

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

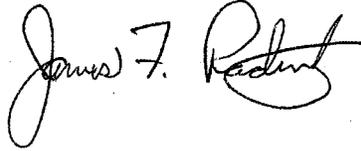
---

**Regular Direct Loan Servicing  
4-FLP**

**Amendment 4**

---

**Approved by:** Acting Deputy Administrator, Farm Loan Programs



---

**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraph 31 B has been amended to provide that limited resource reviews will be tracked and monitored in DLS and documented in FBP.

Subparagraph 47 C has been amended to provide that DLS will be used to screen borrowers for graduation review.

Subparagraph 96 C has been amended to provide that security inspections will be tracked and monitored in DLS.

Subparagraph 103 A has been amended to clarify County Office responsibilities under third party actions.

Subparagraph 116 B has been amended to provide that subordination requests will be tracked and monitored in DLS.

Subparagraph 181 has been amended to:

- emphasize the importance of documenting the disposition of chattel security
- provide a new requirement that all unauthorized dispositions are tracked by DD's to final resolution.

Subparagraph 196 A has been amended to provide that borrowers shall use FSA-2060 to request a partial release of real estate security.

Subparagraph 199 A has been amended to provide that partial release requests will be tracked and monitored in DLS.

## Amendment Transmittal (Continued)

### A Reasons for Amendment (Continued)

The following subparagraphs have been amended to remove reference to MAC and ADPS and replace with DLS:

- 65 F
- 98 B
- 120 A
- 199 A
- 250 B
- 267 A
- 268 B
- 282 A
- 291 C.

Exhibits 21, 30, and 32 have been amended to update the:

- web site address reference
- nondiscrimination statement.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	3-1, 3-2	1, page 3
	4-3, 4-4	21, page 1
	5-9	30, page 1
	6-1, 6-2	32, page 1
	6-5, 6-6	
	6-9, 6-10	
	6-17 through 6-32	
	6-37 through 6-46	
	7-11 through 7-32	
	7-45, 7-46	
	7-51 through 7-62	
	9-13, 9-14	
	10-3, 10-4	
	11-1, 11-2	
	12-1, 12-2	

### Part 3 Limited Resource Loans

## 31 Reviewing a Borrower's Account

### A Overview

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

### B Borrower Account Reviews

**[7 CFR 765.51(a)] A borrower with limited resource interest rate loans is required to provide the Agency annually the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information provided in accordance with § 761.105 of this chapter (1-FLP, paragraph 263).**

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

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

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

- borrower's debt service margin shows that the borrower can afford to pay a higher interest rate according to subparagraph 32 A
- borrower makes a request to be removed from limited resource rates according to subparagraph 32 B
- borrower defaults on the loan agreements according to subparagraph 32 C.

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

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

**32 Increasing and Decreasing Interest Rates****A Debt Service Margin**

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

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

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

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

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

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

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

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

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

47 **Graduation Review Process****A Obtaining Underwriting Criteria From Local Lenders**

Each October, the authorized agency official shall contact local lenders to obtain their underwriting criteria for making agricultural loans. Information gathered from these contacts will be summarized on Exhibit 22, with any additional comments in narrative form, and placed in the county operational files FLP 2-2 “Agriculture Lender Contacts” and FLP 4-2 “Graduation”, according to 25-AS. At a minimum, the narrative for each lender will contain the following:

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

**B Obtaining Financial Data**

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

The borrower will provide upon agency request, a current balance sheet, actual financial performance, and a projected farm budget at least every 2 years. Except for borrowers with only youth loans or whose accounts are flagged “bankruptcy”, “acceleration”, “FP Cap”, or “other” as determined by OGC, the authorized agency official will send Exhibit 23 and the required forms to request current financial information from the borrower to evaluate the potential for refinancing to commercial credit. Exhibit 23 will be sent twice if the borrower does not supply the required information. The first time Exhibit 23 is sent, the borrower will be given 30 calendar days to supply the required information. The second Exhibit 23 will be sent on day 15, only if the required information has not been submitted and will give the borrower 15 calendar days to submit the required information. If the borrower has provided the financial information required to conduct a year-end analysis, or current financial data is available for other reasons, this same information may be used in the graduation review process. The borrower’s financial information will be used to classify accounts according to 1-FLP, Part 8.

**C Screening Borrowers**

- \*--The authorized agency official will conduct annual electronic screening of all borrowers using the Graduation Review Report from DLS. All borrowers classified as a “1” or “2”--\* (commercial or standard) are required to be reviewed on an annual basis in DLS. Borrowers with limited resource interest rates, and youth loan borrowers under 18 years of age, will be excluded from graduation regardless of the classification code. If the financial information provided indicates that the borrower cannot meet local underwriting criteria, the authorized agency official shall document why the borrower, despite being classified a “1” or “2,” is \*--unlikely to graduate. The authorized agency official will record this in the Graduation Review workflow in DLS and in the applicable FBP Credit Presentation.--\*

If the borrower’s financial information indicates that the borrower meets local underwriting criteria and graduation is possible, the borrower’s prospectus will be forwarded according to subparagraph D.

## 47 Graduation Review Process (Continued)

**D Sending Prospectus**

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

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

- include the borrower’s name, loan type, balance sheet, and projected cash flow on Exhibit 24
- send Exhibit 24 to commercial lenders.

Exhibit 24 asks lenders to indicate an interest in further review of borrowers listed. The lenders review will determine if they would be willing to refinance FSA.

When an authorized agency official includes a borrower’s information on Exhibit 24 and sends it to a lender, a copy of Exhibit 24 will be sent to the borrower with a cover letter with language similar to:

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

**E Applying for Commercial Credit**

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

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

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

See 2-FLP for information on guaranteed loans.

## 65 Final Payments (Continued)

## E Borrower Refunds

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

## F Security Instrument Releases

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

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

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

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

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

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

After verifying that the loans are paid in full and the payment has cleared, the authorized agency official will close the case files and return the documents to the borrower according to 25-AS, paragraph 89. Any assignments held by FSA will be terminated using Exhibit 27 and satisfaction of liens will be recorded on FSA-2433.

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

## 66-95 (Reserved)



**Part 6 Protecting FSA's Security Interests**

**Section 1 General Security Preservation and Lien Protection**

**96 Servicing Policy**

**A Overview**

This Part describes FSA's policies on general security preservation and lien protection, subordinations, junior liens, severance agreements, and releases of liens without monetary consideration.

**B General Policy**

**[7 CFR 765.201] All Agency servicing actions regarding preservation and protection of Agency security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.**

## 96 Servicing Policy (Continued)

**C Security Inspections**

Chattel security will be inspected annually except in cases where the authorized agency official has justified in the assessment or analysis that no undue risk exists. However, all chattels will be inspected at least every 2 years.

**Example:** An FO borrower who has been current with FSA and has provided chattels only as additional security might not need an annual inspection.

The authorized agency official:

- will inspect real property security at least once every 3 years
- should conduct more frequent inspections for a delinquent borrower or a borrower who has been indebted to FSA for less than 1 full crop year.

The purpose of inspections is to:

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

The authorized agency official will record all security inspections in the running record of the \*--borrower's case file and in DLS by using the Farm Visit Scheduling, tracking and monitoring, workflow activities.

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

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

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

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

**Note:** See Part 7 for guidance on handling discrepancies.

## \*--97 Maintaining Debt Instruments (Continued)--\*

**B Conducting Yearly Debt Instrument Inventory (Continued)**

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

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

- obtain guidance from the OGC regional attorney, through the State Office, about any necessary corrections to promissory notes, NRBRA's, or shared appreciation agreements
- ensure that copies of all instruments are filed in case files

\*--submit cases requiring corrections to the State Office coordinator on FSA-2446 and State Office coordinator's will send completed FSA-2446's to FLOO by:--\*

- FAX to:
  - 314-539-3111 for States 01 through 32
  - 314-539-6447 for States 33 through 64
- mail to:

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

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

- obtain guidance from OGC regional attorney, through the State Office, about the need to replace lost or missing debt instruments
- advise SED of the review results by July 31 of each year and retain RC 830A as a subdivided file under FLP 4-1, "Reports" according to 25-AS until the next year's report has been received and reviewed.

**98 Maintaining Security Instruments****A Maintaining Security Documents**

Each County Office must maintain security instruments according to 25-AS.

**B Maintaining Current Information**

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

**C Obtaining New FSA-2028's**

FSA obtains new FSA-2028's when:

- a security interest is taken in crops
- FSA obtains additional security
- modifications to the security listed on the working copy of current FSA-2028's have been made
- deemed necessary to protect FSA's security interests.

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

**99 Borrower Responsibilities for Complying With Loan Instruments****A General Policy**

[7 CFR 765.202] The borrower must:

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

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

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

**B Borrower Responsibilities**

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

**(b) Maintain, protect, and account for all security;**

**(c) Pay the following, unless State law requires the Agency to pay:--\***

**(1) Fees for executing, filing, or recording financing statements, continuation statements or other security instruments; and**

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

**(2) The cost of lien search reports;**

**(d) Pay taxes on property securing FLP loans when they become due;**

**(e) Maintain insurance coverage in an amount specified by the Agency;**

**(f) Protect the interests of the Agency when a third party brings suit or takes other action that could affect Agency security.**

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

**C Requirement to Operate Security**

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

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

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

**D Conditions for FSA Consent to Borrower Ceasing to Operate**

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

**(a) Such action is in the Agency's best interests;**

**(b) The borrower is unable to graduate;**

**(c) The borrower is not ineligible as a result of disqualification for Federal Crop Insurance violation according to 7 CFR part 718;**

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

## 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. 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.**

\*--The notification to potential purchasers listed by the borrower on FSA-2040 will be sent--\* by certified mail, completed by using Exhibit 29, and include the following:

- 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.

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 FLM's, a new Exhibit 29 and/or 30 should be sent more often.

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

**103 FSA Responsibilities Under Third Party Actions**

**A County Office Responsibility**

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

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

**B SED's Responsibility**

SED's will:

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

**104-115 (Reserved)**

## Section 2 Subordinations

## 116 Requesting Subordinations

## A Borrower Application

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

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

\*--FSA-2001 with the following completed:

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

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

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

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

**[7 CFR 765.205 (a)] (3) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;**

AD-1026 \* \* \*.

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

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

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

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

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

**116 Requesting Subordinations (Continued)**

**B Processing Subordination Requests**

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

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

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

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

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

An authorized agency official will approve or deny \* \* \* subordinations using FSA-2060, FSA-2455, or other formats required in State supplements as necessary to meet State legal requirements.

Once an authorized agency official approves or denies a subordination, it is closed according to State supplements. The authorized agency official must enter the date that FSA approves \*--an application in DLS.--\*

**B Appeal Rights**

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

**121-125 (Reserved)**



**166 Releasing Security Interest****A Lien Release General Requirements**

**[7 CFR 765.305(a)] When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.**

**B Specific Security Item Releases**

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

**\*--Note:** When specific items are listed on FSA-2028, the authorized agency official **must--\*** record the disposition on the working copy of FSA-2028 and FSA-2040.

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

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

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

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

**167-180 (Reserved)**

## Section 2 Unapproved Disposition of Security

### 181 Initial FSA Actions Upon Discovery

#### A Unauthorized Chattel Security Disposition Discoveries

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

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

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

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

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

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

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

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

**181 Initial FSA Actions Upon Discovery (Continued)**

**B Notification to Third Party Purchasers**

With SED concurrence, the authorized agency official will send Exhibit 32 by certified mail 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 FSA 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.

## Section 3 Real Estate Security Partial Releases

## 196 Requirements

## A General

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

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

## B Conditions for Approval

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

- (1) The transaction will enhance the objectives for which the Agency loan or loans were made;**
- (2) The transaction will not jeopardize the borrower's ability to repay the Agency loan, or is necessary to place the borrower's operation on a sound basis;**

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

- (3) The amount received for the security being disposed of or the rights being granted is not less than the market value;**
- (4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;**
- (5) The transaction must not interfere with the borrower's farming operation;**
- (6) The market value of the remaining security is adequate to secure the Agency loans, or if the market value of the security before the transaction was inadequate to fully secure the Agency loans, the Agency's equity in the security is not diminished;**
- (7) The environmental requirements of subpart G of 7 CFR part 1940 must be met;**
- (8) The borrower cannot graduate to other credit; and**
- (9) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.**

## 196 Requirements (Continued)

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

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

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

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

**(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products will be considered a disposition of a portion of the security.**

**D Compensation for Damage to Real Estate Security**

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

**E Disposition of Security for Outstanding ST's**

**[7 CFR 765.351(a)(10)] The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.**

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

**198 Appraisals****A Appraisal Requirements**

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

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

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

A new appraisal report for the security to be:

- transferred or released will be obtained when the authorized agency official believes it necessary to protect the financial interests of the Government or when the transaction involves more than \$25,000
- retained will only be obtained when the authorized agency official determines that the value of the retained property could be adversely affected by the loss of the transferred or released property.

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

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

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

**199 Approving or Denying Partial Releases**

**A Approval Authority**

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

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

**200-210 (Reserved)**

**250 Closing the Transfer****A Basic Policy**

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

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

The authorized agency official will prepare closing documents according to 3-FLP, Part 11 and State and local requirements. Closing documents will be filed according to State law and as described in the State supplement.

**B Final Processing**

**\*--The authorized agency official will complete a "1M" transaction in DLS to record the--\*** transfer and assumption.

The signed documents in the transfer docket will be placed in the transferee's case file and the transferor's file shall be maintained according to 25-AS.

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

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

**B Transfer and Assumption of a Portion of the Indebtedness**

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

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

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

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

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

- cash contribution
- participation credit
- subsequent FSA loans.

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

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

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

\*--The authorized agency official will process applicable changes to SCIMS and DLS to--\*  
change any name, account number, or case number.

**B Transfer and Assumption**

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

See Part 9 for more information on transfer and assumptions.

**C Net Recovery Buyout Agreements and FSA-2543's**

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

**D Liquidation**

If a deceased borrower's farm loan accounts cannot be paid in full, voluntarily liquidated, resolved through continuation with existing obligors, or transferred to a third party, the authorized agency official will begin processing according to 5-FLP, paragraph 66.

## 268 Servicing Options for NP Accounts

### A General Policy

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

### B Continuation with a Jointly Liable Borrower

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

\*--The authorized agency official shall process applicable changes to SCIMS and DLS to--\* change the borrower's name and case number.

### C Transfer and Assumption

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

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

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

### D Security Transfer Beyond Heirs

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

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

269-280 (Reserved)

**Part 11 Borrowers Entering the Armed Forces**

**281 General**

**A Act Impact**

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

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

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

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

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

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

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

**B Penalty for Violations**

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

**Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities**

**291 Procedures and Servicing Responsibility**

**A General**

When a borrower moves from 1 office jurisdiction to another, FSA will transfer loan records and servicing responsibilities. In general, the County Office for the borrower's old location should transfer borrower records when the farm headquarters is relocated to another jurisdiction.

When FSA has referred an account to DOJ or Treasury, borrower records will remain in the existing County Office location.

A County Office may not transfer a borrower's records to another County Office while FSA is considering a debt settlement application for that borrower.

**B Borrower Responsibilities**

When FSA receives notification that a borrower intends to relocate loan security, the authorized agency official must notify the borrower of his or her responsibilities arising from the move.

A borrower who moves or plans to move must:

- notify the County Office in which the security is currently located that they want to move FSA security and provide the intended new address or property location through FSA-2495
- arrange for the care and/or disposition of any loan-related security or properties that the borrower will not move
- promptly execute and provide recording and lien search fees for any new security instruments FSA may require.

For moves within a county, the borrower may apply verbally for approval to relocate security.

**291 Procedures and Servicing Responsibility (Continued)****C File Transfer and Notification Procedure**

When files or servicing responsibilities are proposed for transfer to another FSA jurisdiction within the same State, the transferring County Office must route FSA-2495, together with the borrower's case files, to SED for concurrence and processing guidance.

When the borrower proposes a move to another State, the transferring County Office must route FSA-2495 and the borrower's case file to the transferring SED. SED reviews the transfer material for relocation acceptability and route the transfer material to the receiving State's SED. In such cases, the receiving SED will then:

- contact transferring SED with any concerns or questions
- notify the transferring SED of the address of the receiving County Office
- forward the transferred material to the receiving County Office.

\*--The receiving County Office should process the transfer using a "9G" transaction in DLS.--\*

The transferring County Office:

- should send the receiving office the original security and debt instruments separately from the case file, by certified mail
- is responsible for notifying the borrower about whether the relocation of chattel security is authorized.

For moves within a county, the authorized agency official may verbally notify the borrower of FSA's decision. However, the authorized agency official should always document any decision in the borrower's case file.

If FSA does not approve the transfer, the transferring County Office will service the case according to 5-FLP, Part 3.

Transferring and receiving FSA Offices may request each other's assistance as appropriate.

For special or problem circumstances accompanying a security or records relocation, SED should seek assistance from the Regional OGC.

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

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
ADPS	automated discrepancy processing system	31, 248, 267, 268, 282
AI	account information	65
CFS	Central Filing System	102
CONACT	Consolidated Farm and Rural Development Act	1, Ex. 2
DLS	Direct Loan System	Text
DOJ	Department of Justice	282, 283, 291
EE	economic emergency loan	16, 248
EM	emergency loan	16, 61, Ex. 2
FBP	Farm Business Plan	Text
FLM	Farm Loan Manager	Text
FSC, FLOO	Financial Services Center, Farm Loan Operations Office	Text
FO	farm ownership loan	Text, Ex.1, 21, 23
GL	guide letter	2
NP	nonprogram loan	16, 46, 62, 266, 248
NRBRA	Net Recovery Buyout Recapture Agreement	97
OL	operating loan	16, 283, Ex. 2, 21, 23
PF	Payoff Balance	65
PIN	personal ID number	63
PLAS	Program Loan Accounting System	Ex. 2
RC	report code	Text
RD	Rural Development	2, 231, 301
RHF	rural housing loan for farm service buildings	16, 248
RL	recreation loan	16, 248
SAA	Shared Appreciation Agreement	117, Ex. 2
SCIMS	Service Center Information Management System	248, 267, 268, 282
ST	softwood timber loan	16, 196, 246
SW	soil and water loan	16, 62, Ex. 2
TDCLCR	Term Debt and Capital Lease Coverage Ratio	32
TOP	Treasury Offset Program	65, 282
TTPP	Tobacco Transition Payment Program	212
UCC	Uniform Commercial Code	98, 166, 247, 291, Ex. 2
VRU	Voice Response System	63

## Re delegations of Authority

SED's may redelegate their authority to approve subordinations to qualified State Office employees.



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

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

\*--<http://165.221.16.90/dam/ffasforms/forms.html>, CLICK “Find Current Forms Using Our Form--\* Number Search”, in Form Number block, type, “4-FLP Exhibit 21”, and CLICK “Submit”.

4-FLP, Exhibit 21

(Use Agency Letterhead format with local return address.)

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

Dear:

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

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

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

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

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

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

Sincerely,



**Change in List of FSA Borrowers**

\*--This notification, or Exhibit 29 at the discretion of FLM, will be updated at least annually as required, to ensure that purchasers are aware of the Government's security interests. Go to <http://165.221.16.90/dam/ffasforms/forms.html>, CLICK "Find Current Forms Using Our Form--\* Number Search", in Form Number block, type, "4-FLP Exhibit 30", and CLICK "Submit".

**4-FLP, Exhibit 30**

(Use Agency Letterhead format with local return address.)

**CHANGE IN LIST OF FARM SERVICE AGENCY BORROWERS**

Dear Buyer,

With regard to the List of Farm Service Agency Borrowers forwarded to you on \_\_\_\_\_, please add or delete the names as noted below. Attached, please find complete information on those borrowers being added

Add

Delete

As security for such loans, these borrowers have executed in favor of the United States (1) mortgages on crops, livestock, and farm equipment in chattel mortgage states, or (2) financing statements and security agreements on crops, livestock, supplies, other farm products, farm equipment and inventory and on the proceeds and products thereof in Uniform Commercial Code States. The appropriate instruments are filed or recorded in the place and manner prescribed by law.

Please contact this office if you have any questions.

Sincerely,

Attachment



**Initial Notification of Third-Party Purchaser**

With SED concurrence, the authorized agency official will send the following by certified mail to third-party purchasers when the:

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

Go to **http://165.221.16.90/dam/ffasforms/forms.html**, CLICK “Find Current Forms Using Our--\* Form Number Search”, in Form Number block, type, “4-FLP Exhibit 32”, and CLICK “Submit”.

**4-FLP, Exhibit 32**

Certified Mail – Return Receipt Requested

(Use Agency Letterhead format with local return address.)

**INITIAL NOTIFICATION OF THIRD-PARTY PURCHASER**

Dear:

It is our understanding that on or about \_\_\_\_\_, you purchased the following property from \_\_\_\_\_ for \$ \_\_\_\_\_:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

All of the above property purchased by you is covered by a (financing statement, security agreement, chattel mortgage, etc., as appropriate) held by the Farm Service Agency and executed by our borrower, \_\_\_\_\_. The (financing statement, chattel mortgage, etc., as appropriate) was filed in \_\_\_\_\_ on \_\_\_\_\_ and is Number \_\_\_\_\_.

The borrower (failed to apply any part, or applied only \$ \_\_\_\_\_) of the proceeds of this sale on their FSA account. The lien on this property has not been released.

By this letter, we are notifying you of our interest in the property and making demand upon you to return the property to the borrower or pay its market value (at the time it was purchased by you) to the FSA within 30 days. This matter has been forwarded to the FSA State Office.

Please feel free to contact this office if any further information is required.

Sincerely,

