP, Part 15, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

Necessary and customary costs appropriate to the transaction:

- include only those costs that the borrower cannot pay from their own resources
- do not include capital gains taxes or junior liens.

--198 Determining Market Value*A Security Proposed for Disposition**

[7 CFR 765.353(a)] (1) The Agency will obtain a valuation of the security proposed for disposition.

(2) The Agency may waive the real estate appraisal requirement when the estimated value is less than \$50,000.

FSA-2132 will be used to document a real estate evaluation completed by FLP staff. See 1-FLP, subparagraph 24 D and 1-FLP, Exhibit 7, for delegations of authority for real estate evaluation. The authorized agency official is responsible for estimating value. The estimate--* will be based upon the intended use of the real estate and will be supported by comparable sales and/or discussions with real estate agents and documented in the case file.

* * *

***--[7 CFR 765.353(b)] The Agency will obtain a real estate appraisal or real estate evaluation of the remaining security if it determines that the transaction will reduce the value of the remaining security.**

A new appraisal or valuation report for the security being retained will only be obtained--* when the authorized agency official determines that the value of the retained property could be adversely affected by the loss of the transferred or released property.

*--Appraisal or valuation reports under this section may show the current market value of the property being transferred or released, and the property being retained (when determined appraisal is necessary), on a single appraisal report or on separate appraisal reports.

The value of rights to mining products, gravel, oil, gas, coal, or other minerals will be specifically included as part of the appraised value of the real estate security.

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

* * *

199 Approving or Denying Partial Releases or Exchanges

A Approval Authority

Approval officials may approve partial releases or exchanges when FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of the approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED is authorized to approve any transaction consistent with this section.

On an individual case basis, SED may approve a partial release or exchange for less than the appraised value under this paragraph when:

- the amount being received is within 10 percent of the appraised value

Note: This authority applies to this paragraph only.

Example 1: A borrower is selling a parcel of real estate and has agreed to a sales contract for \$200,000. However, the appraisal indicates a value of \$215,000. Since the appraisal is within 10 percent ($215,000 \times .10 = 21,500$ ~ $193,500 - 215,000$), the transaction can be approved without a DAFLP exception.

- the property has been professionally and extensively marketed.

*--The authorized agency official must approve a partial release by executing either FSA-2061, or the electronic signature command in the credit presentation section of FBP, and FSA-2470.

If FSA-2061 is utilized to document approval of the partial release, the recommendation or decision must be supported within Part D of FSA-2061. A satisfactory environmental review (FSA-850) for the action must also be completed before approval and placed in the physical file.

Regardless of the method chosen to document approval of the partial release request, an operational review is typically required to be completed within FBP to ensure that the requirements in Part 7, Section 3 are met, including repayment ability. An operational review will not be required if either of the following conditions exist:

- the request will result in all agency debt being paid in full
- a sufficient operational review has been completed within the past year and no changes are expected as a result of the request.

For more complex requests, it may be more efficient to complete the credit action and approval in FBP, but the method used to document approval is ultimately left to the discretion of the authorized agency official.--*

199 Approving or Denying Partial Releases or Exchanges**A Approval Authority (Continued)**

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

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

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

* * *

199 Approving or Denying Partial Releases or Exchanges (Continued)**B Real Estate Auctions**

*--Borrower requests to sell real estate at public auction must be pre-approved by LSPMD unless the:

- loans secured by the property are to be paid in full
- auction floor bid is either:
 - the appraised market value, or--*
 - within 10 percent of the appraised market value and approved by SED.

--FLC or FLS should send a request for LSPMD concurrence to adminexception@usda.gov. The request for LSPMD concurrence for a sale of real estate by public auction will address all of the following:--

- auctioneer's experience with selling real estate
- auctioneer's plan for advertising the auction, including where advertisements will be placed and how long they will run
- how the auction will maximize FSA recovery over a traditional sale through a realtor
- appraised values of the property as it is being advertised and auctioned.

Note: This can be demonstrated with an appraisal that addresses separate tract values as an addendum.

C Appeal Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

200-210 (Reserved)

Section 4 (Withdrawn--Amend. 28)

211, 212 (Withdrawn--Amend. 28)

213-230 (Reserved)

Part 8 Withdrawing Existing Party

231 Withdrawal Requirements

A General

If a jointly liable party requests FSA approval for withdrawal from an entity and conveyance of interest in the security to the remaining members in the entity, FSA considers this request according to this Part when all of the following conditions are met:

- a remaining spouse or entity member is already personally liable for the debt
- there is no change in the entity name (except in divorce cases when the account must be renamed to match the remaining spouse)
- FSA can issue FSA-2080 according to subparagraph B.

If a proposed action does not meet the requirements of this subparagraph, FSA will process the withdrawal as a transfer and assumption according to Part 9.

Note: For the purposes of this Part and Part 9, an entity is defined as a husband and wife, partnership, corporation, or any other entity in which more than 1 person is liable for the debt.

--B Release of Personal Liability--

[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.**

--Requests to withdraw from the farming operation will be submitted on FSA-2601. Incomplete applications will be processed according to paragraph 8.--

231 Withdrawal Requirements (Continued)***--B Release of Personal Liability (Continued)--***

When a transfer is not required under Part 9, and an existing party is requesting a release, the request must be submitted to the local FSA office detailing which members want to be released from liability and which members will remain liable for the debt. In addition, the borrower entity must both:

- file, with the proper authority, documentation that properly identifies and legally accomplishes the intended withdrawal and submit copies of this documentation to FSA

Note: This could include a divorce decree or documentation of a change in the corporation or partnership composition.

- submit:
 - a new FBP that projects the repayment ability of the remaining entity members or new entity that will be liable for the debt
 - any other documentation required by FSA in connection with the proposed withdrawal, such as individual financial statements and earning statements of the withdrawing party when the account is undersecured
 - a copy of the document transferring any security interest from the withdrawing party to the remaining borrower, and could include a new deed or bill of sale to the remaining members of the borrower entity.

Generally, for a request for a withdrawal of an existing party, the analysis will be similar to that required of an operational review unless a full analysis (see paragraph 22) is necessary because of the existence of either of the following conditions:

- the account is undersecured
- the account is subject to a full assessment under 1-FLP, subparagraph 263 A.

* * *

231 Withdrawal Requirements (Continued)***--C Approval Authority--***

When FSA's debt plus prior liens, less the market value, is \$1 million or more (including principal, interest, and other charges), FSA-2080's must be approved by the Administrator or designee. FLM's or SFLO's may approve FSA-2080's when all FLP security is transferred and the total outstanding FLP debt is assumed; otherwise, SED's must approve FSA-2080's. All cases requiring FSA-2080's from SED's will be submitted for review or debt settlement under 7-FLP, Part 12.

The authorized agency official may approve the transaction by executing the electronic signature command in the credit presentation of FBP. Under the electronic signature, the approval official may designate FLM, SFLO, or FLO the responsibility to execute agency and required legal documents to complete the transaction.

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

--D FSA Actions--

A copy of the FSA-2080 should be placed with the original promissory note along with a copy in the borrower's case file attached to the copy of the promissory note.

The authorized agency official will manually maintain a released of liability list of borrowers and/or co-borrowers who signed FSA-2080 and have been approved and released of liability on active and paid in full loans. This list will be maintained in Operational Folder FLPP-4. The following information will/must? be documented for each borrower:

- borrower name
- FSA borrower ID
- loan numbers
- date the release liability was approved
- copy of the executed FSA-2080.

The "Unlink Related Entity" function in DLS must not be used in cases where release of liability has been approved.

Note: If a borrower and/or co-borrower have been released from liability on a loan and debt offset is being pursued, the authorized agency official will refer to 7-FLP, Part 4 and the DLS User Guide for instructions on unlinking the released individual before offset.

232-245 (Reserved)

Part 9 Transfer of Real Estate and Personal Property Security

246 Transfer of Security and Assumption of Debt

A General

[7 CFR 765.401(a)] (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each entity member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

* * *

FSA requires the transfer and assumption of security and FSA debt when:

- a new borrower wants to replace the existing borrower
- an existing borrower is now operating, or proposes to operate as an entity with a non-relative
- an existing borrower proposes to transfer FSA security to an entity controlled or owned by the borrower.

FSA requires an assumption of debt, but not a transfer of security (assumes title to assets is not changing) when:

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

* * *

Operators include borrowers who obtained individual loans and later formed an operating entity with a relative. If the member with the individual loan owns at least 50 percent of the operating entity, the individual meets the definition of operator for loan servicing purposes.

--See the definition of operator in Exhibit 2.--

246 Transfer of Security and Assumption of Debt (Continued)

* * *

--A 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.

--B Junior Liens to FSA's Debt--

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.

--C 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 through an operational review completed according to Part 2.--*

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.

* * *

--D Forgiveness of Youth Loan Debt--

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this section as part of its eligibility. The criteria for determining if the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR section 766.104(a)(1). Any borrower who met those criteria when the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to the present regulations and can preclude the applicant from receiving a loan from FSA.

--246.5 Application for Transfer and Assumption*A Application Requirements**

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. FSA-2476 should be completed for transfer of real estate security. The authorized agency official will review FSA-2476 to assure that the documents required are present and complete. Incomplete applications will be processed according to paragraph 8.

[7 CFR 765.401(b)] A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

FSA-2061 is used by the borrower to request and obtain written consent transferring personal property security. The authorized agency official will review FSA-2061 to **assure** that the documents required are present and complete. Incomplete applications will be processed according to paragraph 8.

[7 CFR 765.403(f)] Transferees must submit a complete application in accordance with 7 CFR 764.51 (3-FLP, subparagraph 42 A).

The authorized agency official will review the transfer request to **assure** that the documents required are present and complete. See 3-FLP, subparagraph 45 B for processing incomplete applications.--*

247 Types of Transfers and Assumptions

A New Eligible Borrower

[7 CFR 765.403(a)] The Agency may approve transfers of security with assumption of Agency debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in part 764 (3-FLP) of this chapter for the type of loan being assumed; and

(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 (1-FLP) of this chapter.

Transfer of security and assumption of debt for a new eligible borrower is completed at new rates and terms. If the debt for the existing borrower is delinquent, the delinquency is resolved when the transfer and assumption at new rates and terms is completed.

--The transaction will be completed according to subparagraph 248 B.--

* * *

B Adding a New Member to a Borrower Entity

To add new entity members to an existing borrower entity, the proposed individual entity members and the entity as a whole must meet the eligibility requirements as defined in 3-FLP, Part 4. Adding a new member to a borrower entity is completed at same rates and terms.

* * *

The transaction will be completed under subparagraph 248 C.

C Withdrawing a Member and the Remaining Members Are Not Jointly Liable

If a personally liable party withdraws from an entity and all remaining entity members are not jointly liable for the debt, FSA will process the transfer and assumption according to this part. Accordingly, all transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If all remaining entity members are jointly liable, the withdrawal is processed according to Part 8.

* * *

--This transaction will be completed according to subparagraph 248 C.--

247 Types of Transfers and Assumptions (Continued)

D Adding New Entity

When an existing individual borrower forms an entity, the borrower should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process.

Example 1: Existing individual borrower has created a sole proprietor LLC. Borrower will now operate the farm under this new LLC.

Example 2: Existing sole individual borrower is requesting to add his son as a co-borrower. The primary borrower (father) will remain the same, but there will now be 2 individual co-borrowers. As a result, the operation will be considered an entity as the definition within handbook 4-FLP consists of an exception to include any arrangement in which more than 1 person is party to the debt

* * *

The transaction will be completed under subparagraph 248 C.

E NP Applicant

FSA may allow NP assistance only when it is in FSA's best financial interest.

FSA allows NP assistance only to accommodate enhanced collection potential for outstanding loans.

FSA application requirements 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. An applicant, including all entity members, for NP assistance will only be approved if the applicant, including all entity members, meets the requirements as provided in

--subparagraph 248 I.--

F Security Requirements

[7 CFR 765.403(g)] All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed (3-FLP Part 5).

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 relative of the borrower or an entity comprised solely of relatives 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;

***--Note:** Includes an existing individual borrower that has created a sole proprietor entity and will now operate the farm under the new entity.--*

(d) A new entity consisting of the same members as the borrower entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or

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 relative of the original borrower or an entity in which the entity members are comprised solely of relatives of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when FSA made the original loan or remain an entity comprised solely of people who were original entity members, partners or joint operators when the entity received the original loan.

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

(i) Have been a corporate stockholder, cooperative member, or other member of a legal business organization, when the Agency made the original loan or will be an entity comprised solely of entity members who were entity members when the entity--* received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or entity members in the transferee.

* * *

***--D 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.--*

E Security

[7 CFR 765.402(g)] All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed (3-FLP, Part 5).

248 Assumption Terms (Continued)

***--F Determining the Value of the Security Property**

Except for transfers and assumptions on same rates and terms under subparagraph C, the value of the security property must be determined before approving a transfer and assumption. Valuations will be conducted according to 1-FLP, Part 6. The valuation determines the value of the security and the amount of the indebtedness that may be assumed.

G 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.

--H Transfer of Security and Assumption of Debt by Ineligible Borrowers--

* * *

***--[7 CFR 765.404(a)] (1) The Agency will allow the transfer of real estate and personal property security 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;

The authorized agency official will use guidance in 3-FLP to determine if the NP applicant is credit worthy or has not acted in good faith. If the applicant is not credit worthy or has not acted in good faith, the NP assistance will be denied.

(2) Not have received debt forgiveness from the Agency;

The authorized agency official will review agency records including past debts history in DLS/ADPS to determine if the applicant has had prior debt forgiveness. NP assistance will not be approved if the applicant caused the Agency a loss, unless specifically exempted in 3-FLP, subparagraph 65 A.

(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)***--I 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 down payment 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 personal property only, the Agency schedules--* repayment in five years or less, based on the applicant's repayment ability.

* * *

248 Assumption Terms (Continued)

* * *

J 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 Processing Transfer Request*A Reviewing Loan Application**

The authorized agency official will review the application according to this Part and 3-FLP, Parts 3, 4, and 15.

Note: As noted in paragraph 7, applicant must be screened for debarment and suspension.--*

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 Approving the Transfer and Assumption--

Approval officials may approve transfer and assumption when the FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED may redelegate their authority to approve transfer and assumption to FLC, FLS, or DD.

--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 FSA-2491 to the applicant. Applicants have 15 calendar days to request a review of the decision by the next level supervisor within FSA.--

The authorized agency official may approve the transfer and assumption by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO, the responsibility to execute the required documents to complete the transaction.

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

--249 Processing Transfer Request (Continued)*D Approving the Transfer and Assumption (Continued)--***

The authorized agency official will use FSA-2025 to notify the applicant that the transfer and assumption has been approved.

If FSA rejects the transfer and assumption request, the authorized agency official will notify the borrower of appeal rights according to 1-APP. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

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 *--(except that FSA-2489 will be used when no new loans are being issued) and State and local--* requirements. Closing documents will be filed according to State law and as described in the State supplement.

***--B Non-Program Loans**

Covenants in promissory notes, security instruments (mortgage or deed of trust), or both, 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.--*

--250 Closing the Transfer (Continued)*C Final Processing--***

The authorized agency official will follow the flowchart in DLS Loan Servicing Users Guide, Section 10.4, to determine if a “1M”, “4A”, or “4D” transaction is needed in DLS to record the transfer and assumption of the loan or loans.

The signed documents in the transfer docket will be placed in the transferee’s case file and the transferor’s file shall be maintained according to 32-AS.

In situations where the transferee provides a down payment to the transferor, the down payment funds will be applied towards the transferor’s existing balance prior to processing the transfer and assumption within DLS per subparagraph 250 B.

251 Determining Transferor Liability After Closing**A Full and Complete Transfer**

[7 CFR 765.406(b)(1)] The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

B Transfer and Assumption of a Portion of the Indebtedness

[7 CFR 765.406(a)] Agency approval of an assumption does not automatically release the transferor from liability.

[7 CFR 765.406(b)(2)] If an outstanding debt balance will remain and only part of the transferor’s Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency’s satisfaction.

[7 CFR 765.406(b)(3)] If an outstanding balance will remain and all of the transferor’s security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with subpart B of 7 CFR part 1956. (7-FLP, Part 12)

If all security has been transferred, the remaining debt will be considered for debt settlement instead of release of liability under this Section.

251 Determining Transferor Liability After Closing (Continued)

B Transfer and Assumption of a Portion of the Indebtedness (Continued)

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.

C Authority

The approval official for the transfer and assumption may consider and execute FSA-2080 in conjunction with the transfer and assumption action when all of the following conditions are met:

- transferee assumes the entire amount of the indebtedness
- transferee's indebtedness is fully secured
- transferor transfers all security
- transfer and assumption will not result in a loss to the Government.

If any of these requirements are not met, only SED's have the authority to execute FSA-2080's.

252-265 (Reserved)

Part 10 Deceased Borrowers**266 General****A Overview**

This Part describes the procedures FSA follows upon learning of the death of an FLP borrower.

B Contacting the Deceased's Family, Heirs, or Other Liable Parties

The authorized agency official will contact the family, heirs, or liable parties as soon as practical after the death of a borrower to discuss plans for the farm.

The authorized agency official will complete FSA-2490 to:

- determine how to proceed with the deceased borrower's account
- assess FSA's security position
- ensure FSA's security is adequately protected and maintained.

If no liable party remains, the heirs/representatives contacted will be informed that:

- the loan can be paid in full or assumed on eligible or ineligible rates and terms, if all requirements are met
- estates cannot be FSA program or NP borrowers.

***--Note:** A copy of the borrower's obituary or DNP documentation (see 1-FLP paragraph 53) will be attached to FSA-2490.--*

266 General (Continued)**C Consulting SED**

To complete FSA-2490 and determine an appropriate course of action, the authorized agency official will refer to State supplements, as appropriate; however, SED's will always be notified when:

- determining claim priority
- filing a proof of claim
- withdrawing a proof of claim
- initiating, participating in, or contributing to a probate or administrative hearing
- servicing a borrower's account when no will exists.

SED's will consult with OGC, as appropriate.

When necessary, the authorized agency official will forward the following information to SED:

- FSA-2490
- the borrower's case file
- a recommendation on how FSA should proceed with the borrower's account.

267 Servicing Options for Program Loan Accounts**A Continuation**

[7 CFR 765.451(a)] Following the death of a borrower, the Agency will continue the loan with any individual who is liable for the indebtedness provided that the individual complies with the obligations of the loan and security agreements.

The authorized agency official will process applicable changes to MIDAS Business Partner and DLS to change any name, account number, or case number.

B Transfer and Assumption

[7 CFR 765.451(b)] The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

See Part 9 for more information on transfer and assumptions.

C Shared Appreciation (FSA-2543's)

If an FSA-2543 exists at the time of the borrower's death, see 5-FLP, subparagraph 342 A.

D Liquidation

If a deceased borrower's farm loan accounts cannot be paid in full, voluntarily liquidated, resolved through continuation with existing obligors, or transferred to a third party, the *--authorized agency official will comply with 5-FLP, subparagraph 65 B before proceeding according to 5-FLP, paragraph 66. If the deceased borrower's loan payments are deferred, the authorized agency official will include canceling the deferral as of the date of the borrower's death with the notification provided in 5-FLP, subparagraph 65 B.--*

268 Servicing Options for NP Accounts

A General Policy

When a borrower with only NP's dies, FSA shall determine whether the borrower's NP's may be continued or assumed by another party. If NP's cannot be continued or assumed, FSA shall liquidate NP's according to 5-FLP, Part 16.

B Continuation with a Jointly Liable Borrower

[7 CFR 765.452(a)(1)] The Agency will continue the loan with a jointly liable borrower if the remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.

--The authorized agency official shall process applicable changes to MIDAS Business Partner and DLS to change the borrower's name and case number.--

C Transfer and Assumption

[7 CFR 765.452(b)] A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part (Part 9).

[7 CFR 765.452(a)(2)] The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower according to the loan and security instruments.

See subparagraph 248 C for information on continuing or assuming a loan.

D Security Transfer Beyond Heirs

[7 CFR 765.452(c)] (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part (Part 9).

269-280 (Reserved)

Part 11 Borrowers Entering the Armed Forces

281 General

A Protections for Borrowers on Active Duty

[7 CFR 765.161] (a) *Protections for borrowers on active duty.* The Servicemembers Civil Relief Act (Public Law 108-189) and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (Public Law 108-375) provide certain loan servicing protections for military borrowers. The Agency will apply those loan servicing protections to applicable Farm Loan borrowers.

(1) The benefits and protections of the Servicemembers Civil Relief Act apply to borrowers on active duty at all times.

(2) The requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 apply during a time of a war or national emergency as declared by the President or Congress.

*--Servicing officials should check 50 U.S.C 1621 for the annual status of Proclamation 7463 at [50 USC 1621: Declaration of national emergency by President; publication in Federal Register; effect on other laws; superseding legislation \(house.gov\)](#). Proclamation 7463 was issued by President Bush and has been renewed each year since its inception in 2001 to maintain a declared national emergency due to the continuous threat of terrorism.

Note: When navigating the above website, select the “notes” tab as this will display the current and past continuations of the proclamation.--*

(b) *Eligibility for National Guard members and military reservists.* Borrowers who are National Guard members or military reservists will be eligible for the protections covered by this section, as specified in paragraphs (b)(1) and (2) of this section:

(1) National Guard members must be on duty for at least 30 consecutive calendar days.

(2) Military reservists are eligible from the date orders are received to report for active duty.

(c) *Entity eligibility.* National Guard members and military reservists on active duty and any operating entity owned solely by the active duty borrower may be considered for protections specified in paragraph (a) of this section.

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 will send *--FSA-2497 to the borrower stating that the interest rate on their existing FSA loans will not--* exceed 6 percent while the borrower is on active military duty. The borrower will submit written notice and a copy of the military orders calling the service member to military service and any orders further extending military service. The interest rate change will be effective with the date the military service started (as verified in the military orders submitted by the borrower).

If the borrower's interest rate is already lower than the 6 percent rate, the borrower will be notified that FSA will not increase the borrower's interest rate.

In times of war or national emergency, active duty members are eligible to have their FSA *--interest and payments deferred on existing loans. FSA-2498 may be used as is or a similar--* notification letter may be used to address the borrower's specific circumstances. See paragraph 283 for additional details.

Adjustments to the interest rate based on military service must be processed by the RD Business Center, FLB only; therefore, the authorized agency official should send a memorandum to the RD Business Center, FLB that confirms the military service of the borrower and the effective date of that service.

In addition, the authorized agency official will process applicable changes to MIDAS Business Partner to change the borrower's address to the address at which FSA may contact the borrower while on active military duty or the address of a designated power of attorney.

B Penalty for Violations

Violations of the Servicemembers Civil Relief Act of 2003 are misdemeanors. Knowingly violating the provisions of the Servicemembers Civil Relief Act of 2003 is punishable by fines, imprisonment for not more than 1 year, or both.

282 Servicemembers Civil Relief Act of 2003 (Continued)**C Borrower Contact**

When the authorized agency official learns that a borrower plans to enter the Armed Forces on full-time active duty, the authorized agency official shall immediately contact the borrower to ensure that someone adequately cares for the borrower's loan security during their absence. The authorized agency official shall determine whether the borrower wants to:

- *--retain personal property or real estate security while on active duty--*
- lease real estate security while on active duty
- *--dispose of personal property or real estate security before reporting to active duty.--*

In addition, during the contact the authorized agency official shall ask the borrower to provide the servicing office with a copy of the military orders calling the service member to military service and any orders further extending military service that apply. The orders will be placed in position 4 of the case file. The contact efforts and the outcome must be documented in FBP running record.

D Power of Attorney

If the borrower decides to retain ownership of the FSA loan security while on active duty and there are no other parties liable for the debt, the authorized agency official shall encourage the borrower to authorize a power of attorney. The borrower may designate a power of attorney before entering active duty. A person designated with a power of attorney has the responsibility to ensure both:

- *--proper use and maintenance of the borrower's personal property and real estate security--*
- timely payment on the borrower's insurance, taxes, and FSA loan.

The borrower should be encouraged to use a military power of attorney prepared and executed pursuant to 10 U.S.C. 100b. No further legal review is required for a power of attorney prepared for the borrower by the military. SED's shall issue State supplements for all other acceptable power of attorney documents.

E Real Estate Security Leases

The authorized agency official, when appropriate, may encourage a borrower, while on active duty, to lease real estate security in which FSA has a security interest when the rental income fully repays the borrower's:

- annual installment
- real estate taxes
- required hazard insurance.

If the borrower decides to lease the real estate security, the authorized agency official may encourage the borrower to enter into a written lease and obtain an assignment of rental income proceeds in an amount sufficient to cover the borrower's annual FSA installment using FSA-2044.

282 Servicemembers Civil Relief Act of 2003 (Continued)**F Disposal of Security**

If the borrower decides to sell the security before entering military service, the borrower may:

- dispose of the security with a voluntary sale and then apply the sale proceeds to the balance of the FSA loan according to Part 5
- transfer the security and the loan to another person according to Part 9.

G Borrower Default

If, while serving on active duty, the borrower becomes delinquent on payments or is otherwise in default, the authorized agency official will send the borrower and the person designated by the borrower with power of attorney notices as required by 5-FLP, Part 3. SED's will fully use the exception authority granted in 5-FLP when additional time is needed by the borrower for submitting a complete servicing application.

FSA may not sell or seize a borrower's property while the borrower is on active duty and 3 months thereafter, except by court order. OGC and SED must provide consent before an authorized agency official may accelerate an account.

If the account has been referred to DOJ, FSA must notify DOJ that the borrower is entitled to relief under the Servicemembers Civil Relief Act of 2003.

H Security Abandonment

If the borrower abandons the security, FSA will service the borrower's account according to 5-FLP, Part 18.

I Failure to Cooperate

The date a borrower is released from active duty may often be obtained from the Service Members Civil Relief Act website at <https://scra.dmdc.osd.mil/>.

--Access to the website may be established for verification of active duty status at the State Office. Each State Office may establish or open their own account as needed based on borrowers who are in active duty status. The application will send an 8-digit access code to the employee's email to enter the website. Google Chrome is the recommended browser.--

However, if the borrower fails to cooperate with FSA and the date cannot be obtained, the authorized agency official shall consult with the State Office for servicing guidance.

282 Servicemembers Civil Relief Act of 2003 (Continued)**J Treasury and Internal Administrative Offsets**

Treasury and internal administrative offsets will be discontinued once a borrower is ordered to report for induction or military service, and any payments received as a result of offset after the date the borrower was called to active duty will be refunded. Treasury offsets shall be suspended by State Offices by deleting affected loans each quarter on the Borrowers Eligible for TOP Offset Certified Screen or the Borrowers Eligible for TOP Offset Screen. Co-borrowers associated with this debt must also be deleted in an effort to reduce hardship on the family. See applicable FI directives for further information. The suspension will begin when the borrower is ordered to report for induction or military service and continues during the period of active duty and 3 months thereafter.

Note: Use delete code “07”, “Borrower was indebted to FSA before entering full time active duty military service and the account is being serviced according to the National Defense Act.”

K Treasury Cross-Servicing

Borrowers and co-borrowers called to active military duty similarly shall not be referred for cross-servicing.

Note: If the borrower has been referred to Treasury for cross-servicing, State Offices must *--FAX FSA-2722's with code “07” in item 14A to the RD Business Center, FLB.--* See 1-FLP, subparagraph 5 B.

L Canceling the 6 Percent Interest Rate

If FSA decreased the borrower's interest rate, as soon as the authorized agency official verifies that a borrower is no longer on active duty, the authorized agency official shall send a *--letter to the RD Business Center, FLB. This letter instructs the RD Business Center, FLB.--* to terminate the 6 percent interest rate and revert to the rate in existence before the assignment of the 6 percent rate.

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

A Suspension of Interest Accrual and Payments

During a time of war or national emergency as declared by the President or Congress, the FLP payments on existing loans of borrowers on active duty will be suspended and interest will not accrue beginning on October 28, 2004, or the date in which they enter active duty, whichever is later. If any regular payments have been made since the date noted, October 28, 2004, the borrower should be contacted, and the payment will be refunded at their request. For **existing** loans, all payments due, as well as the due dates of all payments due during and after such active duty will be suspended or deferred for a period of time equal to the time the borrower is on active duty during war or a national emergency.

Example: A borrower with an OL (matures January 15, 2019, annual payment on January 1) and a FO (matures February 15, 2040, annual payment on January 1) enters active duty on October 1, 2016, and is discharged on April 1, 2017 (182 days).

- Interest will not accrue from October 1, 2016, to April 1, 2017.
- The payments on both loans will be due on September 30 each year (April 1, 2017 + 182 days = September 30).

Notes: Suspension of payments and interest accrual only applies to loans that were outstanding at the time a borrower enters active duty. This does not apply to any loans obtained by the borrower while in active duty status.

Funds from the sale of basic security must be applied as an extra payment according to subparagraph 63 A.

When information is received by the County Office that a borrower has entered or is entering active duty, the County Office will send:

- *--the borrower, FSA-2498, informing them that for **existing** loans, payments will be--* suspended and interest will not accrue during time of active duty
- the RD Business Center, FLB a courtesy copy by FAX (1-FLP, subparagraph 5 B).

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

B Reinstating Annual Payments and Interest Accrual

The payment suspension and interest nonaccrual status will end on the earlier of the date the:

- war or national emergency is over
- borrower is released from active duty.

When information is received that the war or national emergency is over, or the borrower has been released from active duty, the County Office will:

- *--send the borrower FSA-2499, informing them that suspension and nonaccrual status--* has ended, the payment deferral period has started, and the expected due date of the post-deferral payment
- send the RD Business Center, FLB a courtesy copy by FAX
- *--attach a copy of FSA-2499 to the impacted promissory notes.

Note: Pre-military service delinquent payments will also be deferred on FSA-2499 for a--* period equal to the length of service. Any delinquency remaining at the end of the deferral period will be serviced under 5-FLP, Part 3.

C PLS, DBSA, and DSA

When a borrower applies for PLS, it will be treated like a normal servicing application under 5-FLP, Part 3 and will be entered into eDALR\$ accordingly without any changes to the servicing term available. If eDALR\$ generates a feasible plan, provide the offer to the borrower as normal.

For instances where a feasible plan cannot be found or the borrower requests DBSA or DSA, State Offices will contact LSPMD for assistance.

D Acceleration or Foreclosure

FSA will not accelerate or foreclose on the property of a borrower in the armed forces during the borrower's tenure of service and for the term of their deferral, thereafter.

Notes: If the account has been referred to DOJ, notify DOJ that the borrower is entitled to relief under the Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (subparagraph 281 A).

Notify DOJ once information is received that the war or national emergency is over, or if the borrower has been released from active duty.

284-290 (Reserved)

Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities**291 Procedures and Servicing Responsibility****A General**

When a borrower moves from 1 office jurisdiction to another, FSA will transfer loan records and servicing responsibilities. In general, the County Office for the borrower's old location should transfer borrower records when the farm headquarters is relocated to another jurisdiction.

When FSA has referred an account to DOJ or Treasury, borrower records will remain in the existing County Office location.

A County Office may not transfer a borrower's records to another County Office while FSA is considering a debt settlement application for that borrower.

B Borrower Responsibilities

When FSA receives notification that a borrower intends to relocate loan security, the authorized agency official must notify the borrower of his or her responsibilities arising from the move.

A borrower who moves or plans to move must:

- notify the County Office in which the security is currently located that they want to move FSA security and provide the intended new address or property location through FSA-2495
- arrange for the care and/or disposition of any loan-related security or properties that the borrower will not move
- promptly execute and provide recording and lien search fees for any new security instruments FSA may require.

For moves within a county, the borrower may apply verbally for approval to relocate security.

291 Procedures and Servicing 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 personal property is authorized.--*

For moves within a county, the authorized agency official may verbally notify the borrower of FSA's decision. However, the authorized agency official should always document any decision in the borrower's FBP.

If FSA does not approve the transfer, the transferring County Office will service the case according to 5-FLP, Part 3.

Transferring and receiving FSA Offices may request each other's assistance as appropriate.

For special or problem circumstances accompanying a security or records relocation, SED should seek assistance from the Regional OGC.

291 Procedures and Servicing Responsibility (Continued)

D Receiving Office Responsibilities

New security instruments are necessary for borrower relocations and borrower crop and personal property relocations, unless other guidance is provided through a State supplement or from the Regional OGC.

--The receiving County Office must obtain a new UCC-1 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 personal property to a new County Office location.

--The receiving County Office must obtain a new UCC-1 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 UCC-1 with the following text:--

“The above collateral was brought into ____ from ____ County, State of ____, subject to a security interest of the Secured Party.”

The receiving County Office should see the applicable State supplement for instructions and guidance on lien searches.

292-300 (Reserved)

Part 13 (Withdrawn--Amend. 38)

301 (Withdrawn--Amend. 38)

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

Title	Reporting Period	Submission Date	Negative Reports	Reference
Payment Corrections From Previous Calendar Years	Annually	By February 1 each year	Required	61

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		99, 116, 196
CCC-679	Lien Waiver		118
FSA-850	Environment Screening Worksheet		99, 199
FSA-2025	Notification of Approval Terms and Conditions and Borrower Responsibilities		248, 249
FSA-2026	Promissory Note		3
FSA-2028	Security Agreement		Text, Ex. 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 and Security		Text
FSA-2044	Assignment of Income		282
FSA-2045	Record of the Disposition of FSA Security/Release of Proceeds		146, 162, 166, 181
FSA-2061	Application for Partial Release or Consent	25.6	Text
FSA-2062	Application for Subordination to a Commercial Lender		116
FSA-2065	Annual Statement of Loan Account		64, Ex. 25.5
FSA-2071	Transmittal of Document		65
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		61
FSA-2080	Release From Personal Liability		231, 251
FSA-2091	Incomplete Application Letter		8
FSA-2092	Notice of Application Withdrawal		8
FSA-2132	Real Estate Evaluation		198
FSA-2401	Request for Operational Review Information		16, 17
FSA-2406	Certification Regarding Notification of Payoff Amount		65

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Forms (Continued)

Form Number	Title	Display Reference	Paragraph Reference
FSA-2407	Notification of Payoff Amount		65
FSA-2408	Notification of Termination of Security Interests in Farm Products		65
FSA-2409	Request for Continuation Statement Filing Fee		99
FSA-2410	Notice of FSA's Right to File a UCC Continuation Statement		99
FSA-2411	List of FSA Borrowers with Potential Liens		102
FSA-2412	Change in List of FSA Borrowers with Potential Liens		102
FSA-2413	Notification of Unauthorized Use of Proceeds		181
FSA-2414	Notification of Unauthorized Use of Proceeds (bankruptcy)		181
FSA-2415	Initial Notification of 3 rd Party Purchaser		181
FSA-2416	SED Notification of 3 rd Party Purchaser		181
FSA-2417	Lender Agricultural Loan Underwriting Standards		19
FSA-2418	Borrower Prospectus		19
FSA-2419	Letter to Notify Borrowers to Refinance their FSA Loans		19
FSA-2420	Intent to ACL for Failure to Provide Information or to Graduate		19.5
FSA-2421	Intent to Convert Program Loans to Non-Program		19.5
FSA-2422	Notice of Non-Program Rates and Terms		19.5
FSA-2423	Addendum to the Promissory Note or Assumption Agreement Converting to Non-Program Rates and Terms		19.5
FSA-2424	Notice of Change in Limited Resource Loan Interest Rate		21
FSA-2425	Request to Cancel Undisbursed Loan Funds		61
FSA-2429	Request for Change in Application		61
FSA-2433	Satisfaction of Lien		65, 147
FSA-2445	Control Log PLAS/GLAS Account Corrections		97
FSA-2446	PLAS/GLAS Account Correction		97
FSA-2450	Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Proceeds		162
FSA-2455	Subordination by the Government		120
FSA-2465	Assignment, Acceptance, and Release (Wool and Mohair)		166

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Form Number	Title	Display Reference	Paragraph Reference
FSA-2470	Partial Release		146, 147, 166, 199
FSA-2471	Subordination, Non-Disturbance and Attornment Agreement (SNDA)		196
FSA-2476	Transfer of Real Estate Security		246
FSA-2489	Assumption Agreement		250
FSA-2490	Deceased Borrower Report		266
FSA-2491	Denial of NP Loan Assistance		248
FSA-2495	Application to Move Security Property		291
FSA-2497	Potential Active-Duty Military Civil Relief Act Benefits		282
FSA-2498	Benefits of the Ronald W. Reagan National Defense Authorization Act		282, 283
FSA-2499	FSA Loan Borrowers Leaving Active Military Duty		283
FSA-2543	Shared Appreciation Agreement		3, 97, 267
FSA-2551	Request for Non-monetary Default Determination		181
FSA-2585	Acquisition or Abandonment of Secured Property		Ex. 25.5
FSA-2722	Update to TOP and Cross-Servicing Information		282
IRS 1098	Mortgage Interest Statement		61, Ex. 25.5
IRS 1099-A	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1099-C	Cancellation of Debt		Ex. 25.5
IRS 1099-G	Certain Government Payments		Ex. 25.5
IRS 1099-INT	Interest Income		Ex. 25.5
IRS 1099-MISC	Miscellaneous Income		Ex. 25.5
IRS W-9	Request for Taxpayer Identification Number and Certification		68
UCC-1	National Financing Statement		146, 291
UCC-3	National Amendment Form		146

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
AI	account information	65
APCD	type of applicant code	Ex. 25.5
CB	Collections Branch	66, 67
CFS	Central Filing System	102
CL	conservation loan	Text, Ex. 2
CNC	currently not collectible	Ex. 25.5
CONACT	Consolidated Farm and Rural Development Act	1, Ex. 2
CSB	Community Servicing Branch	67
DBSA	Distressed Borrower Set-Aside	146, 283
DSA	Disaster Set-Aside	146, 283
ECM	Enterprise Content Management	61
FLB	Farm Loan Branch	Text, Ex. 51-53
LOC	Line of Credit	118
NP	nonprogram loan	Text
PAD	Pre-Authorized Debit	66, 67
PF	Payoff Balance	65
PIN	personal ID number	63
PLS	primary loan servicing	61, 98, 146, 197, 283
PML	Pay My Loan	61
PRB	Program Reports Branch	Ex. 25.5
RC	report code	Text, Ex. 25.5
SAA	Shared Appreciation Agreement	117, Ex. 2
SAM	System for Award Management	7
SNDA	subordination, non-disturbance, and attornment	99, 199, Ex. 25.6
ST	softwood timber loan	16, 196, 246
SW	soil and water	19
TDCLCR	Term Debt and Capital Lease Coverage Ratio	21, 32
VRU	Voice Response System	63

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)**Redelegations of Authority**

SED's may redelegate their authority to approve:

- subordinations, release without monetary compensation, or releasing and refiling lien instruments instead of subordination to FLC, FLS, or DD
- surface leases for farm property no longer in use (such as old barns) or for nonfarm purposes (such as wind turbines, communication towers, or other similar installations) to FLC, FLS, or DD
- severance agreement to FLC, FLS, or DD
- transfer and assumption to FLC, FLS, or DD.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b))***--1031 Exchange**

1031 exchange means an exchange under Section 1031 of the Internal Revenue Code that permits farmers or ranchers to defer capital gains taxes when selling a farm or ranch (excluding primary residence) and reinvesting the proceeds in a similar property. Proceeds from the sale must be received and used by a “qualified intermediary” to purchase the new property; the investor cannot directly receive the funds. The replacement property’s value and equity must be equal to or greater than the original property’s value in order to defer taxes. Strict time limits require the replacement property to be identified within 45 calendar days, and the exchange completed within calendar 180 days of the sale of the original property.--*

Abandoned Security Property

Abandoned security property is security property that a borrower is not occupying, or is not in possession of, or has relinquished control of, and has not made arrangements for its care or sale.

Acceleration

Acceleration is a demand by a lender for immediate repayment of the entire balance of a debt if the security instrument or promissory note is breached. When FSA accelerates an account, the entire loan balance is due in 30 calendar days.

Additional Security

Additional security is any property which provides security in excess of the amount of security value equal to the loan amount.

Agency

Agency is FSA, an agency of USDA, including its personnel and any successor Agency.

Agency Official

Agency official is any employee with the agency. This term is used when the action does not require inherent or delegated authority.

Agreement for the Use of Proceeds

Agreement for the use of proceeds is an agreement between the borrower and the Agency for each production cycle that reflects the proceeds from the sale of normal income security that will be used to pay scheduled FLP loan installments, including any past due installments, during the production cycle covered by the agreement.

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

Appraisal means a written statement independently and impartially prepared, setting forth an opinion as to the value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information. Real estate appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP).--*

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.

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.

Civil Action

Civil action is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.

Collateral

Collateral is property pledged as security for a loan to ensure repayment of an obligation.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**CONACT or CONACT Property**

CONACT or CONACT property is property that secures a loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 USC 1921 et seq.).

* * *

Cooperative

Cooperative is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

Corporation

Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

Debt Settlement

Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.

Debt Service Margin

Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.

* * *

Deed

Deed is a signed instrument legally transferring real estate to another.

Default

Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

Delinquent Borrower

Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

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

Direct Loan

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

Embedded Entity

Embedded Entity means entity that has a direct or indirect interest, as a stockholder, member, beneficiary or otherwise, in an entity.

Entity

An **entity** means a corporation, partnership, joint operation, cooperative, limited liability company or trust.

Exception: For Parts 8 and 9, an **entity** is defined as a husband and wife, partnership, corporation, or any other arrangement in which more than 1 person is party to the debt.

Entity Member

An **entity member** means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.

Essential Family Living and Farm Operating Expenses

***--Essential family living and farm operating expenses** means those expenses that:

- (i) Are those that are basic, crucial, and indispensable.
- (ii) Are determined by the Agency based on the following considerations:
 - (A) The specific borrower's operation;
 - (B) What is typical for that type of operation in the area; and
 - (C) What is an efficient method of production considering the borrower's resources.
- (iii) 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.

***--Financially Distressed Borrower**

Financially distressed borrower is a borrower unable to develop a feasible plan for the current or next production cycle.--*

FLP's

Farm Loan Programs are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Foreclosed

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Good Faith

Good faith is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. If the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control, the Agency will consider the borrower to have acted in good faith. In addition, the Agency may also consider fraud, waste, or conversion actions when determining if an applicant or borrower has acted in good faith. Such determinations that are substantiated by a legal opinion from OGC constitute an independent basis for determinations of not having acted in good faith.

Note: A lack of good faith determination must be made for each decision. See 3-FLP subparagraph 65 A.

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

Graduation means the payment in full of all direct FLP loans, except for CLs, made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

Guaranteed Loan

Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

Hazard Insurance

Hazard insurance is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

Initial Loan

Initial loan is the first loan of its type processed by FSA. A borrower having one OL and one FO has 2 initial loans, because they are different loan types.

Joint Operation

Joint operation is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Junior Lien

A **junior lien** is a lien that is subordinate to a prior lien on the same item of security.

Lien

--Lien is a legally enforceable claim against real or personal 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:

- (i) FO or OL loan assistance under part 764 of this title; or
- (ii) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

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

Liquidation is the act of selling security for recovery of amounts owed to the Agency or lender.

Liquidation occurs when no further assistance will be given and includes instituting civil suit against a borrower to recover security or Economic Opportunity property or against third parties to recover security or its value or to recover amounts owed to FSA; filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings.

Loan Costs

Loan costs are administrative costs and/or protective advances that have been charged back to a borrower's account according to the promissory note, other security instrument, or FSA regulation.

Note: Most loan costs are tied to specific loans; however, PLAS will only "Add on" this cost if the loan fund code is that of farm ownership or soil and water. If the loan fund code is for operating, emergency, or other loan types, the cost item is established under a separate loan number with the same fund code as the original loan. This loan numbering system generally starts with loan 99 and works backwards (98, 97, 96) with each loan cost paid. The interest rate of the loan cost will be the same as the original loan; however, the loan account is immediately due and payable and will reflect a final year of the loan the same as the year the cost was paid.

Loan Agreement

Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

Loan Servicing Programs

Loan servicing programs include any primary loan servicing program, conservation contract, current market value buyout, and homestead protection.

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

***--Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale of a specified date and the passing of title from seller to buyer under conditions whereby:**

(i) The buyer and seller are typically motivated;

(ii) Both parties are well informed or well advised, and acting in what they consider to be their own best interests;

(iii) A reasonable time is allowed for exposure in the open market;

(iv) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(v) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.--*

Mortgage

Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term “mortgage” also includes the terms “deed of trust” and “security agreement.”

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

Net Recovery Value of Agency Security

Net recovery value of Agency security is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.

Net Recovery Value of Non-Essential Assets

Net recovery value of non-essential assets is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

Non-Capitalized Interest

Non-capitalized interest is accrued interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

Non-Essential Assets

*--**Non-essential assets** mean assets in which the borrower has an ownership interest, that:

(i) Do not contribute to:

(A) Income to pay essential family living expenses, or

(B) The farming operation; and

(ii) Are not exempt from judgment creditors or in a bankruptcy action.

For direct loans, working capital reserves and savings that do not exceed the greater of \$30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expenses, to be realized in the next operating cycle, are considered essential assets.--*

Non-Monetary Default

Non-monetary default means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements, or loan.

Note: Filing for bankruptcy and failing to complete the required borrower training are not considered non-monetary defaults. See 3-FLP, subparagraph 474 C.

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

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.

Normal Income Security

Normal income security is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.

Normal income security does not include any equipment (including fixtures in States that have adopted UCC) or foundation herd or flock that is the basis of the farming operation and is the basic security for an FSA loan.

Note

A note is written evidence of indebtedness, such as a bond or FSA-2026.

Operator

Operator is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.

Note: Operators include borrowers who obtained individual loans and later formed an operating entity with a relative. If the member with the individual loan owns at least 50 percent of the operating entity, the individual meets the definition of operator for loan servicing purposes.

Example: An individual obtains an FO and later forms an operating-only entity with a relative and obtains an OL for the same operation. The individual then needs servicing for the individual FO. In these cases, if the individual owns at least 50 percent of the operating entity, the definition of operation is met.

Borrowers who obtained individual loans and later formed an operating-only entity with a non-relative must have the entity assume the debt to be eligible for loan servicing, as provided in 4-FLP, subparagraph 248 C. However, transfer of the collateral to the entity is not required.

In either of these circumstances the operating entity must have their own unique tax ID number.

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

Partnership

Partnership is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

***--Personal Property Security**

Personal property 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, personal property mortgages, and other security instruments.--*

Primary Loan Servicing Programs

Primary loan servicing programs means:

- (i) Loan consolidation and rescheduling, or reamortization;
- (ii) Interest rate reduction, including use of the limited resource rate program;
- (iii) Deferral;
- (iv) Write-down of the principal or accumulated interest; or
- (v) Any combination of paragraphs (i) through (iv).--*

Prior Lien

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

Prospectus

Prospectus consists of a transmittal letter, a current balance sheet, and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific FSA direct loan applicants and borrowers.

Protective Advance

A **protective advance** is an advance made by the Agency or a lender to protect or preserve the collateral itself from loss or deterioration. A protective advance may be used for purposes, including but not limited to the following:

- delinquent taxes
- annual assessments
- ground rents
- hazard or flood insurance premiums against or affecting the collateral
- harvesting costs
- other expenses needed for emergency measures to protect the collateral.

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

Qualified Intermediary

Qualified intermediary (QI) is a neutral third party in a 1031 exchange that holds proceeds from the sale of the original property, preventing the farmer or rancher from controlling the funds and preserving the tax-deferred status of the exchange under IRS rules. The QI ensures compliance with IRS rules for 1031 exchanges.

*--Real Estate Evaluation

Real estate evaluation is an estimate of value or real estate provided by an individual who is not required to comply with USPAP, using market supported information to analyze the subject property.--*

Related By Blood or Marriage

Related by blood or marriage is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, grandparent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, nephew, niece, cousin, grandson, granddaughter, or the spouses of any of those individuals. “Related by blood or marriage” is used for consistency with a requirement in the CONACT. It has the same meaning as the word “relative” for the Farm Loan Programs regulations in this Chapter.

Relative

Relative means the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of any of those individuals. Relative has the same meaning as the term “related by blood or marriage” for the Farm Loan Programs regulations in this Chapter.

Security

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or “security property” will be considered a reference to the term “security.”

Security Instrument

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

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 write-down on a direct or guaranteed loan to repay the Agency or the lender some or all of the write-down received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

Subordination

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority to another party providing the other party with a priority lien on the collateral.

Subsequent Loan

A **subsequent loan** is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

Transfer and Assumption

Transfer and assumption is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

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 Personal Property Security

Unauthorized disposition of personal property security is the sale of personal property security not authorized by FSA before the sale.

***--Valuation**

Valuation is the estimation or determination of value of personal property or real estate by agency authorized officials, vendors, or third parties.--*

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

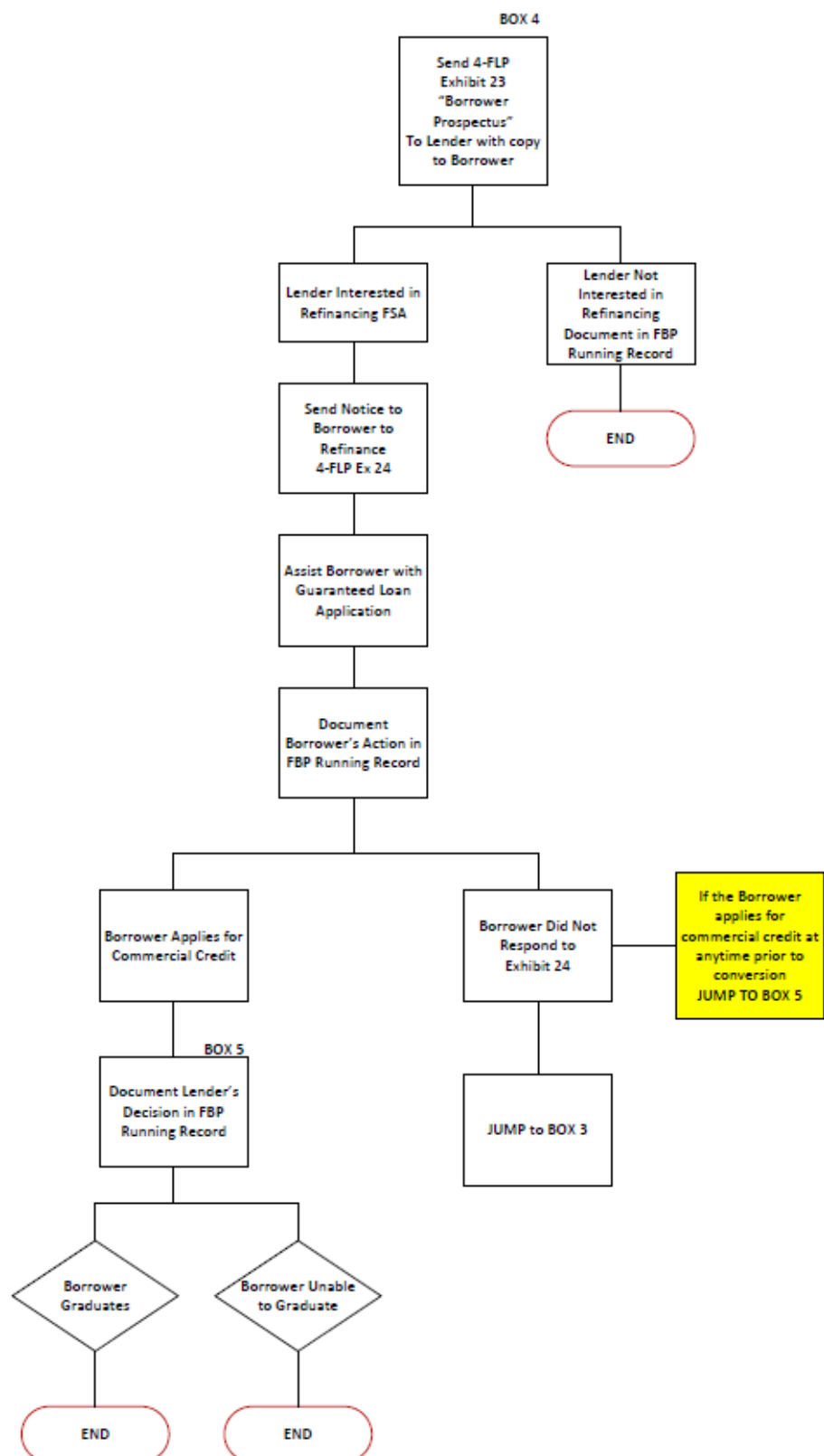
The following table lists required State supplements.

Subparagraph	Required State Supplement
65 F	Loan security instruments releases.
98 C	Obtaining new FSA-2028's.
98 E	Continuing financing statements.
98 G	Obtaining assignments.
98 H	Real Estate Security Instruments
101 A	*--Payment of a borrower's real estate taxes and bidding at tax sales.--*
102 B	Potential purchaser notification.
117 B	Releasing and refileing lien instruments.
118 A	Multi-year subordinations.
120 A	Real estate subordinations.
136 C	Severance agreements.
250 A	Closing documents for transfer and assumptions.
266 C	Guidance for deceased borrower processing.
282 D	Establishment of power of attorney.
291 D	Transfer of borrower's records and lien searches.

Note: SED's shall:

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

Graduation Review Flowchart (Continued)



Example of Loan Payment Reminder – Annual Installment Due Letter

The following is an example of a payment reminder letter sent to a borrower 60 calendar days before their installment due date.

***--Note:** RD Business Center is responsible for mailing Exhibit 25.3 to all borrowers nationwide and will provide copies of mailed letters to the local FSA office.

					
United States Department of Agriculture	[Redacted]				
Farm Production and Conservation Business Center (FPAC)	[Redacted]				
Farm Service Agency	Case Number	[Redacted]			
Farm Services Branch 4300 Goodfellow Blvd. FC-1311 St. Louis, MO 63120	03/25/26				
REMINDER OF PAYMENT(S) TO BE MADE					
According to the Farm Service Agency (FSA) records, you agreed to make annual payments on your farm loans. This is a reminder of loan(s) with installments due in 60 days. If you have loans with other due dates you will be notified by another letter as they become due. "This reminder does not include any cost items which are immediately due and payable."					
Make checks and money orders payable to: FARM SERVICE AGENCY Continue to submit your payments through your local servicing office.					
[Redacted]					
If the amount due has been submitted through payment or assignment, please disregard this notice. You may call 1-888-518-4983 to check the current status of your account. If you have questions, please contact your local FSA farm loan official.					
LOAN NBR	LOAN DATE	LOAN AMOUNT	INSTALLMENT DATE	INSTALLMENT AMOUNT	AMOUNT DUE
[Redacted]					
A late payment reduces the amount applied to loan principal and could result in zero principal reduction depending upon when the payment is made.					
65000035401 L600PRM0					

IRS Forms, Corrections, and Reports

A IRS Forms

County Offices receive reports for the year ending December 31 of FLP borrowers reported on IRS 1099-A, IRS 1099-C, IRS 1099-G, and copies of IRS 1099-INT and IRS 1099-MISC with the form mailed to the borrower, as applicable.

Note: The RD Business Center, PRB reports this information to IRS and the borrower.

*--State Offices may contact PRB regarding issues with documents by email at **RD.SO.PRB@usda.gov**.--*

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 personal property.
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 the RD Business Center, PRB receives the other copy through e-mail at RD-MOSTL-NFAOC-PRB@stl.usda.gov no later than the first workday in January. Contact information is available in 1-FLP, subparagraph 5 E. The information on the RD Business Center, PRB copy is data converted and merged with the IRS 1099-A acquisition data reported to IRS. It is 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, 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 * * * • interest discharged from the note and advance * * * • 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: The RD Business Center, PRB 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

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Examples of How to Complete FSA-2061

A Example 1 - Release of a Portion of FSA Real Estate Security

Ms. Elsa L. Cropper operates her farm on a 100-acre parcel. She also possesses a separate 5-acre parcel adjacent to the farm, but this parcel does not contribute to farm production and is not relied upon for farm operations. Both parcels serve as FSA real estate security, but Ms. Cropper is requesting to sell the 5-acre parcel for \$40,000 and will apply all sales proceeds to her FSA loan number 41-01.

FSA-2061 (09-25-24)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 5
APPLICATION FOR RELEASE OR CONSENT		
<i>INSTRUCTIONS: Return this completed form to your County FSA Office.</i>		
PART A - BORROWER REQUEST – REAL ESTATE SECURITY		
Note: If the transaction will result in all FSA debt being paid in full, Part A Items 1 through 5 are required.		
1. The undersigned (a) <u>Elsa Lee Cropper</u>		
("Borrower") in accordance with the terms of the real estate security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (called "Government") on the property, applies for:		
(b) release, <u>Sell a 5-acre parcel, which represents a portion of FSA Real Estate Security</u>		
(c) Subordination, Non-Disturbance and Attornment Agreement (SNDA)		
(d) consent to,		
2. Description of Property: Tax Parcel Number 991234567. Vacant parcel with no structures and no crops. This parcel has not contributed to farm production and is not currently relied upon for farm operations.		
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:		
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority
USDA, Farm Service Agency	\$200,000	1st
4. The use to be made of the property covered by this application: Sold to a potential buyer via public listing. Future use is not a concern as the borrower's and FSA's interest in the property are legally transferred and proceeds will not be utilized for any development and will be applied toward the borrower's FSA loan.		
5. The anticipated proceeds or benefits from this transaction are: \$40,000		
6. Borrower proposes to use the proceeds as follows: Applied towards FSA loan #41-01 as an extra payment.		

Examples of How to Complete FSA-2061 (Continued)

A Example 1 - Release of a Portion of FSA Real Estate Security (Continued)

FSA-2061 (09-25-24)		Page 2 of 5	
7. Complete Application for Release or Consent		YES	NO
A. Copy of proposed contract or agreement		☒	☐
B. Copy of environmental assessment for proposed release or consent, if available (<i>This will not replace FSA's environmental assessment, but may be helpful as documentation</i>)		☐	☐ N/A
C. Copy of survey, if needed, with legal description for partial release or consent		☐	☐ N/A
D. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)		☒	☐
(2) Current balance sheet		☒	☐
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)		☒	☐
(4) Annual crop and livestock production yields		☒	☐
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes		☒	☐
E. FSA will obtain an appraisal		☐	☒
PART B - BORROWER REQUEST – PERSONAL PROPERTY SECURITY – ONLY FOR RELEASE WITHOUT COMPENSATION			
1. The undersigned (a) _____			
"Borrower") in accordance with the terms of the personal property security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (<i>called "Government"</i>) on the property, applies for: (b) release, _____ _____			
2. Description of Property from the current FSA-2028 (Security Agreement):			
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:			
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority	
4. Complete Application for Release or Consent		YES	NO
A. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)		☐	☐
(2) Current balance sheet		☐	☐
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)		☐	☐
(4) Annual crop and livestock production yields		☐	☐
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes		☐	☐
B. FSA will obtain an appraisal		☐	☐

Examples of How to Complete FSA-2061 (Continued)

A Example 1 - Release of a Portion of FSA Real Estate Security (Continued)

FSA-2061 (09-25-24)		Page 3 of 5
PART C – CERTIFICATIONS AND SIGNATURES		
1. Have you, or any members of an entity, if applicable, ever been:		YES NO
A. Convicted under any Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance within the previous 5 crop years? (See the Food Security Act of 1985, Pub. Law. 99-198)		☐ ☒
B. Determined ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862?		☐ ☒
C. Determined ineligible for Federal benefits based on Federal Crop Insurance Corporation fraud? (See 7 U.S.C. 1515)		☐ ☒
2. Explanation for any "YES" answers to Item 1:		
3. ECOA - RIGHT TO RECEIVE APPRAISAL: As part of the assistance provided by FSA, an appraisal report or written real estate valuation may be required to determine the value of the property you intend to pledge or have pledged as security. If FSA orders an appraisal or completes a written real estate valuation, you will receive a copy at no cost. You will receive a copy at least three business days prior to the closing of your loan or servicing action. On occasion, the three-day waiting period could cause a delay in closing the loan or servicing action. If you so choose, you have a right to waive this waiting period and a copy will be provided to you no later than the time of loan closing or servicing action.		
4. I understand that unless FSA executes a separate written instrument for partial release, FSA's approval of this application will merely constitute and evidence FSA's consent, as lienholder, to the proposed transaction without in any way releasing any of its security, modifying the payment terms of my loans, or otherwise affect any FSA rights. If this application is approved, I agree to comply with such terms as may be set by FSA and to dispose of the proceeds as required by FSA. The statements and representations made above are made in connection with the request for a change in the loan security and/or the release of USDA- provided funds. The making of any false statement or misrepresentations herein may be a crime punishable under 18 U.S.C., §1001. I certify that the statements made are true, complete, and correct to the best of my knowledge and belief.		
5A. Signature of Borrower	SIGNATURE of Elsa Lee Cropper	5B. Date 10/10/2024
5A. Signature of Borrower		5B. Date
5A. Signature of Borrower		5B. Date
5A. Signature of Borrower		5B. Date

Examples of How to Complete FSA-2061 (Continued)

A Example 1 - Release of a Portion of FSA Real Estate Security (Continued)

FSA-2061 (09-25-24)		Page 4 of 5	
PART D - FSA APPROVAL (For FSA Use Only)			
1. Recommendation for approval/denial of the request and comments:		Borrower:	Elsa Lee Cropper
Recommend for Approval as the request meets all of the applicable conditions under 4-FLP subparagraph 196B, 197A(1), and 198A. The requested partial release will not affect the farm's repayment ability or ability to operate. The requested partial release will pay down the borrower's FSA debt, which will improve her overall financial position and chances of obtaining commercial credit in the future. Per 4-FLP subparagraph 198A(2), an appraisal was not required as the value of real estate involved is less than \$50,000. An estimated value was utilized, which has been documented within the file.			
2A. Initial Payment		2B. Subsequent Payment	
(1) to prior liens		(1) % to prior liens	or
(2) to extra payment on FSA loan	\$40,000	(2) % to extra payment of FSA loan	or
(3) to regular payment on FSA loan		(3) % to regular payment of FSA loan	or
(4) other (specify):		(4) other (specify):	or
(5) to borrower		(5) % to borrower	or
3. I hereby:			
A. Recommend this application for approval ☒		B. Do NOT recommend this application be approved ☐	
C. Recommending Official Name John C. Green		D. Recommending Official Title Farm Loan Officer	
E. Signature SIGNATURE of John C. Green		F. Date 10/11/24	
4. I hereby:			
A. Approve this application ☒		B. Do NOT approve this application ☐	
C. Reason for denial of the request			
D. Approving Official Name Audrey S. Ashburn		E. Approving Official Title Farm Loan Manager	
F. Signature SIGNATURE of Audrey S. Ashburn		G. Date 10/12/24	

Examples of How to Complete FSA-2061 (Continued)

* * *

B Example 2 - Consent to Right-of-Way Easement on FSA Real Estate Security

Mr. Joseph M. Cooper has been approached by a land developer in the area, Big Land Corporation, who is in the process of developing new parcels behind Mr. Cooper's property and will need to develop an access road for those new parcels. The proposed access road would run along the entire western property line of Mr. Cooper's parcel, which is unfenced and 1,000 feet long. The road will encroach 15 feet into Mr. Cooper's property line throughout the entire western side of his parcel. In return for granting this right-of-way easement, the land developer is offering to pay Mr. Cooper \$15,000. Mr. Cooper is requesting FSA's consent and approval to grant the requested right-of-way easement.

FSA-2061 (09-25-24)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 5
APPLICATION FOR RELEASE OR CONSENT		
<i>INSTRUCTIONS: Return this completed form to your County FSA Office.</i>		
PART A - BORROWER REQUEST - REAL ESTATE SECURITY		
<i>Note: If the transaction will result in all FSA debt being paid in full, Part A Items 1 through 5 are required.</i>		
1. The undersigned (a) <u>Joseph Matthew Cooper</u> ("Borrower") in accordance with the terms of the real estate security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (called "Government") on the property, applies for: (b) release, _____ _____ (c) Subordination, Non-Disturbance and Attornment Agreement (SNDA) _____ (d) consent to, Grant Right of Way to Big Land Corporation for the Development of an Access Road 2. _____		
2. Description of Property: 15,000 sq. ft. portion of Tax Parcel Number 884412356. The proposed access road will run along the entire length of his western property line (1,000 ft. long) and will encroach 15 ft. into the borrower's property line throughout the entire western side of his parcel.		
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:		
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority
USDA, Farm Service Agency	\$185,000	1st
4. The use to be made of the property covered by this application: Development of an access road by Big Land Corporation, which will provide access to new properties that are being developed behind the borrower's parcel.		
5. The anticipated proceeds or benefits from this transaction are: \$15,000		
6. Borrower proposes to use the proceeds as follows: Applied towards FSA loan #41-02 as an extra payment.		

Examples of How to Complete FSA-2061 (Continued)

B Example 2 - Consent to Right-of-Way Easement on FSA Real Estate Security (Continued)

FSA-2061 (09-25-24)		Page 2 of 5	
7. Complete Application for Release or Consent		YES	NO
A. Copy of proposed contract or agreement	☒	☐	
B. Copy of environmental assessment for proposed release or consent, if available (<i>This will not replace FSA's environmental assessment, but may be helpful as documentation</i>)	☒	☐	
C. Copy of survey, if needed, with legal description for partial release or consent	☒	☐	
D. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)	☒	☐	
(2) Current balance sheet	☒	☐	
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)	☒	☐	
(4) Annual crop and livestock production yields	☒	☐	
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes	☒	☐	
E. FSA will obtain an appraisal	☐	☒	
PART B - BORROWER REQUEST – PERSONAL PROPERTY SECURITY – ONLY FOR RELEASE WITHOUT COMPENSATION			
1. The undersigned (a) _____			
<i>"Borrower"</i>) in accordance with the terms of the personal property security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (<i>called "Government"</i>) on the property, applies for: (b) release, _____ _____			
2. Description of Property from the current FSA-2028 (Security Agreement):			
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:			
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority	
4. Complete Application for Release or Consent		YES	NO
A. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)	☐	☐	
(2) Current balance sheet	☐	☐	
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)	☐	☐	
(4) Annual crop and livestock production yields	☐	☐	
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes	☐	☐	
B. FSA will obtain an appraisal	☐	☐	

Examples of How to Complete FSA-2061 (Continued)

B Example 2 - Consent to Right-of-Way Easement on FSA Real Estate Security (Continued)

FSA-2061 (09-25-24)		Page 3 of 5
PART C – CERTIFICATIONS AND SIGNATURES		
1. Have you, or any members of an entity, if applicable, ever been:	YES	NO
A. Convicted under any Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance within the previous 5 crop years? (See the Food Security Act of 1985, Pub. Law. 99-198)	☐	☒
B. Determined ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862?	☐	☒
C. Determined ineligible for Federal benefits based on Federal Crop Insurance Corporation fraud? (See 7 U.S.C. 1515)	☐	☒
2. Explanation for any "YES" answers to Item 1:		
3. ECOA - RIGHT TO RECEIVE APPRAISAL: As part of the assistance provided by FSA, an appraisal report or written real estate valuation may be required to determine the value of the property you intend to pledge or have pledged as security. If FSA orders an appraisal or completes a written real estate valuation, you will receive a copy at no cost. You will receive a copy at least three business days prior to the closing of your loan or servicing action. On occasion, the three-day waiting period could cause a delay in closing the loan or servicing action. If you so choose, you have a right to waive this waiting period and a copy will be provided to you no later than the time of loan closing or servicing action.		
4. I understand that unless FSA executes a separate written instrument for partial release, FSA's approval of this application will merely constitute and evidence FSA's consent, as lienholder, to the proposed transaction without in any way releasing any of its security, modifying the payment terms of my loans, or otherwise affect any FSA rights. If this application is approved, I agree to comply with such terms as may be set by FSA and to dispose of the proceeds as required by FSA. The statements and representations made above are made in connection with the request for a change in the loan security and/or the release of USDA- provided funds. The making of any false statement or misrepresentations herein may be a crime punishable under 18 U.S.C., §1001. I certify that the statements made are true, complete, and correct to the best of my knowledge and belief.		
5A. Signature of Borrower SIGNATURE of Joseph Matthew Cooper	5B. Date 10/10/2024	
5A. Signature of Borrower	5B. Date	
5A. Signature of Borrower	5B. Date	
5A. Signature of Borrower	5B. Date	

Examples of How to Complete FSA-2061 (Continued)

B Example 2 - Consent to Right-of-Way Easement on FSA Real Estate Security (Continued)

FSA-2061 (09-25-24)		Page 4 of 5	
PART D - FSA APPROVAL (For FSA Use Only)			
1. Recommendation for approval/denial of the request and comments:		Borrower: Joseph Matthew Cooper	
Recommend for Approval as the request meets all of the applicable conditions under 4-FLP subparagraph 196B, 197A(1), and 198A(2). A satisfactory FSA environmental review has been completed for the proposed access road, which included a review of the required ingress, egress, and staging areas. The requested easement will not affect the farm's repayment ability or ability to operate. The request will pay down the borrower's FSA debt, which will improve his overall financial position and chances of obtaining commercial credit in the future. Although this transaction does not involve a "disposition" or transfer of ownership, the requested easement would remain in effect indefinitely. As a result, 4-FLP subparagraph 198A(2) applies, but an appraisal was not required as the value of real estate involved is less than \$50,000. An estimated value was utilized, which has been documented within the file.			
2A. Initial Payment		2B. Subsequent Payment	
(1) to prior liens		(1) % to prior liens	or
(2) to extra payment on FSA loan	\$15,000	(2) % to extra payment of FSA loan	or
(3) to regular payment on FSA loan		(3) % to regular payment of FSA loan	or
(4) other (specify):		(4) other (specify):	or
(5) to borrower		(5) % to borrower	or
3. I hereby:			
A. Recommend this application for approval ☒		B. Do NOT recommend this application be approved ☐	
C. Recommending Official Name John C. Green		D. Recommending Official Title Farm Loan Officer	
E. Signature SIGNATURE of John C. Green		F. Date 10/11/24	
4. I hereby:			
A. Approve this application ☒		B. Do NOT approve this application ☐	
C. Reason for denial of the request			
D. Approving Official Name Audrey S. Ashburn		E. Approving Official Title Farm Loan Manager	
F. Signature SIGNATURE of Audrey S. Ashburn		G. Date 10/12/24	

Examples of How to Complete FSA-2061 (Continued)

C Example 3 - Consent to a Subordination for Non-Lending Purposes

Ms. Elizabeth S. Peppers has been approached by a wind energy company, Sustainable & Breezy Corporation, who would like to place a wind turbine on her farm. The wind energy company would like to enter a 20-year lease with Ms. Peppers, which will allow for the building and operation of the wind turbine. The lease also notates that Ms. Peppers will receive annual royalty payments of \$6,000 as compensation throughout the term of the lease. The wind energy company is also requiring that Ms. Peppers and FSA execute an SNDA agreement.

FSA-2061 (09-25-24)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 5
APPLICATION FOR RELEASE OR CONSENT		
<i>INSTRUCTIONS: Return this completed form to your County FSA Office.</i>		
PART A - BORROWER REQUEST – REAL ESTATE SECURITY		
<i>Note: If the transaction will result in all FSA debt being paid in full, Part A Items 1 through 5 are required.</i>		
1. The undersigned (a) <u>Elizabeth Sweet Peppers</u> ("Borrower") in accordance with the terms of the real estate security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (called "Government") on the property, applies for: (b) release, (c) Subordination, Non-Disturbance and Attornment Agreement (SNDA) Between Sustainable & Breezy Corporation, Ms. Elizabeth Sweet Peppers, and FSA (d) consent to, 20-year Wind Turbine Lease with Sustainable & Breezy Corporation 		
2. Description of Property: 1.5 acre portion of Tax Parcel Number 331556668.		
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:		
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority
USDA, Farm Service Agency	\$300,000	1st
4. The use to be made of the property covered by this application: Development of a wind turbine by a third party energy company - Sustainable & Breezy Corporation.		
5. The anticipated proceeds or benefits from this transaction are: \$6,000 annual royalty.		
6. Borrower proposes to use the proceeds as follows: Applied towards FSA loan #41-01 as a regular payment.		

Examples of How to Complete FSA-2061 (Continued)

C Example 3 - Consent to a Subordination for Non-Lending Purposes (Continued)

FSA-2061 (09-25-24)		Page 2 of 5	
7. Complete Application for Release or Consent		YES	NO
A. Copy of proposed contract or agreement	☒	☐	
B. Copy of environmental assessment for proposed release or consent, if available (<i>This will not replace FSA's environmental assessment, but may be helpful as documentation</i>)	☒	☐	
C. Copy of survey, if needed, with legal description for partial release or consent	☒	☐	
D. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)	☒	☐	
(2) Current balance sheet	☒	☐	
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)	☒	☐	
(4) Annual crop and livestock production yields	☒	☐	
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes	☒	☐	
E. FSA will obtain an appraisal	☐	☒	
PART B - BORROWER REQUEST – PERSONAL PROPERTY SECURITY – ONLY FOR RELEASE WITHOUT COMPENSATION			
1. The undersigned (a) _____ <i>"Borrower"</i>) in accordance with the terms of the personal property security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (<i>called "Government"</i>) on the property, applies for: (b) release, _____ _____			
2. Description of Property from the current FSA-2028 (Security Agreement): _____ _____			
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:			
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority	
4. Complete Application for Release or Consent			
		YES	NO
A. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)	☐	☐	
(2) Current balance sheet	☐	☐	
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)	☐	☐	
(4) Annual crop and livestock production yields	☐	☐	
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes	☐	☐	
B. FSA will obtain an appraisal	☐	☐	

Examples of How to Complete FSA-2061 (Continued)

C Example 3 - Consent to a Subordination for Non-Lending Purposes (Continued)

FSA-2061 (09-25-24)		Page 3 of 5
PART C – CERTIFICATIONS AND SIGNATURES		
1. Have you, or any members of an entity, if applicable, ever been:	YES	NO
A. Convicted under any Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance within the previous 5 crop years? (See the Food Security Act of 1985, Pub. Law. 99-198)	☐	☒
B. Determined ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862?	☐	☒
C. Determined ineligible for Federal benefits based on Federal Crop Insurance Corporation fraud? (See 7 U.S.C. 1515)	☐	☒
2. Explanation for any "YES" answers to Item 1:		
3. ECOA - RIGHT TO RECEIVE APPRAISAL: As part of the assistance provided by FSA, an appraisal report or written real estate valuation may be required to determine the value of the property you intend to pledge or have pledged as security. If FSA orders an appraisal or completes a written real estate valuation, you will receive a copy at no cost. You will receive a copy at least three business days prior to the closing of your loan or servicing action. On occasion, the three-day waiting period could cause a delay in closing the loan or servicing action. If you so choose, you have a right to waive this waiting period and a copy will be provided to you no later than the time of loan closing or servicing action.		
4. I understand that unless FSA executes a separate written instrument for partial release, FSA's approval of this application will merely constitute and evidence FSA's consent, as lienholder, to the proposed transaction without in any way releasing any of its security, modifying the payment terms of my loans, or otherwise affect any FSA rights. If this application is approved, I agree to comply with such terms as may be set by FSA and to dispose of the proceeds as required by FSA. The statements and representations made above are made in connection with the request for a change in the loan security and/or the release of USDA- provided funds. The making of any false statement or misrepresentations herein may be a crime punishable under 18 U.S.C., §1001. I certify that the statements made are true, complete, and correct to the best of my knowledge and belief.		
5A. Signature of Borrower SIGNATURE of Elizabeth Sweet Peppers	5B. Date 10/10/2024	
5A. Signature of Borrower	5B. Date	
5A. Signature of Borrower	5B. Date	
5A. Signature of Borrower	5B. Date	

Examples of How to Complete FSA-2061 (Continued)

C Example 3 - Consent to a Subordination for Non-Lending Purposes (Continued)

FSA-2061 (09-25-24)		Page 4 of 5	
PART D - FSA APPROVAL (For FSA Use Only)			
1. Recommendation for approval/denial of the request and comments:		Borrower:	Elizabeth Sweet Peppers
Recommend for Approval as the request meets all of the applicable conditions under 4-FLP subparagraphs 99E, 196B and 197A(1). A satisfactory FSA environmental review has been completed for the proposed wind turbine, which included a review of the required ingress, egress, and staging areas. Our local OGC was also consulted and confirmed that all documents involved in the transaction meet legal sufficiency. Appraisal requirements of 4-FLP subparagraph 198A do not apply as the request does not involve disposition or transfer of ownership and the request is limited to the term of the lease.			
2A. Initial Payment		2B. Subsequent Payment	
(1) to prior liens		(1) % to prior liens	or
(2) to extra payment on FSA loan		(2) % to extra payment of FSA loan	or
(3) to regular payment on FSA loan	\$6,000	(3) % to regular payment of FSA loan	\$6,000 or
(4) other (specify):		(4) other (specify):	or
(5) to borrower		(5) % to borrower	or
3. I hereby:			
A. Recommend this application for approval ☒		B. Do NOT recommend this application be approved ☐	
C. Recommending Official Name John C. Green		D. Recommending Official Title Farm Loan Officer	
E. Signature SIGNATURE of John C. Green		F. Date 10/11/24	
4. I hereby:			
A. Approve this application ☒		B. Do NOT approve this application ☐	
C. Reason for denial of the request			
D. Approving Official Name Audrey S. Ashburn		E. Approving Official Title Farm Loan Manager	
F. Signature SIGNATURE of Audrey S. Ashburn		G. Date 10/12/24	

Examples of How to Complete FSA-2061 (Continued)

D Example 4 - Release of Personal Property Security Without Compensation

Mr. Dwight P. Wilson purchased his farmland over three years ago via a Direct Farm Ownership loan. FSA obtained a lien on the farmland and also took a lien on his 2019 John Deere tractor to meet the previous additional security requirements of 150 percent. Mr. Wilson's security margin is currently at 125 percent with the farmland alone. Mr. Wilson is requesting a release of the tractor, as he would like to sell this piece of equipment and keep the proceeds.

FSA-2061 (09-25-24)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 5
APPLICATION FOR RELEASE OR CONSENT		
<i>INSTRUCTIONS: Return this completed form to your County FSA Office.</i>		
PART A - BORROWER REQUEST – REAL ESTATE SECURITY		
Note: If the transaction will result in all FSA debt being paid in full, Part A Items 1 through 5 are required.		
1. The undersigned (a) _____ ("Borrower") in accordance with the terms of the real estate security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (called "Government") on the property, applies for: (b) release, _____ _____ (c) Subordination, Non-Disturbance and Attornment Agreement (SNDA) _____ (d) consent to, _____ _____		
2. Description of Property:		
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:		
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority
4. The use to be made of the property covered by this application:		
5. The anticipated proceeds or benefits from this transaction are:		
6. Borrower proposes to use the proceeds as follows:		

Examples of How to Complete FSA-2061 (Continued)

D Example 4 - Release of Personal Property Security Without Compensation (Continued)

FSA-2061 (09-25-24)		Page 2 of 5	
7. Complete Application for Release or Consent		YES	NO
A. Copy of proposed contract or agreement		☐	☐
B. Copy of environmental assessment for proposed release or consent, if available (<i>This will not replace FSA's environmental assessment, but may be helpful as documentation</i>)		☐	☐
C. Copy of survey, if needed, with legal description for partial release or consent		☐	☐
D. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)		☐	☐
(2) Current balance sheet		☐	☐
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)		☐	☐
(4) Annual crop and livestock production yields		☐	☐
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes		☐	☐
E. FSA will obtain an appraisal		☐	☐
PART B - BORROWER REQUEST – PERSONAL PROPERTY SECURITY – ONLY FOR RELEASE WITHOUT COMPENSATION			
1. The undersigned (a) <u>Dwight Peachy Wilson</u>			
"Borrower") in accordance with the terms of the personal property security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (<i>called "Government"</i>) on the property, applies for: (b) release, <u>2019 John Deere Tractor, which serves as additional security</u>			
2. Description of Property from the current FSA-2028 (Security Agreement):			
<u>2019 John Deere Tractor, Model #6120M, Serial #: 881234</u>			
3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority prior to proposed transaction:			
A. Name of Lien Holder	B. Approximate Amount of Lien	C. Lien Priority	
USDA, Farm Service Agency	\$200,000	1st	
4. Complete Application for Release or Consent		YES	NO
A. Documentation required for operational review:			
(1) Actual financial performance for the past year (<i>a copy of your last year's tax return or last year's income and expense records are acceptable</i>)		☒	☐
(2) Current balance sheet		☒	☐
(3) Projected income/expense for next year (<i>a copy of your current year's is also acceptable</i>)		☒	☐
(4) Annual crop and livestock production yields		☒	☐
(5) Review and update, if needed, of assessment (<i>copy attached</i>). Please pencil in comments or changes		☒	☐
B. FSA will obtain an appraisal		☐	☒

Examples of How to Complete FSA-2061 (Continued)

D Example 4 - Release of Personal Property Security Without Compensation (Continued)

FSA-2061 (09-25-24)		Page 3 of 5
PART C – CERTIFICATIONS AND SIGNATURES		
1. Have you, or any members of an entity, if applicable, ever been:		YES NO
A. Convicted under any Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance within the previous 5 crop years? (See the Food Security Act of 1985, Pub. Law. 99-198)		☐ ☒
B. Determined ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862?		☐ ☒
C. Determined ineligible for Federal benefits based on Federal Crop Insurance Corporation fraud? (See 7 U.S.C. 1515)		☐ ☒
2. Explanation for any "YES" answers to Item 1:		
3. ECOA - RIGHT TO RECEIVE APPRAISAL: As part of the assistance provided by FSA, an appraisal report or written real estate valuation may be required to determine the value of the property you intend to pledge or have pledged as security. If FSA orders an appraisal or completes a written real estate valuation, you will receive a copy at no cost. You will receive a copy at least three business days prior to the closing of your loan or servicing action. On occasion, the three-day waiting period could cause a delay in closing the loan or servicing action. If you so choose, you have a right to waive this waiting period and a copy will be provided to you no later than the time of loan closing or servicing action.		
4. I understand that unless FSA executes a separate written instrument for partial release, FSA's approval of this application will merely constitute and evidence FSA's consent, as lienholder, to the proposed transaction without in any way releasing any of its security, modifying the payment terms of my loans, or otherwise affect any FSA rights. If this application is approved, I agree to comply with such terms as may be set by FSA and to dispose of the proceeds as required by FSA.		
The statements and representations made above are made in connection with the request for a change in the loan security and/or the release of USDA- provided funds. The making of any false statement or misrepresentations herein may be a crime punishable under 18 U.S.C., §1001. I certify that the statements made are true, complete, and correct to the best of my knowledge and belief.		
5A. Signature of Borrower	SIGNATURE of Dwight Peachy Wilson	5B. Date 10/10/2024
5A. Signature of Borrower		5B. Date
5A. Signature of Borrower		5B. Date
5A. Signature of Borrower		5B. Date

Examples of How to Complete FSA-2061 (Continued)

D Example 4 - Release of Personal Property Security Without Compensation (Continued)

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FSA-2061 (09-25-24)		Page 4 of 5	
PART D - FSA APPROVAL (For FSA Use Only)			
1. Recommendation for approval/denial of the request and comments:		Borrower:	Dwight Peachy Wilson
Recommend for Approval as the request meets all of the applicable conditions under 4-FLP subparagraph 146 D. Appraisals were not obtained for both the tractor and farmland. Per 4-FLP subparagraph 146 D (3), an evaluation of recent sales of similar properties was completed for both the tractor and farmland. The evaluation has been sufficiently documented within the file.			
2A. Initial Payment		2B. Subsequent Payment	
(1) to prior liens		(1) % to prior liens	or
(2) to extra payment on FSA loan		(2) % to extra payment of FSA loan	or
(3) to regular payment on FSA loan		(3) % to regular payment of FSA loan	or
(4) other (specify):		(4) other (specify):	or
(5) to borrower		(5) % to borrower	or
3. I hereby:			
A. Recommend this application for approval ☒		B. Do NOT recommend this application be approved ☐	
C. Recommending Official Name John C. Green		D. Recommending Official Title Farm Loan Officer	
E. Signature SIGNATURE of John C. Green		F. Date 10/11/2024	
4. I hereby:			
A. Approve this application ☒		B. Do NOT approve this application ☐	
C. Reason for denial of the request			
D. Approving Official Name Rick H. Bogart		E. Approving Official Title Farm Loan Chief	
F. Signature SIGNATURE of Rick H. Bogart		G. Date 10/12/2024	

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