

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Regular Direct Loan Servicing
4-FLP

Amendment 31

Approved by: Acting Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 4 A has been amended to reference handbook requirements.

Subparagraph 47:

- A has been amended to update reference from 25-AS to 32-AS, and correct operational file label
- F has been amended to include promissory note(s) with lien instruments.

Subparagraph 61:

- C has been amended to provide guidance on changing application of loan payments
- E has been amended to include authorized agency official and edit wording.

Subparagraphs 62 A, 64 A, 99 A, 99 D, 99 G, 136 A, 161 E, 161 F, 161 H, 163 A, 163 C, 196 B, and 196 C have been amended to correct CFR wording.

Subparagraph 68 A has been amended to correct part I & II references for IRS Form W-9.

Subparagraph 97:

- A has been amended to update the handbook reference
- B has been amended to change reference from 25-AS to 32-AS and corrects the operational file label.

Subparagraph 98:

- C has been amended to revise wording from new to subsequent and to clarify when a new security agreement is required
- D has been amended to clarify security identification requirements and examples.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 116 B has been amended to clarify items needed for a subordination application.

Subparagraph 196 A has been amended to provide guidance about items needed for real estate security disposition.

Subparagraph 197 D has been amended to provide additional guidance about SED consent to use proceeds.

Subparagraph 199 A has been amended to provide SED with Administrative Exception Authority for partial releases and appraisals.

Subparagraphs 120 A, 136 C, 147 B, 199 A, and 249 E has been amended to replace references to 1-FLP, Exhibit 15 with FBP User Guide.

Subparagraph 246 A has been amended to provide additional guidance about assumption of debt and transfer of security.

Subparagraph 247:

- B and C have been amended to clarify guidance
- D has been added to provide additional guidance about entities.
- E and amended to clarify guidance about adding a new entity.

Subparagraph 267 D has been amended to provide guidance regarding deferred payments.

Subparagraphs 281 A, 282 A, 282 C, and 283 A have been amended to provide guidance about borrower's on active duty in the military.

Subparagraph 282 I has been amended to update the website address.

Exhibit 27 has been amended to update the handbook and paragraph reference.

Exhibit 52 has been amended to update the title.

Amendment Transmittal (Continued)

Page Control Chart		
TC	Text	Exhibit
	1-7, 1-8	1, pages 1, 2
	4-1, 4-2	page 3
	4-5, 4-6	page 4 (add)
	5-1 through 5-6	27, page 1
	5-15	52, pages 1, 2
	6-3 through 6-12	
	6-31, 6-32	
	6-37 through 6-46	
	6-61 through 6-70	
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	7-1 through 7-4	
	7-7 through 7-10	
	7-44.5, 7-44.6 (add)	
	7-45, 7-46	
	7-49 through 7-52	
	7-53 (add)	
	9-1 through 9-6	
	9-11 through 9-14	
	10-3, 10-4	
	11-1 through 11-6	

4 FSA Exception Authority

A General

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

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

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

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

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

B Submitting Exception Requests

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

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

4 FSA Exception Authority (Continued)

B Submitting Exception Requests (Continued)

- what procedure is to be waived
- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- discussion of graduation
- how the action is in the best interest of the Government
- additional information that SED thinks will be needed to review the case.

* * *

Part 4 Borrower Graduation**46 Graduation Requirements****A General**

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

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

B CL-Only Borrowers

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

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

C Graduation Criteria

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

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

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

- (1) In a partial graduation, all FLP loans of one type (i.e. all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.**
- (2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.**
- (3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.**

46 Graduation Requirements (Continued)

C Graduation Criteria (Continued)

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

47 Graduation Review Process

A Obtaining Underwriting Criteria From Local Lenders

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

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

47 **Graduation Review Process (Continued)**

E Applying for Commercial Credit (Continued)

If any lenders are interested in refinancing FSA, the authorized agency official will send the borrower a letter similar to Exhibit 25 listing lenders that are interested in refinancing the borrower's FSA loans.

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

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

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

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

F Transferring and Assigning FSA Liens

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

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

48 Borrower Noncompliance of Graduation

A Borrower Noncompliance With Graduation Requirements

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

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

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

49-60 (Reserved)

Part 5 Borrower Payments**61 General****A Purpose**

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

B Acceptable Payment Forms

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

C Processing Payments

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

When FSA receives a payment, the authorized agency official must record and process the payment according to 64-FI. Any subsequent correction of applications will be processed using FSA-2429 according to 64-FI.

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

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

Approval from DAFLP is required to make changes in past CY's or after IRS 1098's have been prepared.--*

61 General (Continued)

D Identifying Regular and Extra Payments

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

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

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

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

- (1) Sale of chattel security other than normal income security;**
such as farm equipment and breeding livestock.
- (2) Sale of real estate security;**
- (3) Refinancing of Agency debt;**
- (4) Cash proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;**
- (5) Any transaction that results in a loss in the value of any Agency basic security;**
- *--(6) Refunds of duplicate program benefits or assistance to be applied on CL or EM loans; or--***
- (7) Refunds of unused loan funds.**

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

--After a loan has been closed, 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 NFAOC, FaSB. 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 NFAOC, FaSB.

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. This authority may not be redelegated. If PLS has not been exhausted, States Offices shall contact LSPMD for directions.

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

DLS will be updated as required.

62 Regular Payments

A Applying Regular Payments

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

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

Regular payments received will be credited by NFAOC, FaSB 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-2060 should be requested from the borrower. When FSA receives the payment from the sale of real estate security, the authorized agency official must consult FSA-2060 to determine the loan to which the payment should be applied, generally in the order of lien priority.

Note: If the borrower requests that payments resulting from the sale or exchange of real estate security be applied to current, delinquent, or unmatured loan installments; the borrower, with the assistance of the authorized agency official, must complete and submit FSA-2060. Only SED's may approve this application of funds. The authorized agency official will forward the completed FSA-2060 and any other materials required to SED for review. The authorized agency official will inform the borrower of the decision and provide appeal rights according to 1-APP, if FSA-2060 is not approved.

63 Extra Payments

A Applying Extra Payments

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

64 Distributing Payments to Loans

A Order

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

- *--(a) Recoverable costs and protective advances plus interest;--***
- (b) Deferred non-capitalized interest;**
- (c) Accrued deferred interest;**
- (d) Interest accrued to date of payment; and**
- (e) Loan principal.**

B Distribution

Distribute payments according to the following.

IF the loan...	THEN...
number is identified correctly on the payment information	NFAOC, FaSB 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**

NFAOC, FaSB will normally send the borrower and the local FSA office the following:

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

Notes: State Offices that have elected to discontinue the NFAOC, FaSB notification will send a payment reminder letter similar to Exhibit 25.4 to the borrower. A report is under development to assist in accessing the needed data.

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

*--The borrower has the ability to change their PIN using the following instructions.

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

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

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)

97 Maintaining Debt Instruments

A Identifying Debt Instruments

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

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

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

97 Maintaining Debt Instruments (Continued)

B Conducting Yearly Debt Instrument Inventory

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

RC 830A includes the following for each borrower:

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

When RC 830A is received, County Offices shall:

- verify that the debt instruments exist

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

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

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

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

97 Maintaining Debt Instruments (Continued)

B Conducting Yearly Debt Instrument Inventory (Continued)

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

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

- obtain guidance from the OGC regional attorney, through the State Office, about any necessary corrections to promissory notes, 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 NFAOC, FaSB. 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.

98 Maintaining Security Instruments

A Maintaining Security Documents

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

B Maintaining Current Information

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

*--C Obtaining Subsequent FSA-2028's

FSA obtains new FSA-2028's when:

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

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

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

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

Example 1: Borrower has a DOL-ML 44-01 secured by a tractor. A subsequent DOL-ML is made for the purchase of a plow. On the subsequent FSA-2028, only the tractor and plow will be listed as security. The servicing official will include next to the tractor "(M-44-01)" and plow "(M-44-02)".--*

98 Maintaining Security Instruments (Continued)

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

***--Example 2:** Borrower has a DOL-ML 44-01 secured by a tractor, a subsequent DOL-ML 44-02, secured by a plow, and a subsequent DOL-ML 44-03 secured by 20 goats. Due to a designated weather disaster, the borrower has applied for and is eligible for PLS. Based upon eDALR\$ calculation, loans 44-01 & 44-02 are current and will not receive servicing, loan 44-03 will be restructured as a delinquent borrower. In the subsequent FSA-2028, the servicing official will include next to the tractor "M-44-01" and "M-44-02" next to the plow. The goats will no longer have the "M", fund code, and loan number designations.

Example 3: Borrower has a DOL-ML 44-01 secured by a tractor, a subsequent DOL-ML 44-02, secured by a plow, and a subsequent DOL-ML 44-03 secured by 20 goats. Due to a designated weather disaster, the borrower is past due, has applied for, and is eligible for PLS. Based upon eDALR\$ calculation, loans 44-01 & 44-02 are current, loan 44-02 will not receive servicing, loans 44-01 and 44-03 will be restructured as past due borrower. In the subsequent FSA-2028, the servicing official will include a complete listing all assets (crops, machinery, equipment, livestock, poultry, etc. Next to the plow the servicing official will include "M-44-02". If separate and identifiable livestock security cannot be clearly established and/or maintained, all of the type of livestock purchased with DOL-ML funds will be listed on FSA-2028 and identified with an "(m)" and the applicable loan numbers "(xx-xx)".

Example 4: Borrower owned 20 cows before DOL-ML. Borrower used DOL-ML to purchase 20 additional cows. Forty-cows will be listed on FSA-2028 and identified with "(M-XX-XX)".--*

E Continuing, Amending, or Obtaining New Financing Statements

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

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

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

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

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

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

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

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

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

G 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)

G 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.

H 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.

I Real Estate Security Instruments

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

99 Borrower Responsibilities for Complying With Loan Instruments

A General Policy

[7 CFR 765.202] **The borrower must:**

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

***--(1) 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;

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**

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

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

C Requirement to Operate Security

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

- (b) A borrower who fails to operate the security without Agency consent is in violation of loan agreements and security instruments.**
- (c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253 (subparagraphs D and E).**

D Conditions for FSA Consent to Borrower Ceasing to Operate

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

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

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

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

(i) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;

(ii) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or

(iii) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 years.

E Real Estate Surface Leases

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

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

(2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage. Or

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

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

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

(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met (subparagraph D); and

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

F Conditions for Continuation

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

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

G Mineral Leases

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

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

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

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

(i) The Agency's security interest; or

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

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

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

H Chattel Security Leases

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

FSA immediately notifies the borrower of nonmonetary default according to 5-FLP, paragraph 66.

Section 2 Subordinations

116 Requesting Subordinations

A Borrower Application

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

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

FSA-2001 with the exact, full legal name in the following, as applicable:

- Part A, item 1, or
- Part B, items 1 and 13, or
- Part C, items 1 and 14, and
- Part D, items 4A and 4B, and
- Part F.

FSA-2060 will also be required for real estate subordination requests.

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

FSA-2037, FSA-2038, or any other format approved by FSA containing the same information.

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

AD-1026.

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

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

[7 CFR 765.205 (a)] (5) The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

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

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

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

116 Requesting Subordinations (Continued)

A Borrower Application (Continued)

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

FSA may accept the following items from borrowers, or directly from lenders who submit documents on behalf of the borrower; or obtain copies of the items from the guaranteed lenders FSA file, to support subordination requests using FSA-2001 and/or FSA-2060, as provided in paragraph 116:

- written request or confirmation (e-mail) from the lender detailing the loan rate, term, purposes, security requirements, and what the lender specifically needs from FSA
- current financial statement from the borrower and all entity members
- the farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan
- loan agreements or other documentation outlining the approval, loan advance, and closing requirements
- copies of appraisals
- copies of any construction and/or environmental documents, title opinions, and/or lien search
- verification of nonfarm income and debts.

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

Note: FSA should not be approving or issuing the subordination before the items in the first and fourth bullets are received.--*

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.

119 Appraisal Requirements (Continued)**A Appraisals (Continued)**

*--**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.--*

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

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

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

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

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

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

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

B Appeal Rights

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

121-125 (Reserved)

Section 4 Severance Agreements

136 Conditions for Severance Agreements

A Severance Agreements Conditions

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

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

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

B Items That May Be Included in a Severance Agreement

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

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

C Approving Severance Agreements

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

The authorized agency official will approve a severance request by executing FSA-2060 and the necessary severance agreements. OGC approval must be obtained on a severance agreement submitted on a form that has not previously been approved for use in the State.

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

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

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

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

D Appeals Rights

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

137-145 (Reserved)

147 Releasing Valueless Liens (Continued)

B Information Required to Release a Valueless Lien (Continued)

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

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

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

148-160 (Reserved)

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

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

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

B Fair Market Value

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

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

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

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

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

C FSA Lien Release

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

161 General Requirements (Continued)

D Consent of Lienholders for Release of Proceeds

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

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

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

The authorized agency official may require:

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

E Disruption of Farming Operation

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

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

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

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

161 General Requirements (Continued)

F Furthering FSA Program Objectives

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

G Security Exchange or Replacement

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

H Proceeds Payable to Both the Borrower and FSA

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

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

***--[7 CFR 765.302(a)] The borrower and the Agency will execute an agreement for the use of proceeds.** FSA, in consultation with the borrower, will complete the FSA-2040 to describe plans for disposition of security and use of proceeds. Borrower will review the FSA-2040, initial and sign it in the designated places. For borrowers with:

- normal income security, the agreement shall be updated at least annually, as necessary, to reflect changes in the operation
- basic income security only, the agreement shall be updated as part of a scheduled annual review (1-FLP, paragraph 223) or as necessary to reflect changes in the operation.

B Using the Annual Agreement

[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.--*

163 Using Proceeds From Chattel Security

A General Requirements

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

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

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

(ii) Pay customary costs appropriate to the transaction.

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

(4) Security may be consumed as follows:

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

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

163 Using Proceeds From Chattel Security (Continued)

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

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

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

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

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

C Basic Security

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

(1) Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

(2) Security may be exchanged for chattel property better suited to the borrower's needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.

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

164, 165 (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.

*--The borrower must:

- complete and sign FSA-2060 with the assistance of the authorized agency official
- provide a written contract or an agreement for the property indicating the price and terms of the transaction
- sell the property for not less than the appraised value unless FSA is being paid in full.

Borrower's request to sell real estate at public auction may only be approved through an Administrator's Exception. In addition to information required under subparagraph 4 B, the request will also address:

- auctioneer's experience with selling real estate
- auctioneer's plan for advertising 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.--*

196 Requirements (Continued)

B Conditions for Approval

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

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

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

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

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

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

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

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

196 Requirements (Continued)

B Conditions for Approval (Continued)

[7 CFR 765.351(a)] (6) The environmental requirements of part 799 of this chapter must be met (1-EQ and 6-CP);

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

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

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

C Sale of Timber, Gravel, Oil, Gas, Coal, or Other Minerals

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

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

(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.

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.

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

With SED consent, proceeds may also be used for:

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

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

The authorized agency official must:

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

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

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

- using real estate proceeds as regular payment should not be a re-occurring event
- FSA has significant excess security based upon current appraisals
- the security being sold is a non-essential asset
- the borrower has not received disaster set-aside or PLS within the past 3 years or have payments deferred
- the application of the payment is not being used to resolve nonmonetary default or impending acceleration
- the borrower has been impacted directly by a disaster, is still in recovery, and the sale and application of the proceeds will allow the borrower to resume normal payments.

Note: SED's authority may be redelegated to FLC.

E Pending Liquidation

[7 CFR 765.352(b)] After acceleration, according to 5-FLP, Part 15, the Agency--* may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

Necessary and customary costs appropriate to the transaction:

- include only those costs that the borrower cannot pay from their own resources
- do not include capital gains taxes or junior liens.

198 Appraisals

A Appraisal Requirements

[7 CFR 765.353(a)] (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than \$25,000.

--The authorized agency official is responsible for estimating value. The estimate will be based upon the intended use of the real estate and will be supported by comparable sales and/or discussions with real estate agents and documented in the case file.--

[7 CFR 765.353(b)] The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security.

A new appraisal report for the security to be:

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

*--**Note:** Exceptions may be requested in accordance with paragraph 4 for appraisals completed between 12 and 18 months ago.--*

- retained will only be obtained when the authorized agency official determines that the value of the retained property could be adversely affected by the loss of the transferred or released property.

Appraisal reports under this section may show the current market value of the property being transferred or released, and the property being retained, on a single appraisal report or on separate appraisal reports.

The value of rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate security.

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

199 Approving or Denying Partial Releases 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 ($215,000 \times .10 = 21,500$ ~ 193500-215,000), the transaction can be approved without a DAFLP exception.

- the property has been professionally and extensively marketed
- borrower requests to sell real estate at public auction may only be approved through an Administrator's Exception.--*

The authorized agency official must approve a partial release by executing FSA-2060 and FSA-2470.

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

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

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

199 Approving or Denying Partial Releases or Exchanges (Continued)

B Appeal Rights

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

200-210 (Reserved)

Section 4 (Withdrawn--Amend. 28)

211, 212 (Withdrawn--Amend. 28)

213-230 (Reserved)

Part 9 Transfer of Real Estate and Chattel Security

246 Transfer of Security and Assumption of Debt

A General

[7 CFR 765.401(a)] (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each entity member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

FBP * * * must demonstrate the repayment ability and management capacity of the transferee.

[7 CFR 765.401(b)] A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

FSA requires the transfer and assumption of security and FSA debt when:

- a new borrower wants to replace the existing borrower
- *--an existing borrower is now operating, or proposes to operate as an entity with a non-relative
- an existing borrower proposes to transfer FSA security to an entity controlled or owned by the borrower.

FSA requires an assumption of debt, but not a transfer of security (assumes title to assets is not changing) when:

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

Note: See definition of operator in Exhibit 2.

Operators include borrowers who obtained individual loans and later formed an operating entity with a relative. If the member with the individual loan owns at least 50 percent of the operating entity, the individual meets the definition of operator for loan servicing purposes.--*

246 Transfer of Security and Assumption of Debt (Continued)**A General (Continued)**

***--Example:** An individual obtains an FO and later forms an operating-only entity with a relative and obtains an OL for the same operation. The individual then needs servicing for the individual FO. In these cases, if the individual owns at least 50 percent of the operating entity, the definition of operation is met.

Borrowers who obtained individual loans and later formed an operating-only entity with a non-relative must have the entity assume the debt to be eligible for loan servicing, as provided in 4-FLP, subparagraph 248 C. However, transfer of the collateral to the entity is not required.

In either of these circumstances, the operating entity must have their own unique tax ID number.--*

B ST's

ST's will only be transferred on NP rates and terms according to subparagraph 248 E, unless transfer is required because of the death of a borrower, in which case transfer will be considered according to Part 10.

C Junior Liens

When a transferee assumes:

- the transferor's entire FSA debt, SED's must concur with the proposed transfer of any junior liens
- less than the full amount of FSA's debt, junior liens to the assumed debt are prohibited.

D Partial Transfer and Assumption

A borrower may transfer FSA indebtedness in whole notes only. The borrower and transferee may not split an individual loan. The borrower must demonstrate that a proposed partial sale is in the best financial interest of the operation and that the sale will not adversely affect the security and/or Government's financial interest.

The compensation received by the transferor and applied to the transferor's FSA debt may not be less than the market value of the property sold.

When the value of the property exceeds the debt to be assumed, the transferee may pay with cash on hand or obtained through credit. FSA applies such cash payment to the transferor's indebtedness according to Part 5.

246 Transfer of Security and Assumption of Debt (Continued)**E Determining the Assumption Amount**

[7 CFR 765.403(d)] The transferee must assume the lesser of:

- (1) The outstanding balance of the transferor's loan; or**
- (2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.**

F Determining the Value of the Security Property

The value of the security property must be determined before approving a transfer and assumption. Appraisals will be conducted according to 1-FLP, Part 6. The appraisal determines the value of the security and the amount of the indebtedness that may be assumed.

G Forgiveness of Youth Loan Debt

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this section as part of its eligibility. The criteria for determining if the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR section 766.104(a)(1). Any borrower who met those criteria when the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to the present regulations and can preclude the applicant from receiving a loan from FSA.

247 Types of Transfers and Assumptions**A New Eligible Borrower**

[7 CFR 765.403(a)] The Agency may approve transfers of security with assumption of Agency debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:

- (1) The transferee meets all loan and security requirements in part 764 (3-FLP) of this chapter for the type of loan being assumed; and**
- (2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 (1-FLP) of this chapter.**

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.

247 Types of Transfers and Assumptions (Continued)**A New Eligible Borrower (Continued)**

The completed documents may include:

- complete application by the proposed transferee for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- appraisal from the transferor's file, with a copy to the transferee's file
- transferring "deed" or "bill of sale" from the transferor to the transferee
- FSA-2025
- FSA-2060
- FSA-2080, if applicable
- FSA-2476
- FSA-2489
- additional documents such as UCC1's, FSA-2028's, and mortgages as required.

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.

The borrower and the proposed entity member should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- complete application by the proposed new entity for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- FSA-2025
- *--FSA-2489 or FSA-2026, or both
- new FSA-2026's, if needed
- FSA-2476, if applicable
- security instruments, as appropriate.

The transaction will be completed under subparagraph 248 C.--*

247 Types of Transfers and Assumptions (Continued)

C Withdrawing a Member and the Remaining Members are Not Jointly Liable

If a personally liable party withdraws from an entity and all remaining entity members are not jointly liable for the debt, FSA will process the transfer and assumption according to this Part. Accordingly, all transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If all remaining entity members are jointly liable, the withdrawal is processed according to Part 8.

The borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process.

The completed documents may include:

- FBP, for the new entity demonstrating the repayment ability and management capacity of the remaining borrower entity
- updated farm assessment
- documents identifying the reason for the withdrawal such as a death certificate, a divorce decree, or a change in the composition of a corporation or partnership
- documentation of the transfer of the property such as a “deed” or “bill of sale” to the remaining members of the borrower entity
- narrative by the authorized agency official describing and recommending the proposal
- FSA-2025
- *--FSA-2489, FSA-2026, or both
- FSA-2080, if applicable
- FSA-2476, if applicable--*
- new security instruments, as appropriate.

247 Types of Transfers and Assumptions (Continued)***--D Adding New Entity**

When an existing individual borrower forms an entity, the borrower should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- FSA-2001
- narrative by the authorized agency official describing the proposal
- FBP demonstrating the replacement ability
- new security instruments, as appropriate
- FSA-2489, FSA-2026, or both
- FSA-2476, if applicable.

The transaction will be completed under subparagraph 248 C.--*

E NP Applicant

FSA may allow NP assistance only when it is in FSA's best interest.

FSA allows NP assistance only to accommodate enhanced collection potential for outstanding loans.

The documents FSA requires for a NP transfer and assumption are the same as for a program eligible applicant, except FSA does not need to determine the borrower's eligibility.

248 Assumption Terms (Continued)

F Modification of Security Instruments

Covenants in promissory notes and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FLP operation requirements, and consent to junior lien encumbrance will be deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and the approval official initialing the changes.

G Transfer from a NP Borrower

[7 CFR 765.403(b)] Applicants eligible for FO loans under part 764 (3-FLP) of this chapter may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as an FO loan.

When a NP borrower proposes to sell security property, the authorized agency official may approve assumption of indebtedness on program or NP terms based on the eligibility of the transferee.

FSA does not release NP borrowers of liability.

249 Reviewing Transfer Request

A Reviewing Required Documents

The authorized agency official will review the transfer request to assure that the documents required are present and complete according to paragraph 247. See 1-FLP, Part 2 for transfer and assumption approval authority.

If the required documents are incomplete or additional information is needed, FSA will request the transferor and the transferee to provide the additional information, as appropriate. The authorized agency official must inform the transferor and the transferee that FSA will not process the transfer request until the application is complete.

B Insurance Requirements

A transferee must obtain insurance according to 3-FLP, Part 6.

C Title Clearance

A transferee must obtain title clearance and legal services for closing a transfer according to 3-FLP, Part 16. FSA does not require title clearance and legal services when the interest of a liable party on the note is conveyed to another liable party who assumes the total indebtedness at same rates and terms.

D Reviewing Loan Application

The authorized agency official will review the application according to this Part and 3-FLP, Part 3.

E Approving the Transfer and Assumption

Approval officials may approve transfer and assumption when the FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED may redelegate their authority to approve transfer and assumption to FLC, FLS, or DD.

The authorized agency official may approve the transfer and assumption by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO, the responsibility to execute the required documents to complete the transaction.

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

249 Reviewing Transfer Request (Continued)**E Approving the Transfer and Assumption (Continued)**

The authorized agency official will use FSA-2025 to notify the applicant that the transfer and assumption has been approved.

If FSA rejects the transfer and assumption request, the authorized agency official will notify the borrower of appeal rights according to 1-APP.

250 Closing the Transfer**A Basic Policy**

[7 CFR 765.405] The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:

- (a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;**
- (b) The transferee's payoff of any junior liens does not exceed \$5,000;**
- (c) Fees are customary and reasonable;**
- (d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and**
- (e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.**

The authorized agency official will prepare closing documents according to 3-FLP, Part 16 and State and local requirements. Closing documents will be filed according to State law and as described in the State supplement.

B Final Processing

The authorized agency official will follow the flowchart in DLS Loan Servicing Users Guide, Section 5.2, to determine if a "1M", "4A", or "4D" transaction is needed in DLS to record the transfer and assumption of the loan or loans.

The signed documents in the transfer docket will be placed in the transferee's case file and *--the transferor's file shall be maintained according to 32-AS.--*

251 Determining Transferor Liability After Closing**A Full and Complete Transfer**

[7 CFR 765.406(b)(1)] The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

B Transfer and Assumption of a Portion of the Indebtedness

[7 CFR 765.406(a)] Agency approval of an assumption does not automatically release the transferor from liability.

[7 CFR 765.406(b)(2)] If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.

[7 CFR 765.406(b)(3)] If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request *--debt settlement in accordance with subpart B of 7 CFR part 1956. (7-FLP, Part 12)--*

If all security has been transferred, the remaining debt will be considered for debt settlement instead of release of liability under this Section.

In partial debt and partial security transfer cases, the transferee may pay any sale price or security shortfalls to resolve deficiencies as approved by the authorized agency official by any of the following:

- cash contribution
- participation credit
- subsequent FSA loans.

If only a portion of the indebtedness is to be assumed by the transferee, the authorized agency official must recommend and SED must approve or deny settlement of the remaining indebtedness.

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 subparagraph 100 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 subparagraph 100 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 Act Impact**

The Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 both affect FSA loan servicing. The Servicemembers Civil Relief Act of 2003 authorization affects FLP borrowers on active duty at all times whereas the requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 are only implemented during a time of a war or national emergency as declared by the President or Congress. The FLP National Office will *--notify SED's when we are no longer under a national emergency conflict or at war.--*

B Active Duty

National Guard members must be on duty at least 30 calendar days to be considered on active duty for protections under both the Servicemembers Civil Relief Act and Ronald W. Reagan National Defense Authorization Act.

Reservists are covered by both the Servicemembers Civil Relief Act and Ronald W. Reagan National Defense Authorization Act from the date orders are received to report for active duty.

282 Servicemembers Civil Relief Act of 2003**A Interest Rate**

Subject to paragraph 283, FSA may not charge interest exceeding 6 percent on existing FLP debt if the borrower enters full-time active military duty.

Upon learning that a borrower enters active duty, the authorized agency official shall send Exhibit 52 to the borrower stating that the interest rate on their existing FSA loans will not exceed 6 percent while the borrower is on active military duty. The borrower shall submit written notice and a copy of the military orders calling the service member to military service and any orders further extending military service. The interest rate change will be effective with the date the military service started (as verified in the military orders submitted by the borrower).

If the borrower's interest rate is already lower than the 6 percent rate, the borrower will be notified that FSA will not increase the borrower's interest rate.

--In times of war or national emergency, active duty members are eligible to have their FSA interest and payments deferred on existing loans. Exhibit 52 may be used as is or a similar notification letter may be used to address the borrower's specific circumstances. See paragraph 283 for additional details.--

Adjustments to the interest rate based on military service must be processed by NFAOC, FaSB only; therefore, the authorized agency official should send a memorandum to NFAOC, FaSB that confirms the military service of the borrower and the effective date of that service.

In addition, the authorized agency official shall process applicable changes to MIDAS Business Partner to change the borrower's address to the address at which FSA may contact the borrower while on active military duty or the address of a designated power of attorney.

B Penalty for Violations

Violations of the Servicemembers Civil Relief Act of 2003 are misdemeanors. Knowingly violating the provisions of the Servicemembers Civil Relief Act of 2003 is punishable by fines, imprisonment for not more than 1 year, or both.

282 Servicemembers Civil Relief Act of 2003 (Continued)

C Borrower Contact

When the authorized agency official learns that a borrower plans to enter the Armed Forces on full-time active duty, the authorized agency official shall immediately contact the borrower to ensure that someone adequately cares for the borrower's loan security during their absence. The authorized agency official shall determine whether the borrower wants to:

- retain chattel or real estate security while on active duty
- lease real estate security while on active duty
- dispose of chattel or real estate security before reporting to active duty.

--In addition, during the contact the authorized agency official shall ask the borrower to provide the servicing office with a copy of the military orders calling the service member to military service and any orders further extending military service that apply. The orders will be placed in position 4 of the case file. The contact efforts and the outcome must be documented in FBP running record.--

D Power of Attorney

If the borrower decides to retain ownership of the FSA loan security while on active duty and there are no other parties liable for the debt, the authorized agency official shall encourage the borrower to authorize a power of attorney. The borrower may designate a power of attorney before entering active duty. A person designated with a power of attorney has the responsibility to ensure both:

- proper use and maintenance of the borrower's chattel and real estate security
- timely payment on the borrower's insurance, taxes, and FSA loan.

The borrower should be encouraged to use a military power of attorney prepared and executed pursuant to 10 U.S.C. 100b. No further legal review is required for a power of attorney prepared for the borrower by the military. SED's shall issue State supplements for all other acceptable power of attorney documents.

E Real Estate Security Leases

The authorized agency official, when appropriate, may encourage a borrower, while on active duty, to lease real estate security in which FSA has a security interest when the rental income fully repays the borrower's:

- annual installment
- real estate taxes
- required hazard insurance.

If the borrower decides to lease the real estate security, the authorized agency official may encourage the borrower to enter into a written lease and obtain an assignment of rental income proceeds in an amount sufficient to cover the borrower's annual FSA installment using FSA-2044.

282 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/>.--

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 NFAOC, FaSB. 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 NFAOC, FaSB. This letter instructs NFAOC, FaSB to terminate the 6 percent--* interest rate and revert to the rate in existence before the assignment of the 6 percent rate.

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

A Suspension of Interest Accrual and Payments

During a time of war or national emergency as declared by the President or Congress, the FLP payments on existing loans of borrowers on active duty will be suspended and interest will not accrue beginning on October 28, 2004, or the date in which they enter active duty, whichever is later. If any regular payments have been made since the date noted, October 28, 2004, the borrower should be contacted, and the payment will be refunded at their request. For **existing** loans; all payments due, as well as the due dates of all payments due during and after such active duty will be suspended or deferred for a period of time equal to the time the borrower is on active duty during war or a national emergency.

***--Example:** A borrower with an OL (matures January 15, 2019, annual payment on January 1) and a FO (matures February 15, 2040, annual payment on January 1) enters active duty on October 1, 2016, and is discharged on April 1, 2017 (182 days).

- Interest will not accrue from October 1, 2016, to April 1, 2017.
- The payments on both loans will be due on September 30 each year (April 1, 2017 + 182 days = September 30).--*

Note: Funds from the sale of basic security must be applied as an extra payment according to subparagraph 63 A.

When information is received by the County Office that a borrower has entered or is entering active duty, the County Office will send:

- the borrower, Exhibit 52, informing them that for **existing** loans, payments will be suspended and interest will not accrue during time of active duty
- NFAOC, FaSB a courtesy copy by FAX (1-FLP, subparagraph 5 B).

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None.

Forms

This table lists all forms referenced in this handbook.

Form Number	Title	Display Reference	Paragraph Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		116
CCC-679	Lien Waiver		118
FSA-2001	Request for Direct Loan Assistance		116, 126
FSA-2025	Notification of Approval Terms and Conditions and Borrower Responsibilities		247-249
FSA-2026	Promissory Note		3, 247, Ex. 2, 20
FSA-2028	Security Agreement		Text, Ex. 2, 4
FSA-2029	Mortgage/Deed of Trust		3
FSA-2037	Farm Business Plan – Balance Sheet		116
FSA-2038	Farm Business Plan – Income and Expenses		116
FSA-2040	Agreement for the Use of Proceeds and Security		162, 181, Ex. 29
FSA-2044	Assignment of Income		281
FSA-2045	Record of the Disposition of FSA Security/Release of Proceeds		162, 166, 181
FSA-2060	Application for Partial Release, Subordination, or Consent		Text
FSA-2065	Annual Statement of Loan Account		64, Ex. 25.5
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FSA-2080	Release From Personal Liability		231, 247, 251

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Form Number	Title	Display Reference	Paragraph Reference
FSA-2425	Request to Cancel Undisbursed Loan Funds		61
FSA-2429	Request for Change in Application		61
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FSA-2446	PLAS/GLAS Account Correction		97
FSA-2450	Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Proceeds		162
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FSA-2489	Assumption Agreement		247
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FSA-2585	Acquisition or Abandonment of Secured Property		Ex. 25.5
FSA-2722	Update to TOP and Cross-Servicing Information		282
IRS 1098	Mortgage Interest Statement		61, Ex. 25.5
IRS 1099-A	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1099-C	Cancellation of Debt		Ex. 25.5
IRS 1099-G	Certain Government Payments		Ex. 25.5
IRS 1099-INT	Interest Income		Ex. 25.5
IRS 1099-MISC	Miscellaneous Income		Ex. 25.5
IRS W-9	Request for Taxpayer Identification Number and Certification		68
UCC1	National Financing Statement		247, 291, Ex. 2
RD-3550-28	Authorization Agreement for Preauthorized Payments		66, 67

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
AI	account information	65
APCD	type of applicant code	Ex. 25.5
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
ECM	Enterprise Content Management	61
GL	guide letter	2
NFAOC, CMCB	National Financial and Accounting Operations Center, Cash Management Collections Branch	66, 67
NFAOC, FaSB	National Financial and Accounting Operations Center, Farm Service Branch	61, 62, 64, 65, 97, 146, 282, 283, Ex. 52, Ex. 53
NFAOC, PRB	National Financial and Accounting Operations Center, Program Reports Branch	Ex. 25.5
NP	nonprogram loan	16, 46, 62, 266, 248
PAD	Preauthorized Debit	66, 67
PF	Payoff Balance	65
PIN	personal ID number	63
PLS	primary loan servicing	61
RC	report code	Text, Ex. 25.5
SAA	Shared Appreciation Agreement	117, Ex. 2
ST	softwood timber loan	16, 196, 246
TDCLCR	Term Debt and Capital Lease Coverage Ratio	32
VRU	Voice Response System	63

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Redelegations of Authority

SED's may redelegate their authority to approve:

- subordinations or releasing and refiling lien instruments instead of subordination to FLC, FLS, or DD
- surface leases for farm property no longer in use (such as old barns) or for nonfarm purposes (such as wind turbines, communication towers, or other similar installations) to FLC, FLS, or DD
- severance agreement to FLC, FLS, or DD
- transfer and assumption to FLC, FLS, or DD.

Notice of Termination of Security Interests in Farm Products

After verifying that the loans are paid in full and the payment has cleared, the authorized agency *--official will close the case files and return the documents to the borrower according to 32-AS, paragraph 173. Any assignments held by FSA will be terminated using the following letter and--* satisfaction of liens will be recorded on FSA-2433. Go to **<http://165.221.16.90/dam/ffasforms/forms/html>**, CLICK "Find Current Forms Using Our Form Number Search", in Form Number block, type, "4-FLP Exhibit 27", and CLICK "Submit".

4-FLP, Exhibit 27

(Use Agency Letterhead format with local return address.)

NOTICE OF TERMINATION OF SECURITY INTERESTS IN FARM PRODUCTS

[Purchaser's Name, Address, and Telephone Number]

[Borrower's Name, Address, and Telephone Number]

The subject borrower has fully repaid the debt secured by the farm product describe in:

- 1. Consent to Payment of Proceeds from Sale of Products (FSA-2042) dated: _____.
- 2. Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest (FSA-2043) dated: _____.
- 3. Assignment of Proceeds from the Sale of Products (FSA-2041) dated: _____.

Therefore, the Farm Service Agency (FSA) or its successor agency, no longer has a security interest in such farm products, and the payment to FSA under such consent or assignment should be discontinued.

United States of America

By _____

Title _____

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov. USDA is an equal opportunity provider and employer.

--Borrowers Entering Active Duty in Times of War or National Emergency--

When information is received by the County Office that a borrower has entered or is entering active duty, the County Office shall send:

- the borrower the following, informing them that payments will be suspended, and interest will not accrue during time of active duty
- NFAOC, FaSB a courtesy copy by FAX (1-FLP, subparagraph 5 B).

Note: This exhibit may only be revised by SED.

--Borrowers Entering Active Duty in Times of War or National Emergency (Continued)--

Note: Exhibit 52 is available in a fillable format. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 52”.

4-FLP, Exhibit 52

(Use Agency Letterhead format with local return address.)

BORROWERS ENTERING ACTIVE DUTY

Dear:

On October 28, 2004, the President signed into law the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (the Act). As per the Act, while you are on active duty, interest will not accrue and annual payments will not be required (will be suspended) on your existing Farm Service Agency (FSA) Farm Loan Program (FLP) loans while the United States is at war or during a national emergency as declared by the President or Congress. Payments due during or after active duty will be suspended or deferred for the length of time you are on active duty. New loans are not covered by the Act.

The beginning date of the suspension and non-accrual status is _____. The suspension and non-accrual status will end on the earlier of when your active duty ends or the war or national emergency is concluded.

FSA is committed to providing service to assist our borrowers who are impacted by military deployment. Please continue to keep this office apprised of your current duty status so your account can be updated in a timely manner once you are relieved from active duty (with a copy of your release orders) or the national emergency has ended.

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

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW