

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Regular Direct Loan Servicing
4-FLP

Amendment 37

Approved by: Deputy Administrator, Farm Loan Programs

William S. Cobb

Amendment Transmittal

A Reasons for Amendment

Subparagraph 16 B has been amended to require the use of OGC flag on accounts where OGC has determined FSA should suspend routine servicing.

Subparagraphs 19 H, 99 F, 101 A, 102 B, 103 A, 181 A, 197 D, Paragraph 183, and Exhibits 1 and 2 have been amended for consistent spelling of non-monetary and non-compliance.

Subparagraph 21:

- A has been amended to remove references to year-end analysis
- F has been amended to require notification be sent certified mail and maintaining file copies.

Subparagraph 61:

- C has been amended to revise approval authority and submission process for past CY or later IRS-1098's
- D has been amended to clarify use of insurance claim proceeds.

Subparagraph 65:

- A has been amended to add contact information on wire transfer for FLP final loan payments
- F has been amended to add requirement to provide form FSA-2071 to the borrower.

Subparagraph 97 C has been added to require review of debt instruments for CNC accounts.

Subparagraph 98 H has been amended to clarify federal government actions to foreclose real estate instruments are not limited by state laws.

Subparagraph 99 A has been amended to provide reference to 5-FLP Part 3 for processing non-compliance.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Paragraph 100 has been withdrawn and moved to 5-FLP, Part 3.

Subparagraph 101 A has been amended to revise required concurrence from Administrator to DAFLP for protective advances to pay insurance.

Subparagraph 102 B has been amended to clarify pre-notification requirements for non-traditional crop or livestock sales.

Subparagraph 116 A has been amended to authorize use of lender credit reports.

Subparagraph 117 A has been amended to provide reference to:

- 3-FLP for authorized loan purposes and Part 7 Section 3 for nonlending purposes
- Subparagraph 196 for approval requirements on leases for nonlending purposes.

Subparagraph 119 A has been amended to reference appraisal requirements of 1-FLP.

Subparagraph 120 A has been amended to clarify maximum subordination authorities.

Subparagraph 146 E has been amended to update the reference for graduations to Part 2.

Subparagraph 163 C has been amended to clarify the need for supervised bank accounts for situations involving insurance proceeds.

Subparagraph 183 A has been amended to add requirement to track unauthorized disposition in DLS.

Subparagraph 267 D has been amended to revise reference to paragraph 100 to 5-FLP, subparagraph 65 B.

Exhibit 4 has been amended to include State supplement requirement for subparagraph 98 H.

Exhibit 28.5 has been withdrawn and moved to 5-FLP, Exhibit 10.5.

Exhibit 31 has been revised to remove reference to Paragraph 100.

Amendment Transmittal (Continued)

Page Control Chart		
TC	Text	Exhibit
1-4 5	2-1, 2-2 2-7 through 2-10 2-13, 2-14 5-1, 5-2 5-7 through 5-10 6-5, 6-6 6-6.5, 6-6.6 (add) 6-9 through 6-32 6-32.5, 6-32.6 6-33 through 6-46 6-71, 6-72 7-7 through 7-10 7-31 through 7-44 7-49 through 7-52 7-53 10-3, 10-4	1, pages 1, 2 4, page 1 28.5 page 1 (remove) 31, page 1

Table of Contents

Page No.

Part 1 Introduction and Purpose

1	Purpose and Sources of Authority	1-1
2	Related References.....	1-2
3	FLP Forms	1-4
4	FSA Exception Authority	1-7
5	Introduction to Direct Loan Servicing (Regular).....	1-9
6-15	(Reserved)	

Part 2 Operational Reviews

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

Part 3 (Withdrawn--Amend. 35)

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

Part 4 (Withdrawn--Amend. 35)

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

Part 5 Borrower Payments

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

Table of Contents (Continued)

Page No.

Part 6 Protecting FSA's Security Interests

Section 1 General Security Preservation and Lien Protection

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

Section 2 Subordinations

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

Section 3 Junior Liens

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

Section 4 Severance Agreements

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

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

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

Table of Contents (Continued)

Page No.

Part 7 Disposition of Security

Section 1 Disposition of Normal Income and Basic Chattel Security

161	General Requirements.....	7-1
162	Agreement for Disposition of Normal Income and Basic Chattel Security.....	7-4
163	Using Proceeds From Chattel Security	7-7
164, 165	(Reserved)	
166	Releasing Security Interest	7-11
167-180	(Reserved)	

Section 2 Unapproved Disposition of Security

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

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

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

Section 4 (Withdrawn--Amend. 28)

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

Part 8 Withdrawing Existing Party

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

Table of Contents (Continued)

Page No.

Part 9 Transfer of Real Estate and Chattel Security

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

Part 10 Deceased Borrowers

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

Part 11 Borrowers Entering the Armed Forces

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

Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities

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

Part 13 Servicing Borrowers With Both FSA and RD Loans

301	General Servicing Procedures.....	13-1
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Table of Contents (Continued)

Exhibits

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

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

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

An operational review is performed to:

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

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

16 Reviewing a Borrower's Account (Continued)

B Requesting Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F Applying for Commercial Credit

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

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

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

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

19 Graduation Review (Continued)

F Applying for Commercial Credit (Continued)

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

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

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

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

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

G Transfer and Assignment of FSA Liens

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

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

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

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

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

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

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

***--20 Agreement for Using Proceeds**

A Planning

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

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

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

For borrowers with:

- normal income security, the agreements will be updated at least biennially
- basic security only, the agreement will be reviewed biennially and updated as necessary to reflect changes in the operation.

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

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

21 Limited Resource Review**A Borrower Account Reviews**

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

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

* * *

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

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

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

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

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

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

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

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

G Change in Regular Interest Rate

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

--22 Year-End Analysis*A Summary of Year-End Analysis**

Refer to 1-FLP, Part 5 for guidance on year-end analysis.

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

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

Part 5 Borrower Payments

61 General

A Purpose

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

B Acceptable Payment Forms

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

C Processing Payments

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

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

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

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

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

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

61 General (Continued)

D Identifying Regular and Extra Payments

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

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

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

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

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

such as farm equipment and breeding livestock.

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

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

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

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

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

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

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

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

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

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

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

B Supervised Bank Accounts and Undisbursed Loan Funds

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

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

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

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

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

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

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

D Underpayment

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

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

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

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

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

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

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

F Security Instrument Releases

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

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

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

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

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

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

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

66 Preauthorized Debit (PAD)

A Introduction

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

B Using Form RD 3550-28

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

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

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

97 Maintaining Debt Instruments (Continued)

B Conducting Yearly Debt Instrument Inventory (Continued)

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

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

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

97 Maintaining Debt Instruments (Continued)

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

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

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

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

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

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

98 Maintaining Security Instruments

A Maintaining Security Documents

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

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

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

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

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

C Obtaining Subsequent FSA-2028's

FSA obtains new FSA-2028's when:

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

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

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

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

98 Maintaining Security Instruments (Continued)

G Obtaining Assignments

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

SED's will issue State supplements as needed to:

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

H Real Estate Security Instruments

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

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

99 Borrower Responsibilities for Complying With Loan Instruments

A General Policy

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

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

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

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

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

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

[7 CFR 765.202] The borrower must:

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

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

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

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

C Requirement to Operate Security

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

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

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

D Conditions for FSA Consent to Borrower Ceasing to Operate

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

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

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

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

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

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

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

E Real Estate Surface Leases

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

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

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

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

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

* * *

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

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

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

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

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

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

G Mineral Leases

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

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

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

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

(i) The Agency's security interest; or

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

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

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

H Chattel Security Leases

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

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

I Allotments Leases

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

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

J Lease Proceeds

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

100 (Withdrawn--Amend. 37)

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

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

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

FSA will make protective advances according to 1-FLP, Part 7 on program loan expenses. Once a protective advance is made, that protective advance is a debt owing and immediately ~~due and payable~~. Borrowers will immediately be notified of a non-monetary default and ~~serviced~~ according to 5-FLP. According to 5-FLP, Part 4, only protective advances used to pay real estate taxes may receive primary loan servicing. All other protective advances cannot be restructured and must be immediately repaid by the borrower.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

102 Notifying Potential Purchasers

A States With CFS

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

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

B States Without CFS

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

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

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

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

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

Note: Follow applicable directives providing guidance for protecting PII.

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

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

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

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

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

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

103 FSA Responsibilities Under Third Party Actions (Continued)

B SED's Responsibility

SED's will:

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

104-115 (Reserved)

Section 2 Subordinations

116 Requesting Subordinations

A Borrower Application

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

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

FSA-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.

116 Requesting Subordinations (Continued)

A Borrower Application (Continued)

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

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

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

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

FSA may accept 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.

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

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

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

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

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

117 Conditions for Real Estate Subordinations

A Real Estate Security

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

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

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

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

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

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

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

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

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

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

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

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

117 Conditions for Real Estate Subordinations

A Real Estate Security (Continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 Conditions for Real Estate Subordinations (Continued)

B Releasing and Refiling Lien Instruments Instead of Subordination

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

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

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

- the borrower agrees to execute new security instruments

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

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

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

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

See subparagraph 197 B for customary costs.

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

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

118 Conditions for Chattel Subordinations**A Chattel Security**

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

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

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

B Second Subordinations on Chattel Security

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

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

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

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

C CCC Loans

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

119 Appraisal Requirements

A Appraisals

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

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

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

* * *

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

Note: See subparagraph 197 B for customary costs.

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

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

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

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

* * *

120 Approving or Denying Subordination Requests

A Approval Authority

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

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

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

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

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

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

B Appeal Rights

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

121-125 (Reserved)

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

146 Release Without Monetary Consideration

A Approval

SED may approve a release request by executing FSA-2060, FSA-2470, or other documents *--approved by OGC. Before approval of a release without monetary consideration, borrower's ability to graduate to commercial credit must be considered and documented.--*

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

B Release Because of Mutual Mistakes

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

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

C Release Because of No Evidence of Indebtedness

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

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

146 Release Without Monetary Consideration (Continued)

D Borrower Requested Chattel Security Release

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

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

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

E Borrower Requested Real Estate Security Release

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

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

163 Using Proceeds From Chattel Security**A General Requirements**

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

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

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

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

(4) Security may be consumed as follows:

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

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

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

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

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

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

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

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

C Basic Security

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

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

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

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

164, 165 (Reserved)

Section 2 Unapproved Disposition of Security

181 Initial FSA Actions Upon Discovery

A Unauthorized Chattel Security Disposition Discoveries

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

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

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

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

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

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

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

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

181 Initial FSA Actions Upon Discovery (Continued)

B Notification to Third Party Purchasers

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

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

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

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

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

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

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

B Denying Post-Approval Requests

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

C Determining the Disposed Security's Value

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

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

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

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

A Future Eligibility Decisions

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

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

184-195 (Reserved)

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

With SED consent, proceeds may also be used for:

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

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

The authorized agency official must:

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

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

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

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

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

E Pending Liquidation

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

Necessary and customary costs appropriate to the transaction:

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

198 Appraisals**A Appraisal Requirements**

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

(2) The Agency may waive the appraisal requirement when the estimated value is less *--than \$50,000.--*

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

An appraisal report for the security to be transferred or released (except for releases without monetary compensation under subparagraph 146 E) will be obtained when the authorized agency official believes it necessary to protect the financial interest of the government or the *--disposition is greater than \$50,000.--*

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

A new appraisal report for the security being retained will only be obtained when the authorized agency official determines that the value of the retained property could be adversely affected by the loss of the transferred or released property.

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

Note: Exceptions may be requested according to paragraph 4 for appraisals completed between 12 and 18 months ago.

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

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

199 Approving or Denying Partial Releases or Exchanges

A Approval Authority

Approval officials may approve partial releases or exchanges when FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of the approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED is authorized to approve any transaction consistent with this section.

On an individual case basis, SED may approve a partial release or exchange for less than the appraised value under this paragraph when:

- the amount being received is within 10 percent of the appraised value

Note: This authority applies to this paragraph only.

Example 1: A borrower is selling a parcel of real estate and has agreed to a sales contract for \$200,000. However, the appraisal indicates a value of \$215,000. Since the appraisal is within 10 percent ($215,000 \times .10 = 21,500 \sim 193,500 - 215,000$), the transaction can be approved without a DAFLP exception.

- the property has been professionally and extensively marketed.

* * *

The authorized agency official must approve a partial release by executing FSA-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 Real Estate Auctions**

Borrower requests to sell real estate at public auction may only be approved through an Administrator's Exception unless the:

- loans secured by the property are paid in full
- auction floor bid is either:
 - the appraised market value
 - within 10% of the appraised market value and approved by SED.

If submitting a request for Administrator's Exception to approve a sale by public auction, the request will address:

- information required under subparagraph 4 B
- auctioneer's experience with selling real estate
- auctioneer's plan for advertising the auction, including where advertisements will be placed and how long they will run
- how the auction will maximize FSA recovery over a traditional sale through a realtor
- appraised values of the property as it is being advertised and auctioned.

Note: This can be demonstrated with an appraisal that addresses separate tract values as an addendum.

C Appeal Rights--*

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

200-210 (Reserved)

Section 4 (Withdrawn--Amend. 28)

211, 212 (Withdrawn--Amend. 28)

213-230 (Reserved)

267 Servicing Options for Program Loan Accounts**A Continuation**

[7 CFR 765.451(a)] Following the death of a borrower, the Agency will continue the loan with any individual who is liable for the indebtedness provided that the individual complies with the obligations of the loan and security agreements.

The authorized agency official will process applicable changes to MIDAS Business Partner and DLS to change any name, account number, or case number.

B Transfer and Assumption

[7 CFR 765.451(b)] The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

See Part 9 for more information on transfer and assumptions.

C Shared Appreciation (FSA-2543's)

If an FSA-2543 exists at the time of the borrower's death, see 5-FLP, subparagraph 342 A.

D Liquidation

If a deceased borrower's farm loan accounts cannot be paid in full, voluntarily liquidated, resolved through continuation with existing obligors, or transferred to a third party, the *--authorized agency official will comply with 5-FLP, subparagraph 65 B before proceeding according to 5-FLP, paragraph 66. If the deceased borrower's loan payments are deferred, the authorized agency official will include canceling the deferral as of the date of the borrower's death with the notification provided in 5-FLP, subparagraph 65 B.--*

268 Servicing Options for NP Accounts**A General Policy**

When a borrower with only NP's dies, FSA shall determine whether the borrower's NP's may be continued or assumed by another party. If NP's cannot be continued or assumed, FSA shall liquidate NP's according to 5-FLP, Part 16.

B Continuation with a Jointly Liable Borrower

[7 CFR 765.452(a)(1)] The Agency will continue the loan with a jointly liable borrower if the remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.

--The authorized agency official shall process applicable changes to MIDAS Business Partner and DLS to change the borrower's name and case number.--

C Transfer and Assumption

[7 CFR 765.452(b)] A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part (Part 9).

[7 CFR 765.452(a)(2)] The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower according to the loan and security instruments.

See subparagraph 248 C for information on continuing or assuming a loan.

D Security Transfer Beyond Heirs

[7 CFR 765.452(c)] (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part (Part 9).

269-280 (Reserved)

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		20, 162, 181, Ex. 29
FSA-2044	Assignment of Income		281
FSA-2045	Record of the Disposition of FSA Security/Release of Proceeds		162, 166, 181
FSA-2060	Application for Partial Release, Subordination, or Consent		Text
FSA-2065	Annual Statement of Loan Account		64, Ex. 25.5
FSA-2071	Transmittal of Document		65
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		61
FSA-2080	Release From Personal Liability		231, 247, 251

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

Forms (Continued)

Form Number	Title	Display Reference	Paragraph Reference
FSA-2420	Intent to ACL for Failure to Provide Information or to Graduate		19
FSA-2425	Request to Cancel Undisbursed Loan Funds		61
FSA-2429	Request for Change in Application		61
FSA-2433	Satisfaction of Lien		65, 147
FSA-2445	Control Log PLAS/GLAS Account Corrections		97
FSA-2446	PLAS/GLAS Account Correction		97
FSA-2450	Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Proceeds		162
FSA-2455	Subordination by the Government		120
FSA-2465	Assignment, Acceptance, and Release (Wool and Mohair)		166
FSA-2470	Partial Release		166, 212, 146, 147
FSA-2476	Transfer of Real Estate Security		247
FSA-2489	Assumption Agreement		247
FSA-2490	Deceased Borrower Report		266
FSA-2495	Application to Move Security Property		291
FSA-2543	Shared Appreciation Agreement		3, 97, 267
FSA-2551	Request for Non-monetary Default Determination		100, 181
FSA-2585	Acquisition or Abandonment of Secured Property		Ex. 25.5
FSA-2722	Update to TOP and Cross-Servicing Information		282
IRS 1098	Mortgage Interest Statement		61, Ex. 25.5
IRS 1099-A	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1099-C	Cancellation of Debt		Ex. 25.5
IRS 1099-G	Certain Government Payments		Ex. 25.5
IRS 1099-INT	Interest Income		Ex. 25.5
IRS 1099-MISC	Miscellaneous Income		Ex. 25.5
IRS W-9	Request for Taxpayer Identification Number and Certification		68
UCC1	National Financing Statement		247, 291, Ex. 2
RD-3550-28	Authorization Agreement for Preauthorized Payments		66, 67

State Supplements

The following table lists required State supplements.

Subparagraph	Required State Supplement
3 C	Guidance on notary acknowledgement.
3 D	Guidance on signature requirements.
3 F	Using State-specific and State-created forms.
65 F	Loan security instruments releases.
98 C	Obtaining new FSA-2028's.
98 E	Continuing financing statements.
98 H	Obtaining assignments.
--98 H	State limitations on foreclosures by Federal government--
98 I	Real estate security instruments.
101 A	Payment of a borrower's real estate taxes.
102 B	Potential purchaser notification.
117 B	Releasing and refileing lien instruments.
118 A	Multi-year subordinations.
120 A	Real estate subordinations.
136 C	Severance agreements.
250 A	Closing documents for transfer and assumptions.
266 C	Guidance for deceased borrower processing.
282 D	Establishment of power of attorney.
291 D	Transfer of borrower's records and lien searches.

Note: SED's shall:

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

Request for Continuation Statement Filing Fee (Bankruptcy Borrower)

The borrower must pay fees for executing, filing, or recording financing statements, continuation statements or other security instruments, unless State law requires FSA to pay these fees. This letter will be used to inform the borrower of any fees required. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “4-FLP Exhibit 28.4”.

4-FLP, Exhibit 28.4
(Bankruptcy)

(Use Agency Letterhead format with local return address.)

NOTICE OF FSA’S RIGHT TO FILE A UCC CONTINUATION STATEMENT

Dear:

With regard to the loans you received from FSA, a financing statement was filed or recorded in the office of _____. Under the Uniform Commercial Code, FSA’s financing statements are effective for a period of five years from the date of filing or recording. From a review of our records, we note that the five-year period is almost up in your case and it is necessary for FSA to file a continuation statement.

When you signed FSA’s security agreement, you agreed to pay all filing or recording fees for instruments necessary to perfect, continue, service, or terminate FSA’s security interest. Because you are currently under bankruptcy protection, FSA is providing you with the choice of either paying the filing fee now, or allowing FSA to pay the fee and charge the amount to your account, which will accrue interest at the rate set out in your oldest outstanding promissory note associated with that security.

PLEASE NOTE: This informational notice is not intended as an act to collect or recover any debt from you for which your personal liability was previously discharged.

The cost for filing a UCC continuation statement is \$ _____. If you choose to pay the fee, please send this amount to the above address in the form of a check or money order made payable to: _____ no later than _____. If FSA does not receive a check or money order from you by that date, FSA will pay the filing fee on your behalf and charge the amount to your account.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

[Authorized Agency Official’s Name and Title]

cc: [Debtor’s Attorney]

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

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

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

* * *

Notification of Unauthorized Use of Proceeds

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using the following. Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 31”.

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4-FLP, Exhibit 31

(Use Agency Letterhead format with local return address.)

NOTIFICATION OF UNAUTHORIZED USE OF PROCEEDS

United States Department of Agriculture Farm Service Agency [Location].

Dear :

It is our understanding that on or about [date] you [sold, traded, exchanged] the following described property: _____ for \$ ____.

Such property is covered by a (financing statement and security agreement or chattel mortgage, as appropriate) which secures your indebtedness owed to the Farm Service Agency (FSA).

Since you did (not use the property) (not account for the proceeds) in accordance with your security instruments and signed agreement dated _____, we demand that you either pay the FSA the above described amount or replace the property with property of equal or greater value within 30 days.

If you believe you possess information that will show this demand is in error, you should contact the County Office at [Telephone number, include area code] within 10 days to arrange an appointment to discuss this matter and present such information.

If you do not comply with this demand we will declare your loans to be in default, recommend referral of this claim to the United States Attorney for appropriate action, and make demand upon the purchasers of the property.

Sincerely,

[Authorized Agency Official's Title]

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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.

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