

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

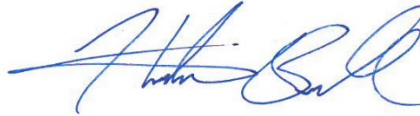
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**Regular Direct Loan Servicing**  
**4-FLP**

**Amendment 50**

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



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**Amendment Transmittal**

**A Reasons for Amendment**

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

Subparagraph 5 C has been amended to remove obsolete programs.

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

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

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

Subparagraph 19.5 B has been amended to:

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

Subparagraph 21 A has been amended to:

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

Subparagraph 22 A has been amended to update analyses policy.

Paragraph 23 has been withdrawn because it is obsolete.

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

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

## **Amendment Transmittal (Continued)**

### **A Reasons for Amendment (Continued)**

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

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

Part 6 Title has been amended for clarification

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

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

Subparagraph 99 F has been amended to:

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

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

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

Subparagraph 116 A has been amended to:

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

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

Subparagraph 117 A has been amended to:

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

Subparagraph 117 B has been amended to update subordination requirements.

Subparagraph 118 A has been amended to update CFR language.

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

## **Amendment Transmittal (Continued)**

### **A Reasons for Amendment (Continued)**

Subparagraph 118 C has been amended to:

- update CFR language
- clarify second subordinations.

Subparagraph 120 A has been amended to update subordination requirements.

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

- incomplete applications instructions
- operational review requirements.

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

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

Subparagraph 146 D has been amended to:

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

Subparagraph 146 F has been amended to:

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

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

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

Subparagraph 196 A has been amended to:

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

## **Amendment Transmittal (Continued)**

### **A Reasons for Amendment (Continued)**

Subparagraph 196 B has been amended to:

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

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

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

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

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

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

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

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

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

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

Paragraph 248 has been amended to clarify assumption terms.

Paragraph 249 has been amended to clarify processing transfer request.

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

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

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

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

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

## Amendment Transmittal (Continued)

### A Reasons for Amendment (Continued)

| Page Control Chart |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                    |
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| 51    | (Withdrawn--Amend. 49)                                           |
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## Part 1 Introduction and Purpose

### 1 Purpose and Sources of Authority

#### A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- regulations governing direct loan regular or routine servicing
- roles and responsibilities in implementing regulations and other responsibilities in direct loan regular or routine servicing.

#### B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 765 and other regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress, including CONACT.

#### C Regulation References

Text in this handbook that is published in CFR is printed in **bold** text. CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement spelled out in CFR
- may be used to support FSA adverse decisions.

**Note:** Cross-references printed in bold are citing a section of CFR. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in non-bold text in parenthesis (within the bold text).

**\*--Example:** Subparagraph 118 A provides “[7 CFR 765.205(d)] (1) For loans secured by personal property, the subordination must meet conditions contained in--\* paragraphs (b)(3)(i) through (b)(3)(xiii) of this section (subparagraph 117 A).”

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

## 2 Related References

### A Related FSA Handbooks

The following FSA handbooks concern FLP.

| <b>IF the area of concern is about...</b>                                                                                                                                                                        | <b>THEN see...</b>          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| appeals and mediation                                                                                                                                                                                            | 1-APP.                      |
| civil rights compliance and administration for FSA programs                                                                                                                                                      | 18-AO.                      |
| common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX                                                | 1-CM.                       |
| highly erodible land conservation and wetland conservation provisions                                                                                                                                            | 6-CP                        |
| debt collection and resolution                                                                                                                                                                                   | 7-FLP.                      |
| direct loan making                                                                                                                                                                                               | 3-FLP.                      |
| direct loan special servicing and inventory property management                                                                                                                                                  | 5-FLP.                      |
| disaster designations                                                                                                                                                                                            | 1-DIS.                      |
| employee development and training                                                                                                                                                                                | 6-PM.                       |
| environmental requirements                                                                                                                                                                                       | 1-EQ.                       |
| environmental risk management                                                                                                                                                                                    | 2-EQ                        |
| general and administrative regulations governing FLP, and implementing NAD final determinations                                                                                                                  | 1-FLP.                      |
| guaranteed loan making and servicing                                                                                                                                                                             | 2-FLP.                      |
| the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, Land Contract Guarantee Program, and servicing of minor loan programs | 6-FLP.                      |
| personnel management, such as employee conflict of interest                                                                                                                                                      | 3-PM.                       |
| policies and procedures for the acquisition of supplies, equipment, and services                                                                                                                                 | 27-AS.                      |
| procedures for collecting, maintaining, or disclosing data or information concerning an individual                                                                                                               | 3-INFO.                     |
| procedures for making records available to the public, other Federal agencies, and Congress                                                                                                                      | 2-INFO.                     |
| processing collections and canceling loan checks and payments                                                                                                                                                    | *--FPAC<br>NRRS<br>Guide--* |
| State and county organization and administration policies, procedures, principles, and standards, such as work organization                                                                                      | 16-AO.                      |
| State and county records management                                                                                                                                                                              | 32-AS                       |

### B Helpful Links

The Handbook Link web site at

**<http://intranet.fsa.usda.gov/dam/handbooks/handbooks.asp>** provides links to useful web sites.

## 5 Introduction to Direct Loan Servicing (Regular)

### A Purpose

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

### B Servicing Actions

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

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

### C Loans Covered

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

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

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

## 6 ECOA Requirements for Actions Involving Real Estate Security

### A Release of Real Estate Appraisals

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

## 7 Non-Procurement Debarment and Suspension

### A Covered Transactions

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

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

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

#### **(6) Loans.**

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

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

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

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

## Part 2 Operational Reviews

### 16 Reviewing a Borrower's Account

#### A Overview

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

An operational review is performed to:

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

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

## 16 Reviewing a Borrower's Account (Continued)

**B Requesting Information**

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

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

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

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

**Exceptions to completing the operational review every 3 years.**

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

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

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

\* \* \*

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

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

## 18 Updating Account Classification

### A Action

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

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

## 19 Graduation Review

### A General

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

See Exhibit 19 for a graduation flowchart.

### B Graduation Criteria

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

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

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

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

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

**\*--(1) In a partial graduation, all FLP loans of one type (i.e. all personal property loans or--\* all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.**

**(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.**

**\*--(3) A loan made for personal property and real estate purposes will be categorized--\* according to how the majority of the loan's funds are expended.**

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

## 19 Graduation Review (Continued)

**C Obtaining Underwriting Criteria from Local Lenders**

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

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

**D Screening Borrowers**

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

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

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

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

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

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

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

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

FSA-2418 asks lenders to indicate an interest in further review of borrowers listed. The lenders review will determine if they would be willing to refinance FSA.

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

**F Applying for Commercial Credit**

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

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

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

See 2-FLP for information on guaranteed loans.

**19 Graduation Review (Continued)****F Applying for Commercial Credit (Continued)**

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

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

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

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

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

**G Transfer and Assignment of FSA Liens**

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

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

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

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

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

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

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

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

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

**19.5 Non-Compliance with Graduation Requirements (Continued)****B Conversion to NP Rates and Terms in lieu of Acceleration**

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

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

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

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

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

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

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

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

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

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

**19.5 Non-Compliance with Graduation Requirements (Continued)****B Conversion to NP Rates and Terms in lieu of Acceleration (Continued)**

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

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

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

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

**C Final Processing**

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



## 20 Agreement for Using Proceeds

### A Planning

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

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

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

For borrowers with:

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

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

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

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

## 21 Limited Resource Review

### A Borrower Account Reviews

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

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

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

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

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

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

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

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

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

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

**G Change in Regular Interest Rate**

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

## 22 Analysis

### \*--A Analysis Requirements

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

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

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

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

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

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

\* \* \*

## 23 (Withdrawn--Amend. 50)

## 24-30 (Reserved)

### Part 3 Withdrawn--Amend. 35

## 31-33 (Withdrawn--Amend. 35)

## 34-45 (Reserved)

### Part 4 Withdrawn--Amend. 35

## 46-48 (Withdrawn--Amend. 35)

## 49-60 (Reserved)

## Part 5 Borrower Payments

### 61 General

#### A Purpose

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

#### B Acceptable Payment Forms

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

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

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

#### C Processing Payments

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

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

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

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

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

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

## 61 General (Continued)

**D Identifying Regular and Extra Payments**

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

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

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

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

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

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

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

such as farm equipment and breeding livestock.

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

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

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

**61 General (Continued)****D Identifying Regular and Extra Payments (Continued)**

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

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

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

**(7) Refunds of unused loan funds.**

**E Canceling Undisbursed Loan Funds**

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

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

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

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

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

DLS will be updated as required.

**62 Regular Payments****A Applying Regular Payments**

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

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

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

**B Regular Payments From Real Estate Sale Security With SED Approval**

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

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

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

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

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



## 63 Extra Payments

### A Applying Extra Payments

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

## 64 Distributing Payments to Loans

### A Order

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

**(a) Recoverable costs and protective advances plus interest;**

\* \* \*

**\*--(b) Accrued deferred interest;**

**(c) Interest accrued to date of payment; and**

**(d) Loan principal.--\***

### B Distribution

Distribute payments according to the following.

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

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

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

- Exhibit 25.3 sixty calendar days before the installment due date

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

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

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

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

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

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

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

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

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

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

**B Dealing With Non-Payment**

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

**C Restructures and Assumptions**

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

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

\*--Note: The RD Business Center CB FAX number is [314-457-4370@fax.usda.gov](mailto:314-457-4370@fax.usda.gov).--\*



## 67 Managing Pre-Authorized Debit (PAD)

### D Final Payments

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

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

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

### E Canceling PAD

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

**\*--Note:** The RD Business Center CB FAX number is [314-457-4370@fax.usda.gov](mailto:314-457-4370@fax.usda.gov).--\*

### F Additional Information

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

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

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

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

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

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

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

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

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

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

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

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

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

**\*--G PAD Alternatives**

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

**\*--Part 6 Managing FSA's Security Interests--\*****Section 1 General Security Preservation and Lien Protection****96 Servicing Policy****A Overview**

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

**B General Policy**

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

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

**C Security Inspections**

Personal property will be inspected at least every 3 years.

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

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

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

## 96 Servicing Policy (Continued)

### C Security Inspections (Continued)

The authorized agency official:

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

The purpose of inspections is to:

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

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

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

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

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

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

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

### D Documenting Reviews Not Completed As Scheduled

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

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

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

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

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

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

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

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

\* \* \*



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

**E Real Estate Surface Leases**

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

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

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

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

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

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

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

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

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

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

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

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

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

**F Mineral Leases**

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

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

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

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

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

**(i) The Agency's security interest; or**

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

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

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

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

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

**G Personal Property Security Leases**

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

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

**(1) The term of lease does not exceed 12 months and does not automatically renew;**

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \*

## Section 2 Subordinations

## 116 Requesting Subordinations

## A Borrower Application

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

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

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

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

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

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

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

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

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

\* \* \*

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

## 116 Requesting Subordinations (Continued)

### A Borrower Application (Continued)

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

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

\* \* \*

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

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

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

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

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

\* \* \*

**C Incomplete Applications**

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

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

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

**117 Conditions for Real Estate Subordinations****A Real Estate Security**

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

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

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

## 117 Conditions for Real Estate Subordinations (Continued)

**A Real Estate Security (Continued)**

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

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

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

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

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

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

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

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

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

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

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

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

## 117 Conditions for Real Estate Subordinations

**A Real Estate Security (Continued)**

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

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

**\* \* \***

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

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

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

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

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

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

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

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

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

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

## 117 Conditions for Real Estate Subordinations (Continued)

**B Releasing and Refiling Lien Instruments Instead of Subordination**

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

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

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

- the borrower agrees to execute new security instruments

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

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

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

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

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

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

See subparagraph 197 B for customary costs.

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

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

## 118 Conditions for Personal Property Subordinations

### A Personal Property Security

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

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

### B Multi-Year Subordinations

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

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

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

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

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

\* \* \*

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

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

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

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

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

**\*--(iii) The subordination meets the conditions under paragraphs (c)(3)(i) through (xii) and (xv) of this section (subparagraph 117 A).--\***

## 118 Conditions for Personal Property Subordinations (Continued)

### D CCC Loans

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

## 119 Appraisal Requirements

### A Appraisals

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

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

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

**Note:** See subparagraph 197 B for customary costs.

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

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

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

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

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

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

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

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

\* \* \*

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

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

**B Appeal Rights**

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

**121-125 (Reserved)**



## Section 3 Junior Liens

## 126 General Conditions for Junior Liens

## A General Policy

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

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

- FSA-2061

**\*--Note:** Incomplete applications will be processed according to paragraph 8.--\*

- a copy of the farm operating plan submitted to the junior lienholder
- \*--information needed to complete an operational review according to Part 2--\*
- an FBP or other similar plan of operation that shows the junior lien and repayment schedule
- any other information necessary for FSA to make a decision.

**126 General Conditions for Junior Liens (Continued)****B Conditions for Consent to a Junior Lien**

**[7 CFR 765.206(b)] The Agency will consent to the terms of a junior lien if all of the following conditions are met:**

**[7 CFR 765.206(b)] (1) The borrower's ability to make scheduled loan payments is not jeopardized;**

**[7 CFR 765.206(b)] (2) The borrower provides the Agency a copy of the farm operating plan submitted to the junior lienholder, and the plan is consistent with the Agency operating plan;**

**[7 CFR 765.206(b)] (3) The total debt against the security does not exceed the security's market value;**

FSA will not obtain appraisals to consider junior liens. Any appraisal required by FSA to make this decision must be supplied by the borrower or lender and will be reviewed by FSA to ensure that all 1-FLP requirements are met.

**[7 CFR 765.206(b)] (4) The junior lienholder agrees in writing not to foreclose the security instrument unless written notice is provided to the Agency;**

**[7 CFR 765.206(b)] (5) The borrower is unable to graduate on any program except for CL; and**

**[7 CFR 765.206(b)] (6) The junior lien will not otherwise adversely impact the Agency's financial interests.**

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

Approval authority rests with any authorized agency official.

**C Unapproved Junior Liens**

FSA will consider an unapproved junior lien on security when determining future borrower eligibility for FSA loan making or servicing actions.

\* \* \*

**127-135 (Reserved)**

## Section 4 Severance Agreements

### 136 Conditions for Severance Agreements

#### A Severance Agreements Conditions

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

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

The requirements of subparagraph 196 B also apply.

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

#### B Items That May Be Included in a Severance Agreement

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

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

\* \* \*

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

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

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

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

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

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

**\*--D Appeals Rights--\***

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

**137-145 (Reserved)**

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

### **146 Release Without Monetary Compensation**

#### **A Approval**

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

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

#### **B Release Because of Mutual Mistakes**

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

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

#### **C Release Because of No Evidence of Indebtedness**

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

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

## 146 Release Without Monetary Compensation (Continued)

**D Borrower Requested Personal Property Security Release**

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

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

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

Borrowers:

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

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

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

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

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

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

## 146 Release Without Monetary Compensation (Continued)

**D Borrower Requested Personal Property Security Release (Continued)**

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

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

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

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

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

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

## 146 Release Without Monetary Compensation (Continued)

**D Borrower Requested Personal Property Security Release (Continued)**

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

\* \* \*

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

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

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

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

## 146 Release Without Monetary Compensation (Continued)

**D Borrower Requested Personal Property Security Release (Continued)**

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

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

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

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

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

**E Processing Release Requests**

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

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

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

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

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

## 146 Release Without Monetary Compensation (Continued)

**F Borrower Requested Real Estate Security Release**

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

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

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

Borrowers:

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

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

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

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

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

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

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

**146 Release Without Monetary Compensation (Continued)**

**F Borrower Requested Real Estate Security Release (Continued)**

**(3) The property released will not interfere with access to or operation of the remaining farm;**

**(4) Essential buildings and facilities will not be released if they reduce the utility or marketability of the remaining property;**

**(5) Any issues arising due to legal descriptions, surveys, environmental concerns, utilities are the borrower's responsibility and no costs or fees will be paid by FSA;**

**(6) After the release, the security margin on each Agency direct loan will be 125 percent (or more if it is not practical to separate the property, if necessary to ensure the loan is fully secured for the life of the loan, or if the borrower requests only a portion of Agency security to be released). The value of the retained security will normally be \*--based on valuations 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 valuations;--\***

**\* \* \*** The 125 percent security margin applies to each direct loan on the account, including any proposed new loans.



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

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

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

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

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

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

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

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

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

**G Appeals Rights**

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

## 147 Releasing Valueless Liens

### A Conditions for Releasing Valueless Liens

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

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

SED authority may:

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

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

### B Information Required to Release a Valueless Lien

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

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

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

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

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

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

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

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

**B Fair Market Value**

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

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

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

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

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

**C FSA Lien Release**

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

## 161 General Requirements (Continued)

**D Consent of Lienholders for Release of Proceeds**

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

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

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

The authorized agency official may require:

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

**E Disruption of Farming Operation**

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

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

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

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

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

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

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

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

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

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

**C Government Payments and Insurance**

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

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

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

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

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

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

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

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

SED's may issue further guidance as needed on the changes that require FBP revision or replacement.

When FSA and the borrower agree to revisions over the telephone, the authorized agency official will:

- initial and date the change
- mark FBP or FSA-2040 with "Revised through telephone contact."
- send written confirmation to the borrower of any significant changes
- have the borrower date and initial the change the next time the borrower is in the County Office.

**\*--163 Using Proceeds From Personal Property Security--\*****A General Requirements**

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

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

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

**(ii) Pay customary costs appropriate to the transaction.**

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

**(4) Security may be consumed as follows:**

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

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

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

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

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

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

## 163 Using Proceeds From Personal Property Security (Continued)

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

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

**C Basic Security**

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

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

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

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

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

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

**Section 2 Unapproved Disposition of Security****181 Initial FSA Actions Upon Discovery****A Unauthorized Personal Property Security Disposition Discoveries**

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

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

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

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

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

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

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

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

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

With SED concurrence, the authorized agency official will send FSA-2415 to third -party purchasers when the:

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

If the borrower's account is in liquidation, FSA will often attempt to liquidate remaining personal property security on which FSA holds a first lien before making demand or taking civil action against third-party purchasers. FSA-2415 makes demand on the third -party purchaser to return the property or pay the value of the security to FSA within 30 calendar days.

If no response has been received within 30 calendar days, FSA-2416 will be forwarded to the purchaser by SED. If satisfaction is not made within 15 calendar days, SED will forward the account to OGC according to 5-FLP, paragraph 421.

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

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

#### 196 Requirements

##### A General

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

**Note:** This section also applies to:

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

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

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

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

## 196 Requirements (Continued)

**A General (Continued)**

The borrower must:

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

**B Conditions for Approval**

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

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

**Note:** Releases without compensation properly completed according to subparagraph 146 F, enhance the objectives for which the agency loans were made.

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

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

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

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

## 196 Requirements (Continued)

**B Conditions for Approval (Continued)**

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

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

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

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

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

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

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

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

\* \* \*

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

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

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

## 196 Requirements (Continued)

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

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

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

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

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

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

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

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

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

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

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

## 196 Requirements (Continued)

**F Exchange of Security Property**

**[7 CFR 765.351(c)] (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352 (paragraph 197).**

**(2) Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.**

See 3-FLP:

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

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

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

- paragraph 95 for appraisal requirements.

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

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

## 196 Requirements (Continued)

**G Sale Under a Contract for Deed**

**[7 CFR 765.351(d)] A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:**

- (1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;**
- (2) Payments will not exceed 10 annual installments of principal plus interest or the remaining term of the FSA loan, whichever is less. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;**
- (3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;**
- (4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder's approval, used in accordance with § 765.352; (paragraph 197)**
- (5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;**
- (6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;**
- (7) All other requirements of this section are met.**

**\*--H Eminent Domain**

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

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

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

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

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

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

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

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

**(1) Applied on liens in order of priority;**

**B Use of Proceeds for Paying Costs**

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

**(i) Are reasonable in amount;**

**(ii) Cannot be paid by the borrower;**

**(iii) Will not be paid by the purchaser;**

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

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

Examples of customary costs may include:

- abstracts

\* \* \*

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

**\*--198 Determining Market Value****A Security Proposed for Disposition**

**[7 CFR 765.353(a)] (1) Except when releasing real estate security without compensation under § 765.351(f), the Agency will obtain a valuation of the security proposed for disposition.**

**(2) The Agency may waive the real estate appraisal requirement when the estimated value is less than the higher of current OMB appraisal threshold or \$500,000.**

FSA-2132 will be used to document a real estate evaluation completed by FLP staff. See 1-FLP, subparagraph 24 D and 1-FLP, Exhibit 7, for delegations of authority for real estate evaluations. 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 or discussions with real estate agents and documented in the case file.--\*

\* \* \*

**\*--[7 CFR 765.353(b)] The Agency will obtain a real estate appraisal or real estate evaluation of the remaining security if it determines that the transaction will reduce the value of the remaining security.**

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

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

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

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

\* \* \*

## 199 Approving or Denying Partial Releases or Exchanges

### A Approval Authority

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

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

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

**Note:** This authority applies to this paragraph only.

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

- the property has been professionally and extensively marketed.

\*--The authorized agency official must approve a partial release by executing either FSA-2061, or the electronic signature command in the credit presentation section of FBP, and FSA-2470.

If FSA-2061 is utilized to document approval of the partial release, the recommendation or decision must be supported within Part D of FSA-2061. A satisfactory environmental review (FSA-850) for the action must also be completed before approval and placed in the physical file.

Regardless of the method chosen to document approval of the partial release request, an operational review is typically required to be completed within FBP to ensure that the requirements in Part 7, Section 3 are met, including repayment ability. An operational review will not be required if either of the following conditions exist:

- the request will result in all agency debt being paid in full
- a sufficient operational review has been completed within the past year and no changes are expected as a result of the request.

For more complex requests, it may be more efficient to complete the credit action and approval in FBP, but the method used to document approval is ultimately left to the discretion of the authorized agency official.--\*

## Part 8 Withdrawing Existing Party

### 231 Withdrawal Requirements

#### A General

If a jointly liable party requests FSA approval for withdrawal from an entity and conveyance of interest in the security to the remaining members in the entity, FSA considers this request according to this Part when all of the following conditions are met:

- a remaining spouse or entity member is already personally liable for the debt
- there is no change in the entity name (except in divorce cases when the account must be renamed to match the remaining spouse)
- FSA can issue FSA-2080 according to subparagraph B.

If a proposed action does not meet the requirements of this subparagraph, FSA will process the withdrawal as a transfer and assumption according to Part 9.

**Note:** For the purposes of this Part and Part 9, an entity is defined as a husband and wife, partnership, corporation, or any other entity in which more than 1 person is liable for the debt.

#### \*--B Release of Personal Liability--\*

**[7 CFR 765.406(b)(4)] Except for loans in default being serviced under 7 CFR part 766 (5-FLP), if an individual who is jointly liable for repayment of an Agency loan withdraws from the farming operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:**

- (i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;**
- (ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and**
- (iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.**

\*--Requests to withdraw from the farming operation will be submitted on FSA-2061. Incomplete applications will be processed according to paragraph 8.--\*

**231 Withdrawal Requirements (Continued)****\*--B Release of Personal Liability (Continued)--\***

When a transfer is not required under Part 9, and an existing party is requesting a release, the request must be submitted to the local FSA office detailing which members want to be released from liability and which members will remain liable for the debt. In addition, the borrower entity must both:

- file, with the proper authority, documentation that properly identifies and legally accomplishes the intended withdrawal and submit copies of this documentation to FSA

**Note:** This could include a divorce decree or documentation of a change in the corporation or partnership composition.

- submit:
  - a new FBP that projects the repayment ability of the remaining entity members or new entity that will be liable for the debt
  - any other documentation required by FSA in connection with the proposed withdrawal, such as individual financial statements and earning statements of the withdrawing party when the account is undersecured
  - a copy of the document transferring any security interest from the withdrawing party to the remaining borrower, and could include a new deed or bill of sale to the remaining members of the borrower entity.

Generally, for a request for a withdrawal of an existing party, the analysis will be similar to that required of an operational review unless a full analysis (see paragraph 22) is necessary because of the existence of either of the following conditions:

- the account is undersecured
- the account is subject to a full assessment under 1-FLP, subparagraph 263 A.

\* \* \*

**231 Withdrawal Requirements (Continued)****\*--C Approval Authority--\***

When FSA's debt plus prior liens, less the market value, is \$1 million or more (including principal, interest, and other charges), FSA-2080's must be approved by the Administrator or designee. FLM's or SFLO's may approve FSA-2080's when all FLP security is transferred and the total outstanding FLP debt is assumed; otherwise, SED's must approve FSA-2080's. All cases requiring FSA-2080's from SED's will be submitted for review or debt settlement under 7-FLP, Part 12.

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

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

**\*--D FSA Actions--\***

A copy of the FSA-2080 should be placed with the original promissory note along with a copy in the borrower's case file attached to the copy of the promissory note.

The authorized agency official will manually maintain a released of liability list of borrowers and/or co-borrowers who signed FSA-2080 and have been approved and released of liability on active and paid in full loans. This list will be maintained in Operational Folder FLPF-4. The following information will/must? be documented for each borrower:

- borrower name
- FSA borrower ID
- loan numbers
- date the release liability was approved
- copy of the executed FSA-2080.

The "Unlink Related Entity" function in DLS must not be used in cases where release of liability has been approved.

**Note:** If a borrower and/or co-borrower have been released from liability on a loan and debt offset is being pursued, the authorized agency official will refer to 7-FLP, Part 4 and the DLS User Guide for instructions on unlinking the released individual before offset.

**232-245 (Reserved)**



**Part 9 Transfer of Real Estate and Personal Property Security**

**246 Transfer of Security and Assumption of Debt**

**A General**

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

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

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

\* \* \*

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

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

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

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

\* \* \*

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

\*--See the definition of operator in Exhibit 2.--\*

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

\* \* \*

**\*--B ST's--\***

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

**\*--C Junior Liens to FSA's Debt--\***

When a transferee assumes:

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

**\*--D Partial Transfer and Assumption--\***

A borrower may transfer FSA indebtedness in whole notes only. The borrower and transferee may not split an individual loan. The borrower must demonstrate that a proposed partial sale is in the best financial interest of the operation and that the sale will not adversely affect the \*--security or Government's financial interest through an operational review completed according to Part 2.--\*

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

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

\* \* \*

**\*--E Forgiveness of Youth Loan Debt--\***

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

**\*--246.5 Application for Transfer and Assumption****A Application Requirements**

Before a sale, the borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process. FSA-2476 should be completed for transfer of real estate security. The authorized agency official will review FSA-2476 to confirm that the documents required are present and complete. Incomplete applications will be processed according to paragraph 8.

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

FSA-2061 is used by the borrower to request and obtain written consent transferring personal property security. The authorized agency official will review FSA-2061 to confirm that the documents required are present and complete. Incomplete applications will be processed according to paragraph 8.

**[7 CFR 765.403(f)] Transferees must submit a complete application in accordance with 7 CFR 764.51 (3-FLP, subparagraph 42 A).**

The authorized agency official will review the transfer request to confirm that the documents required are present and complete. See 3-FLP, subparagraph 45 B for processing incomplete applications.--\*



## 247 Types of Transfers and Assumptions

### A New Eligible Borrower

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

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

Transfer of security and assumption of debt for a new eligible borrower is completed at new rates and terms. If the debt for the existing borrower is delinquent, the delinquency is resolved when the transfer and assumption at new rates and terms is completed.

\*--The transaction will be completed according to subparagraph 248 B.--\*

### B Adding a New Member to a Borrower Entity

To add new entity members to an existing borrower entity, the proposed individual entity members and the entity as a whole must meet the eligibility requirements as defined in 3-FLP, Part 4. Adding a new member to a borrower entity is completed at same rates and terms.

The transaction will be completed under subparagraph 248 C.

### C Withdrawing a Member and the Remaining Members Are Not Jointly Liable

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

\*--This transaction will be completed according to subparagraph 248 C.--\*

## 247 Types of Transfers and Assumptions (Continued)

### D Adding New Entity

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

**Example 1:** Existing individual borrower has created a sole proprietor LLC. Borrower will now operate the farm under this new LLC.

**Example 2:** Existing sole individual borrower is requesting to add his son as a co-borrower. The primary borrower (father) will remain the same, but there will now be 2 individual co-borrowers. As a result, the operation will be considered an entity as the definition within handbook 4-FLP consists of an exception to include any arrangement in which more than 1 person is party to the debt

The transaction will be completed under subparagraph 248 C.

### E NP Applicant

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

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

FSA application requirements for a NP transfer and assumption are the same as for a program eligible applicant, except FSA does not need to determine the borrower's eligibility. An applicant, including all entity members, for NP assistance will only be approved if the applicant, including all entity members, meets the requirements as provided in

\*--subparagraph 248 I.--\*

\* \* \*

## 248 Assumption Terms

### A Basic Policy

Loans will generally be assumed on new rates and terms. A loan may only be assumed on the same rates and terms according to paragraph C.

### B Eligible Applicant - New Rates and Terms

**[7 CFR 765.403(e)] The interest rate and loan term will be determined according to rates and terms established in part 764 (3-FLP) of this chapter for the type of loan being assumed.**

### C Eligible Applicant - Same Rates and Terms

A transfer and assumption of all debt and security processed at the same rates and terms does not require an appraisal.

**[7 CFR 765.402] An eligible applicant may assume an Agency loan under the same rates and terms as the original note if:**

**(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;**

**(b) A relative of the borrower or an entity comprised solely of relatives of the borrower assumes the debt along with the original borrower;**

**\* \* \***

**(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;**

**\*--Note:** Includes an existing individual borrower that has created a sole proprietor entity and will now operate the farm under the new entity.--\*

**(d) A new entity consisting of the same members as the borrower entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or**

## 248 Assumption Terms (Continued)

**C Eligible Applicant - Same Rates and Terms (Continued)**

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be a relative of the original borrower or an entity in which the entity members are comprised solely of relatives of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when FSA made the original loan or remain an entity comprised solely of people who were original entity members, partners or joint operators when the entity received the original loan.

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

(i) Have been a corporate stockholder, cooperative member, or other member of a legal business organization, when the Agency made the original loan or will be an entity comprised solely of entity members who were entity members when the entity--\* received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or entity members in the transferee.

\* \* \*

**\*--D Determining the Assumption Amount**

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

(1) The outstanding balance of the transferor's loan; or

(2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.--\*

**E Security**

[7 CFR 765.402(g)] All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed (3-FLP, Part 5).

## 248 Assumption Terms (Continued)

**\*--F Determining the Value of the Security Property**

Except for transfers and assumptions on same rates and terms under subparagraph C, the value of the security property must be determined before approving a transfer and assumption. Valuations will be conducted according to 1-FLP, Part 6. The valuation determines the value of the security and the amount of the indebtedness that may be assumed.

**G Transfer and Assumption of Types of Loans No Longer Made by FSA--\***

**[7 CFR 765.403(c)] Real estate loan types the Agency no longer makes (i.e. EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter (3-FLP) and the property proposed for transfer meets program requirements.**

**\*--H Transfer of Security and Assumption of Debt by Ineligible Borrowers--\***

\* \* \*

**\*--[7 CFR 765.404(a)] (1) The Agency will allow the transfer of real estate and personal property security to applicants who are ineligible for the type of loan being assumed--\* only on Non-program loan rates and terms.**

**(2) The Agency will reclassify the assumed loan as a Non-program loan.**

**[7 CFR 765.404(b)] Transferees must:**

**(1) Provide written documentation verifying their credit worthiness and debt repayment ability;**

The authorized agency official will use guidance in 3-FLP to determine if the NP applicant is credit worthy or has not acted in good faith. If the applicant is not credit worthy or has not acted in good faith, the NP assistance will be denied.

**(2) Not have received debt forgiveness from the Agency;**

The authorized agency official will review agency records including past debts history in DLS/ADPS to determine if the applicant has had prior debt forgiveness. NP assistance will not be approved if the applicant caused the Agency a loss, unless specifically exempted in 3-FLP, subparagraph 65 A.

**(3) Not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718; and**

**(4) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.**

**248 Assumption Terms (Continued)****\*--I Transfer of Security and Assumption of Debt by Ineligible Borrowers (Continued)--\***

**[7 CFR 765.404(c)] The transferee must assume the total outstanding Agency debt or if the value of the property is less than the entire amount of debt, an amount equal to the market value of the security less any prior liens. The total outstanding Agency debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's market value.**

**[7 CFR 765.404(d)] Non-program transferees must make a down payment to the Agency of not less than 10 percent of the lesser of the market value or unpaid debt.**

**[7 CFR 765.404(e)] The interest rate will be the Non-program interest rate in effect at the time of loan approval.**

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

**[7 CFR 765.404(f)] (1) For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the applicant's repayment ability.**

**\*--(2) For a Non-program loan secured by personal property only, the Agency schedules--\* repayment in five years or less, based on the applicant's repayment ability.**

**\* \* \***

**248 Assumption Terms (Continued)**

\* \* \*

**J Transfer from a NP Borrower**

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

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

FSA does not release NP borrowers of liability.

**\*--249 Processing Transfer Request****A Reviewing Loan Application**

The authorized agency official will review the application according to this Part and 3-FLP, Parts 3, 4, and 15.

**Note:** As noted in paragraph 7, the applicant must be screened for debarment and suspension.--\*

**B Insurance Requirements**

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

**C Title Clearance**

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

\* \* \*

**\*--D Approving the Transfer and Assumption--\***

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

\*--See 1-FLP, Part 2 for levels of authority for approval of NP loans. SED has unlimited approval authority for NP loans. FSA approves NP loans on FSA-2025. Applications for NP assistance that cannot be approved will be denied by sending FSA-2491 to the applicant. Applicants have 15 calendar days to request a review of the decision by the next level supervisor within FSA.--\*

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

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

**\*--249 Processing Transfer Request (Continued)****D Approving the Transfer and Assumption (Continued)--\***

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

If FSA rejects the transfer and assumption request, the authorized agency official will notify the borrower of appeal rights according to 1-APP. See 1-FLP subparagraphs 42 A through 42 F for guidance on preparing appeal letters specific to FLP.

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

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

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

The authorized agency official will prepare closing documents according to 3-FLP, Part 16 \*--(except that FSA-2489 will be used when no new loans are being issued) and State and local--\* requirements. Closing documents will be filed according to State law and as described in the State supplement.

**\*--B Non-Program Loans**

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

**\*--250 Closing the Transfer (Continued)****C Final Processing--\***

The authorized agency official will follow the flowchart in DLS Loan Servicing Users Guide, Section 10.4, to determine if a “1M”, “4A”, or “4D” transaction is needed in DLS to record the transfer and assumption of the loan or loans.

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

In situations where the transferee provides a down payment to the transferor, the down payment funds will be applied towards the transferor’s existing balance prior to processing the transfer and assumption within DLS per subparagraph 250 B.

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

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

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

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

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

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

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

**251 Determining Transferor Liability After Closing (Continued)****B Transfer and Assumption of a Portion of the Indebtedness (Continued)**

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

- cash contribution
- participation credit
- subsequent FSA loans.

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

**C Authority**

The approval official for the transfer and assumption may consider and execute FSA-2080 in conjunction with the transfer and assumption action when all of the following conditions are met:

- transferee assumes the entire amount of the indebtedness
- transferee's indebtedness is fully secured
- transferor transfers all security
- transfer and assumption will not result in a loss to the Government.

If any of these requirements are not met, only SED's have the authority to execute FSA-2080's.

**252-265 (Reserved)**



**291 Procedures and Servicing Responsibility (Continued)****D Receiving Office Responsibilities**

New security instruments are necessary for borrower relocations and borrower crop and personal property relocations, unless other guidance is provided through a State supplement or from the Regional OGC.

\*--The receiving County Office must obtain a new UCC-1 and FSA-2028 (3-FLP, Part 16)--\* when a borrower moves:

- to a new farm and crops or fixtures on new real estate will serve as security
- to a new farm which is to serve as security
- FSA personal property to a new County Office location.

\*--The receiving County Office must obtain a new UCC-1 and FSA-2028 as soon as possible,--\* but no later than 30 calendar days after the borrower's move.

If the borrower does not execute the new instruments, the County Office shall refer the case to SED with recommendations for appropriate action. Normally, the receiving County Office will notify the borrower according to 5-FLP, subparagraph 66 A and proceed to liquidation with the assistance of the transferring County Office. For interstate moves, the receiving County Office

\*--must execute and file a new UCC-1 with the following text:--\*

“The above collateral was brought into \_\_\_\_\_ from \_\_\_\_\_ County, State of \_\_\_\_\_, subject to a security interest of the Secured Party.”

The receiving County Office should see the applicable State supplement for instructions and guidance on lien searches.

**292-300 (Reserved)**



## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

| Title                                            | Reporting Period | Submission Date         | Negative Reports | Reference |
|--------------------------------------------------|------------------|-------------------------|------------------|-----------|
| Payment Corrections From Previous Calendar Years | Annually         | By February 1 each year | Required         | 61        |

### Forms

This table lists all forms referenced in this handbook.

| Form Number | Title                                                                       | Display Reference | Paragraph Reference |
|-------------|-----------------------------------------------------------------------------|-------------------|---------------------|
| AD-1026     | Highly Erodible Land Conservation and Wetland Conservation Certification    |                   | 99, 116, 196        |
| CCC-679     | Lien Waiver                                                                 |                   | 118                 |
| FSA-850     | Environment Screening Worksheet                                             |                   | 99, 199             |
| FSA-2025    | Notification of Approval Terms and Conditions and Borrower Responsibilities |                   | 248, 249            |
| FSA-2026    | Promissory Note                                                             |                   | 3                   |
| FSA-2028    | Security Agreement                                                          |                   | Text, Ex. 4         |
| FSA-2029    | Mortgage/Deed of Trust                                                      |                   | 3                   |
| FSA-2037    | Farm Business Plan – Balance Sheet                                          |                   | 116                 |
| FSA-2038    | Farm Business Plan – Income and Expenses                                    |                   | 116                 |
| FSA-2040    | Agreement for the Use of Proceeds and Security                              |                   | Text                |
| FSA-2044    | Assignment of Income                                                        |                   | 282                 |
| FSA-2045    | Record of the Disposition of FSA Security/Release of Proceeds               |                   | 146, 162, 166, 181  |
| FSA-2061    | Application for Partial Release or Consent                                  | 25.6              | Text                |
| FSA-2062    | Application for Subordination to a Commercial Lender                        |                   | 116                 |
| FSA-2065    | Annual Statement of Loan Account                                            |                   | 64, Ex. 25.5        |
| FSA-2071    | Transmittal of Document                                                     |                   | 65                  |
| FSA-2072    | Cancellation of U.S. Treasury Check and/or Obligation                       |                   | 61                  |
| FSA-2080    | Release From Personal Liability                                             |                   | 231, 251            |
| FSA-2091    | Incomplete Application Letter                                               |                   | 8                   |
| FSA-2092    | Notice of Application Withdrawal                                            |                   | 8                   |
| FSA-2132    | Real Estate Evaluation                                                      |                   | 198                 |
| FSA-2401    | Request for Operational Review Information                                  |                   | 16, 17              |
| FSA-2406    | Certification Regarding Notification of Payoff Amount                       |                   | 65                  |

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

## Forms (Continued)

| Form Number | Title                                                                                             | Display Reference | Paragraph Reference |
|-------------|---------------------------------------------------------------------------------------------------|-------------------|---------------------|
| FSA-2407    | Notification of Payoff Amount                                                                     |                   | 65                  |
| FSA-2408    | Notification of Termination of Security Interests in Farm Products                                |                   | 65                  |
| FSA-2409    | Request for Continuation Statement Filing Fee                                                     |                   | 99                  |
| FSA-2410    | Notice of FSA's Right to File a UCC Continuation Statement                                        |                   | 99                  |
| FSA-2411    | List of FSA Borrowers with Potential Liens                                                        |                   | 102                 |
| FSA-2412    | Change in List of FSA Borrowers with Potential Liens                                              |                   | 102                 |
| FSA-2413    | Notification of Unauthorized Use of Proceeds                                                      |                   | 181                 |
| FSA-2414    | Notification of Unauthorized Use of Proceeds (bankruptcy)                                         |                   | 181                 |
| FSA-2415    | Initial Notification of 3 <sup>rd</sup> Party Purchaser                                           |                   | 181                 |
| FSA-2416    | SED Notification of 3 <sup>rd</sup> Party Purchaser                                               |                   | 181                 |
| FSA-2417    | Lender Agricultural Loan Underwriting Standards                                                   |                   | 19                  |
| FSA-2418    | Borrower Prospectus                                                                               |                   | 19                  |
| FSA-2419    | Letter to Notify Borrowers to Refinance their FSA Loans                                           |                   | 19                  |
| FSA-2420    | Intent to ACL for Failure to Provide Information or to Graduate                                   |                   | 19.5                |
| FSA-2421    | Intent to Convert Program Loans to Non-Program                                                    |                   | 19.5                |
| FSA-2422    | Notice of Non-Program Rates and Terms                                                             |                   | 19.5                |
| FSA-2423    | Addendum to the Promissory Note or Assumption Agreement Converting to Non-Program Rates and Terms |                   | 19.5                |
| FSA-2424    | Notice of Change in Limited Resource Loan Interest Rate                                           |                   | 21                  |
| FSA-2425    | Request to Cancel Undisbursed Loan Funds                                                          |                   | 61                  |
| FSA-2429    | Request for Change in Application                                                                 |                   | 61                  |
| FSA-2433    | Satisfaction of Lien                                                                              |                   | 65, 147             |
| FSA-2445    | Control Log PLAS/GLAS Account Corrections                                                         |                   | 97                  |
| FSA-2446    | PLAS/GLAS Account Correction                                                                      |                   | 97                  |
| FSA-2450    | Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Proceeds                  |                   | 162                 |
| FSA-2455    | Subordination by the Government                                                                   |                   | 120                 |
| FSA-2465    | Assignment, Acceptance, and Release (Wool and Mohair)                                             |                   | 166                 |

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

## Forms (Continued)

| Form Number   | Title                                                               | Display Reference | Paragraph Reference |
|---------------|---------------------------------------------------------------------|-------------------|---------------------|
| FSA-2470      | Partial Release                                                     |                   | 146, 147, 166, 199  |
| FSA-2471      | Subordination, Non-Disturbance and Attornment Agreement (SNDA)      |                   | 196                 |
| FSA-2476      | Transfer of Real Estate Security                                    |                   | 246                 |
| FSA-2489      | Assumption Agreement                                                |                   | 250                 |
| FSA-2490      | Deceased Borrower Report                                            |                   | 266                 |
| FSA-2491      | Denial of NP Loan Assistance                                        |                   | 248                 |
| FSA-2495      | Application to Move Security Property                               |                   | 291                 |
| FSA-2497      | Potential Active-Duty Military Civil Relief Act Benefits            |                   | 282                 |
| FSA-2498      | Benefits of the Ronald W. Reagan National Defense Authorization Act |                   | 282, 283            |
| FSA-2499      | FSA Loan Borrowers Leaving Active Military Duty                     |                   | 283                 |
| FSA-2543      | Shared Appreciation Agreement                                       |                   | 3, 97, 267          |
| FSA-2551      | Request for Non-monetary Default Determination                      |                   | 181                 |
| FSA-2585      | Acquisition or Abandonment of Secured Property                      |                   | Ex. 25.5            |
| FSA-2722      | Update to TOP and Cross-Servicing Information                       |                   | 282                 |
| IRS 1098      | Mortgage Interest Statement                                         |                   | 61, Ex. 25.5        |
| IRS 1099-A    | Acquisition or Abandonment of Secured Property                      |                   | Ex. 25.5            |
| IRS 1099-C    | Cancellation of Debt                                                |                   | Ex. 25.5            |
| IRS 1099-G    | Certain Government Payments                                         |                   | Ex. 25.5            |
| IRS 1099-INT  | Interest Income                                                     |                   | Ex. 25.5            |
| IRS 1099-MISC | Miscellaneous Income                                                |                   | Ex. 25.5            |
| IRS W-9       | Request for Taxpayer Identification Number and Certification        |                   | 68                  |
| UCC-1         | National Financing Statement                                        |                   | 146, 291            |
| UCC-3         | National Amendment Form                                             |                   | 146                 |

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

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term                                           | Reference             |
|-----------------------|------------------------------------------------|-----------------------|
| AI                    | account information                            | 65                    |
| APCD                  | type of applicant code                         | Ex. 25.5              |
| CB                    | Collections Branch                             | 66, 67                |
| CFS                   | Central Filing System                          | 102                   |
| CL                    | conservation loan                              | Text, Ex. 2           |
| CNC                   | currently not collectible                      | Ex. 25.5              |
| CONACT                | Consolidated Farm and Rural Development Act    | 1, Ex. 2              |
| CSB                   | Community Servicing Branch                     | 67                    |
| DBSA                  | Distressed Borrower Set-Aside                  | 146, 283              |
| DSA                   | Disaster Set-Aside                             | 146, 283              |
| ECM                   | Enterprise Content Management                  | 61                    |
| FLB                   | Farm Loan Branch                               | Text, Ex. 51-53       |
| LOC                   | Line of Credit                                 | 118                   |
| NP                    | nonprogram loan                                | Text                  |
| PAD                   | Pre-Authorized Debit                           | 66, 67                |
| PF                    | Payoff Balance                                 | 65                    |
| PIN                   | personal ID number                             | 63                    |
| PLS                   | primary loan servicing                         | 61, 98, 146, 197, 283 |
| PML                   | Pay My Loan                                    | 61                    |
| PRB                   | Program Reports Branch                         | Ex. 25.5              |
| RC                    | report code                                    | Text, Ex. 25.5        |
| SAA                   | Shared Appreciation Agreement                  | 117, Ex. 2            |
| SAM                   | System for Award Management                    | 7                     |
| SNDA                  | subordination, non-disturbance, and attornment | 99, 199, Ex. 25.6     |
| ST                    | softwood timber loan                           | 16, 196, 246          |
| SW                    | soil and water                                 | 19                    |
| TDCLCR                | Term Debt and Capital Lease Coverage Ratio     | 21, 32                |
| VRU                   | Voice Response System                          | 63                    |

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b))****\*--1031 Exchange**

1031 exchange means an exchange under Section 1031 of the Internal Revenue Code that permits farmers or ranchers to defer capital gains taxes when selling a farm or ranch (excluding primary residence) and reinvesting the proceeds in a similar property. Proceeds from the sale must be received and used by a “qualified intermediary” to purchase the new property; the investor cannot directly receive the funds. The replacement property’s value and equity must be equal to or greater than the original property’s value in order to defer taxes. Strict time limits require the replacement property to be identified within 45 calendar days, and the exchange completed within calendar 180 days of the sale of the original property.--\*

**Abandoned Security Property**

Abandoned security property is security property that a borrower is not occupying, or is not in possession of, or has relinquished control of, and has not made arrangements for its care or sale.

**Acceleration**

Acceleration is a demand by a lender for immediate repayment of the entire balance of a debt if the security instrument or promissory note is breached. When FSA accelerates an account, the entire loan balance is due in 30 calendar days.

**Additional Security**

Additional security is any property which provides security in excess of the amount of security value equal to the loan amount.

**Agency**

Agency is FSA, an agency of USDA, including its personnel and any successor Agency.

**Agency Official**

Agency official is any employee with the agency. This term is used when the action does not require inherent or delegated authority.

**Agreement for the Use of Proceeds**

Agreement for the use of proceeds is an agreement between the borrower and the Agency for each production cycle that reflects the proceeds from the sale of normal income security that will be used to pay scheduled FLP loan installments, including any past due installments, during the production cycle covered by the agreement.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****\*--Appraisal**

**Appraisal** means a written statement independently and impartially prepared, setting forth an opinion as to the value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information. Real estate appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP).--\*

**Approval Official**

**Approval official** is the specific employee who has the authority to approve or deny the described action.

**Assumption**

**Assumption** is the act of agreeing to be legally responsible for another party's indebtedness.

**Authorized Agency Official**

**Authorized agency official** is an employee who has either inherent or delegated authority to complete the described action.

**Basic Security**

**Basic security** is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

**Borrower (or Debtor)**

**Borrower (or debtor)** is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term "borrower" includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

**Civil Action**

**Civil action** is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.

**Collateral**

**Collateral** is property pledged as security for a loan to ensure repayment of an obligation.

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

## Family Living Expenses

**Family living expenses** are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

## Family Members

**Family members** are the immediate members of the family residing in the same household with the borrower, or, in the case of an entity, with the operator.

## Farm

**Farm** is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term “farm” also includes the term “ranch.” It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

## \*--Financially Distressed Borrower

**Financially distressed borrower** is a borrower unable to develop a feasible plan for the current or next production cycle.--\*

## FLP's

**Farm Loan Programs** are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

## Foreclosed

**Foreclosed** is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

## Good Faith

**Good faith** is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. If the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control, the Agency will consider the borrower to have acted in good faith. In addition, the Agency may also consider fraud, waste, or conversion actions when determining if an applicant or borrower has acted in good faith. Such determinations that are substantiated by a legal opinion from OGC constitute an independent basis for determinations of not having acted in good faith.

**Note:** A lack of good faith determination must be made for each decision. See 3-FLP subparagraph 65 A.

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

### Graduation

**Graduation** means the payment in full of all direct FLP loans, except for CLs, made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

### Guaranteed Loan

**Guaranteed loan** is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

### Hazard Insurance

**Hazard insurance** is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

### Initial Loan

**Initial loan** is the first loan of its type processed by FSA. A borrower having one OL and one FO has 2 initial loans, because they are different loan types.

### Joint Operation

**Joint operation** is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

### Junior Lien

A **junior lien** is a lien that is subordinate to a prior lien on the same item of security.

### Lien

**--Lien** is a legally enforceable claim against real or personal property of another obtained--\* as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

### Limited Resource Interest Rate

**Limited resource interest rate** is an interest rate normally below the Agency's regular interest rate, which is available to applicants unable to develop a feasible plan at regular rates and are requesting:

- (i) FO or OL loan assistance under part 764 of this title; or
- (ii) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

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

**Liquidation** is the act of selling security for recovery of amounts owed to the Agency or lender.

Liquidation occurs when no further assistance will be given and includes instituting civil suit against a borrower to recover security or Economic Opportunity property or against third parties to recover security or its value or to recover amounts owed to FSA; filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings.

**Loan Costs**

**Loan costs** are administrative costs and/or protective advances that have been charged back to a borrower's account according to the promissory note, other security instrument, or FSA regulation.

**Note:** Most loan costs are tied to specific loans; however, PLAS will only "Add on" this cost if the loan fund code is that of farm ownership or soil and water. If the loan fund code is for operating, emergency, or other loan types, the cost item is established under a separate loan number with the same fund code as the original loan. This loan numbering system generally starts with loan 99 and works backwards (98, 97, 96) with each loan cost paid. The interest rate of the loan cost will be the same as the original loan; however, the loan account is immediately due and payable and will reflect a final year of the loan the same as the year the cost was paid.

**Loan Agreement**

**Loan Agreement** is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

**Loan Servicing Programs**

**Loan servicing programs** include any primary loan servicing program, conservation contract, current market value buyout, and homestead protection.



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

**\*--Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:**

- (i) The buyer and seller are typically motivated;**
- (ii) Both parties are well informed or well advised, and acting in what they consider to be their own best interests;**
- (iii) A reasonable time is allowed for exposure in the open market;**
- (iv) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and**
- (v) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.--\***

**Mortgage**

**Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term “mortgage” also includes the terms “deed of trust” and “security agreement.”**

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

**Net Recovery Value of Agency Security**

**Net recovery value of Agency security** is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.

**Net Recovery Value of Non-Essential Assets**

**Net recovery value of non-essential assets** is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

**Non-Capitalized Interest**

**Non-capitalized interest** is accrued interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

**Non-Essential Assets**

**\*--Non-essential assets** mean assets in which the borrower has an ownership interest, that:

(i) Do not contribute to:

(A) Income to pay essential family living expenses, or

(B) The farming operation; and

(ii) Are not exempt from judgment creditors or in a bankruptcy action.

For direct loans, working capital reserves and savings that do not exceed the greater of \$30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expenses, to be realized in the next operating cycle, are considered essential assets.--\*

**Non-Monetary Default**

**Non-monetary default** means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements, or loan.

**Note:** Filing for bankruptcy and failing to complete the required borrower training are not considered non-monetary defaults. See 3-FLP, subparagraph 474 C.

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

**Nonprogram Loan**

**Non-program loan** is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

**Normal Income Security**

**Normal income security** is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.

Normal income security does not include any equipment (including fixtures in States that have adopted UCC) or foundation herd or flock that is the basis of the farming operation and is the basic security for an FSA loan.

**Note**

A note is written evidence of indebtedness, such as a bond or FSA-2026.

**Operator**

**Operator** is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.

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

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

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

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

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

**Partnership**

**Partnership** is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

**\*--Personal Property Security**

**Personal property security** is property that may consist of, but is not limited to: Crops; livestock; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, personal property mortgages, and other security instruments.--\*

**Primary Loan Servicing Programs**

**Primary loan servicing programs** means:

- (i) Loan consolidation and rescheduling, or reamortization;
- (ii) Interest rate reduction, including use of the limited resource rate program;
- (iii) Deferral;
- (iv) Write-down of the principal or accumulated interest; or
- (v) Any combination of paragraphs (i) through (iv).--\*

**Prior Lien**

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

**Prospectus**

**Prospectus** consists of a transmittal letter, a current balance sheet, and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific FSA direct loan applicants and borrowers.

**Protective Advance**

A **protective advance** is an advance made by the Agency or a lender to protect or preserve the collateral itself from loss or deterioration. A protective advance may be used for purposes, including but not limited to the following:

- delinquent taxes
- annual assessments
- ground rents
- hazard or flood insurance premiums against or affecting the collateral
- harvesting costs
- other expenses needed for emergency measures to protect the collateral.

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

Qualified intermediary (QI) is a neutral third party in a 1031 exchange that holds proceeds from the sale of the original property, preventing the farmer or rancher from controlling the funds and preserving the tax-deferred status of the exchange under IRS rules. The QI ensures compliance with IRS rules for 1031 exchanges.

**\*--Real Estate Evaluation**

Real estate evaluation is an estimate of value or real estate provided by an individual who is not required to comply with USPAP, using market supported information to analyze the subject property.--\*

**Related By Blood or Marriage**

Related by blood or marriage is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, grandparent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, nephew, niece, cousin, grandson, granddaughter, or the spouses of any of those individuals. “Related by blood or marriage” is used for consistency with a requirement in the CONACT. It has the same meaning as the word “relative” for the Farm Loan Programs regulations in this Chapter.

**Relative**

Relative means the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of any of those individuals. Relative has the same meaning as the term “related by blood or marriage” for the Farm Loan Programs regulations in this Chapter.

**Security**

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or “security property” will be considered a reference to the term “security.”

**Security Instrument**

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

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Shared Appreciation Agreement**

**Shared Appreciation Agreement** is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower on the appropriate Agency form that requires the borrower who has received a write-down on a direct or guaranteed loan to repay the Agency or the lender some or all of the write-down received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

**Subordination**

**Subordination** is a creditor's temporary relinquishment of all or a portion of its lien priority to another party providing the other party with a priority lien on the collateral.

**Subsequent Loan**

A **subsequent loan** is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

**Transfer and Assumption**

**Transfer and assumption** is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

**Trust**

**Trust** is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

**Unauthorized Disposition Of Personal Property Security**

**Unauthorized disposition of personal property security** is the sale of personal property security not authorized by FSA before the sale.

**\*--Valuation**

**Valuation** is the estimation or determination of value of personal property or real estate by agency officials, vendors, or third parties, in each case authorized or approved by the Agency.--\*

**VRU**

**VRU** is a secure automated system that requires a PIN number, and guides borrowers in obtaining the status of their loans at any time. If further loan information is needed, such as a payoff amount, borrowers are directed to call the FSA office.

## Example of Loan Payment Reminder – Annual Installment Due Letter

The following is an example of a payment reminder letter sent to a borrower 60 calendar days before their installment due date.

**\*--Note:** RD Business Center is responsible for mailing Exhibit 25.3 to all borrowers nationwide and will provide copies of mailed letters to the local FSA office.

|                                                                                                                                                                                                                                                                                                                                                                     |              |                |                     |                       |               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------|---------------------|-----------------------|---------------|
|                                                                                                                                                                                                                                                                                    |              |                |                     |                       |               |
| United States<br>Department of<br>Agriculture                                                                                                                                                                                                                                                                                                                       | [REDACTED]   |                |                     |                       |               |
| Farm Production<br>and Conservation<br>Business Center<br>(FPAC)                                                                                                                                                                                                                                                                                                    | [REDACTED]   |                |                     |                       |               |
| Farm Service<br>Agency                                                                                                                                                                                                                                                                                                                                              | Case Number  | [REDACTED]     |                     |                       |               |
| Farm Services<br>Branch<br>4300 Goodfellow<br>Blvd.<br>FC-1311<br>St. Louis, MO<br>63120                                                                                                                                                                                                                                                                            | 03/25/26     |                |                     |                       |               |
| <b>REMINDER OF PAYMENT(S) TO BE MADE</b>                                                                                                                                                                                                                                                                                                                            |              |                |                     |                       |               |
| According to the Farm Service Agency (FSA) records, you agreed to make annual payments on your farm loans. This is a reminder of loan(s) with installments due in 60 days. If you have loans with other due dates you will be notified by another letter as they become due. "This reminder does not include any cost items which are immediately due and payable." |              |                |                     |                       |               |
| Make checks and money orders payable to: FARM SERVICE AGENCY<br>Continue to submit your payments through your local servicing office.                                                                                                                                                                                                                               |              |                |                     |                       |               |
| [REDACTED]                                                                                                                                                                                                                                                                                                                                                          |              |                |                     |                       |               |
| If the amount due has been submitted through payment or assignment, please disregard this notice. You may call 1-888-518-4983 to check the current status of your account. If you have questions, please contact your local FSA farm loan official.                                                                                                                 |              |                |                     |                       |               |
| LOAN<br>NBR                                                                                                                                                                                                                                                                                                                                                         | LOAN<br>DATE | LOAN<br>AMOUNT | INSTALLMENT<br>DATE | INSTALLMENT<br>AMOUNT | AMOUNT<br>DUE |
| [REDACTED]                                                                                                                                                                                                                                                                                                                                                          |              |                |                     |                       |               |
| A late payment reduces the amount applied to loan principal and could result in zero principal reduction depending upon when the payment is made.                                                                                                                                                                                                                   |              |                |                     |                       |               |
| *6S000035401* L600PRMD                                                                                                                                                                                                                                                                                                                                              |              |                |                     |                       |               |

