# FSA
## HANDBOOK

# Direct Loan Servicing – Special and Inventory Property Management

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

5-FLP

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

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

| Direct Loan Servicing – Special and Inventory Property Management 5-FLP | Amendment 34 |
|---|---|

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

## Amendment Transmittal

### A Reasons for Amendment

This handbook has been amended to:

- add references to 7-FLP
- add references to 7-FLP, Part 12
- change FLOO to NFAOC **or** NFAOC, DLD
- change TOP references from Exhibit 15 to 7-FLP, Part 4
- change references from RD Instruction 1956-B and Exhibit 16 to 7-FLP, Parts 8 and 12
- change references from Part 24 to 7-FLP
- change references from Part 11, Section 3 to 7-FLP, Part 11
- change references from RD Instruction 1956-B to 7-FLP, Part 12
- change references from paragraph 955 to 7-FLP, Part 12.

Subparagraph 1 B has been amended to remove authority for offsets, cross-servicing, AWG, and debt settlement, which has been moved to 7-FLP.

Subparagraph 2 A has been amended to remove references to 1-DIS and RD Instructions 1951-C and 1956-B in the notes.

Subparagraph 68 B has been amended to change administrative offset reference from RD Instruction 1951-C to 7-FLP, Part 3.

Subparagraphs 406 A and 407 B have been amended to change references from RD 1956-1 to FSA-2731.

Subparagraphs 406 B and 407 F have been amended to move partial cancellation to paragraph 409.

Paragraph 409 has been added to address requirements for administrator's exception for partial cancellation of debt after discharge.

## A Reasons for Amendment (Continued)

Subparagraph 421 G has been amended to add that deficiency judgments are serviced under 7-FLP, Part 11.

Part 11, Section 3 has been withdrawn because the material is now in 7-FLP, Part 11.

Subparagraph 499 F has been amended to add reference to 7-FLP, Parts 8 and 9.

Subparagraphs 531 A and 534 D have been amended to add references to Exhibit 48.

Subparagraph 533 B has been amended in an effort to correct weaknesses identified by OCR in preparing FSA-2580 and FSA-2581.

Subparagraph 708 B has been amended to change FLOO to NFAOC, PRD.

Part 24 has been withdrawn because the material is now in 7-FLP.

Exhibit 2 has been amended to remove definitions no longer referenced in this handbook.

Exhibit 15 has been withdrawn because the material is now in 7-FLP, Part 4.

Exhibit 16 has been withdrawn because the material is now in 7-FLP, Parts 7 and 8.

Exhibit 36 has been withdrawn because the material is now in 7-FLP, Part 9.

Exhibit 44 has been withdrawn because it is now FSA-2716.

Exhibit 45 has been withdrawn because it is now FSA-2717.

Exhibit 48 has been added to include a Notice of Acceleration of Farm Loan Programs Accounts That Are Unsecured.

**Amendment Transmittal (Continued)**

| Page Control Chart | | |
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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 the following:

- regulations governing:
  - direct loan servicing – special
  - inventory property management
- roles and responsibilities in implementing those regulations and other responsibilities in direct loan servicing – special and inventory property management.

### B Sources of Authority

The sources of authority for this handbook include the following:

*** * ***

- 7 CFR Part 766 for servicing borrowers who are financially distressed or delinquent
- 7 CFR Part 767 for managing, leasing, and selling inventory property
- various laws and statutes passed by Congress, including CONACT *** * ***.

### C Regulation References

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

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

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

**Example:** Subparagraph 103 C provides **"[7 CFR 766.105(b)] (1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) (**subparagraph B) **of this section."**

**Note:** The text **"paragraphs (a)(2) through (4) of this section"** refers to 7 CFR 766.105 (a)(2) through (4). The nonbold reference indicates that 7 CFR 766.105(a) is included in subparagraph 103 B.

## 2 Related References

### A Related FSA Handbooks

The following FSA handbooks concern FLP.

| IF the area of concern is about… | THEN see… |
|---|---|
| appeals and mediation | 1-APP. |
| civil rights compliance and administration for FSA programs | 18-AO. |
| common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX | 1-CM. |
| *--debt collection and resolution | 7-FLP.--* |
| direct loan making | 3-FLP. |
| direct loan regular or routine servicing | 4-FLP. |
| disaster designations | 1-DIS. |
| employee development and training | 6-PM. |
| environmental requirements | 1-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 about 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 | 3-FI. |
| State and county organization and administration policies, procedures, principles, and standards, such as work organization | 16-AO. |
| State and county records management | 25-AS. |

**Note:** RD Instruction 1940-G must be used along with 1-EQ.

* * *

### B Helpful Links

The Helpful Links web site at
***--https://amistad.sc.egov.usda.gov/flp/InformationalLinks?Action=Links&caller=index--***
provides links to useful web sites.

## 2 Related References (Continued)

### C State Supplements

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

* * *

## 3 FLP Forms

### A Form References

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

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

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

- the common name of the form

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

- purpose or the information collected.

  **Example:** CFR may state, "a conservation contract", instead of stating, "FSA-2535".

## 3 FLP Forms (Continued)

### A Form References (Continued)

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

| Form Number | Form Title |
|---|---|
| FSA-2026 | Promissory Note |
| FSA-2029 | Mortgage/Deed of Trust |
| FSA-2489 | Assumption Agreement |
| FSA-2535 | Conservation Contract |
| FSA-2543 | Shared Appreciation Agreement |

### B FSA-2029

All references to FSA-2029 within this handbook are intended as a reference to the applicable State-specific Mortgage or Deed of Trust. State-specific Mortgages or Deeds of Trust are available on the FFAS Employee Forms/Publications Online Website at ***--http://intranet.fsa.usda.gov/dam/ffasforms/forms.html** and are numbered FSA-2029**--*** "ST".

**Notes:** "ST" represents the appropriate State acronym.

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

### C Notary Acknowledgement

Forms do not include preprinted text for the Notary Acknowledgement because numerous States have State-specific laws establishing required text. Therefore, a fillable text area is provided under the "Acknowledgement" heading. SED's shall issue State supplements providing the appropriate Notary Acknowledgement text to be inserted.

### D Applicant and Borrower Signatures

Forms completed by applicants or borrowers include a signature box to accommodate multiple signatures. Separate signature lines are not provided because the number of signatures required for an entity applicant or borrower cannot be determined in advance. Instructions for completing forms will provide guidance to applicants or borrowers on signature requirements.

Forms prepared by FSA for the applicant's or borrower's signature include a fillable area instead of preprinted signature lines. County Offices shall insert a signature line and the name of each applicant, borrower, entity member, or other individual required to sign the form.

SED's shall issue a State supplement addressing State-specific signature requirements.

## 3 FLP Forms (Continued)

### E State-Modified National Forms

State and County Offices shall use national forms unless their use is prohibited by State law. In such cases, the State Office may modify the national form. Follow guidance in 1-FLP, subparagraph 3 H for obtaining clearance for State-modified national forms.

**Note:** State-modified national forms based on national forms will be made available on the FFAS Employee Forms/Publications Online Website at
***--http://intranet.fsa.usda.gov/dam/ffasforms/forms.html** with the same form--*
number as the national form, followed by the State acronym.

### F State-Created Forms

State Offices may create forms, as necessary, when a national form is not available. State-created forms shall be assigned a 5-digit number establishing linkage to the appropriate FLP handbook, followed by the State acronym, according to the following.

| IF the form pertains to… | THEN the form number shall be… |
|---|---|
| more than one FLP handbook | FSA-2000-1 ST, FSA-2000-2 ST, FSA-2000-3 ST, etc. |
| 1-FLP | FSA-2100-1 ST, FSA-2100-2 ST, FSA-2100-3 ST, etc. |
| 2-FLP | FSA-2200-1 ST, FSA-2200-2 ST, FSA-2200-3 ST, etc. |
| 3-FLP | FSA-2300-1 ST, FSA-2300-2 ST, FSA-2300-3 ST, etc. |
| 4-FLP | FSA-2400-1 ST, FSA-2400-2 ST, FSA-2400-3 ST, etc. |
| 5-FLP | FSA-2500-1 ST, FSA-2500-2 ST, FSA-2500-3 ST, etc. |
| 6-FLP | FSA-2600-1 ST, FSA-2600-2 ST, FSA-2600-3 ST, etc. |
| *--7-FLP | FSA-2700-1 ST, FSA-2700-2 ST, FSA-2700-3 ST, etc.--* |

**Notes:** "ST" represents the appropriate State acronym.

Before using State-created forms imposing information collections on 10 or more persons per year, State Offices shall work with the National Office to obtain OMB approval.

State-created forms will be made available on the FFAS Employee Forms/Publications Online Website at
**http://intranet.fsa.usda.gov/dam/ffasforms/forms.html**.

### G Other Sources of Forms

FSA does **not** provide forms that establish an agreement or contract between applicants/borrowers and third parties only, such as leases. Advise applicants/borrowers to obtain these
***--**forms from other sources, such as State Extension Service, on-line services, attorney, etc.**--***

## 4 Agency Exception Authority

### A General

***--[7 CFR 766.401, 767.251] On an individual case basis, the Agency may consider--* granting an exception to any regulatory requirement or policy of this part if:**

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

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

Authority for granting approval of an exception is held only by the Administrator and DAFLP.

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

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

### B Submitting Exception Requests

SED must submit an exception request by e-mail to DAFLP at **RA.dcwashing2.FSA-AdmException**. The e-mail subject should read "Administrator's Exception to (cite 5-FLP subparagraph) – (Borrower's Name and State)". An **encrypted** attachment must fully describe the status of the account including:

- a brief background on the case
- total outstanding FSA indebtedness, loan types, and amounts
- current status of the account

  **Note:** If it is delinquent, where is it in Primary Loan Servicing?

- type of security (chattel or real estate) and estimated value
- prior liens
- proposed plan of action that warrants the exception request
- what procedure is to be waived

## 4 Agency Exception Authority (Continued

### B Submitting Exception Requests (Continued)

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

***--Note:** County Offices may submit exception requests to SED by e-mail provided documents are encrypted, as appropriate.**--***

## 5 Introduction to Direct Loan Servicing – Special and Inventory Property Management

### A Direct Loan Servicing – Special

**[7 CFR 766.1(a)] This part describes the Agency's servicing policies for direct loan borrowers who:**

**(1) Are financially distressed;**

**(2) Are delinquent in paying direct loans or otherwise in default;**

**(3) Have received unauthorized assistance;**

**(4) Have filed bankruptcy or are involved in other civil or criminal cases affecting the Agency; or**

**(5) Have loan security being liquidated voluntarily or involuntarily.**

**[7 CFR 766.1(b)] The Agency services FLP direct loans under the policies contained in this part.**

**(1) Youth loans:**

**(i) May not receive Disaster Set-Aside under subpart B of this part**

**(ii) Will only be considered for rescheduling according to § 766.107** (paragraph 131) **and deferral according to § 766.109** (paragraph 159)

**(2) The Agency does not service Non-program loans under this part except where noted.**

**[7 CFR 766.1(c)] The Agency requires the borrower to make every reasonable attempt to make payments and comply with loan agreements before the Agency considers special servicing.**

**5 Introduction to Direct Loan Servicing – Special and Inventory Property Management (Continued)**

**B Inventory Property Management**

**[7 CFR 767.1(a)] This part describes the Agency's policies for**

**(1) Managing inventory property;**

**(2) Selling inventory property;**

**(3) Leasing inventory property;**

**(4) Managing real and chattel property the Agency takes into custody after abandonment by the borrower;**

**(5) Selling or leasing inventory property with important resources, or located in special hazard areas; and**

**(6) Conveying interest in real property for conservation purposes.**

**[7 CFR 767.1(b)] The Agency maintains, manages and sells inventory property as necessary to protect the Agency's financial interest.**

**6-40 (Reserved)**

## Part 2 Disaster Set-Aside (DSA)

### 41 Purpose

#### A Intent of DSA

**[7 CFR 766.51] (a) DSA is available to borrowers with FLP program loans who suffered losses as a result of a natural disaster.**

**(b) DSA is not intended to circumvent other servicing available under this part.**

**(c) Non-program loans may be serviced under this subpart for borrowers who also have FLP program loans.**

***--**FLP loans that may be serviced under this part are FO, OL, CL, SW, EM, EE, ST, RL, and**--***
RHF. NP's may be serviced under this part for borrowers who also have any program loans as noted in this subparagraph.

**Note:** YL's are **not** eligible for servicing under this part.

DSA is only intended to relieve some of the borrower's immediate and temporary financial stress caused by a disaster. When the operation has demonstrated that it cannot make the payments due and requires restructure, primary loan servicing under Parts 3 and 4 will be used. DSA will not be used to circumvent the servicing available under Parts 3 and 4.

## 42 Notifying Borrowers of DSA

### A When FSA Must Notify Borrowers

When the President, the Secretary of Agriculture, or the Administrator designates a county as *--a disaster area, FSA will make the DSA program available to its borrowers.--*

FSA will notify a borrower of DSA availability only if both:

- the borrower was an FLP borrower at the time of the disaster
- the borrower actively operated a farm in a county designated a disaster area or a county contiguous to a designated county.

FSA will not notify borrowers whose FLP loans have been accelerated, restructured after the disaster, have only NP's or YL's, or are paying FSA under a debt settlement agreement.

### B How FSA Notifies Borrowers

Borrowers will be notified of DSA availability by sending out Exhibit 10 on the first *--workday after the first disaster designation of a calendar year. This will inform all eligible borrowers that the DSA program is available during disaster designations. The letter will list all outstanding disaster designations at the time.--*

## 43 DSA Applications

### A Requests for DSA

**[7 CFR 766.54(a)] (1) A borrower must submit a request for DSA in writing within eight months from the date the natural disaster was designated.**

**(2) All borrowers must sign the DSA request.**

**(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.**

### B Required Financial Information

**[7 CFR 766.54(b)] (1) The borrower must submit actual production, income, and expense records for the production cycle in which the disaster occurred unless the Agency already has this information.**

**(2) The Agency may request other information needed to make an eligibility determination.**

The borrower must also provide any documentation required to support the farm operating plan as required in paragraph 45, such as 3 years of production, income and expense records.

## 44 Application Tracking

### A Tracking DSA Requests

The authorized agency official must date stamp the borrower's DSA request on the date FSA received it. The application will be inputted and tracked through to completion in DLS under Security Instruments Other Workflows.

The authorized agency official **must**, at a minimum, record the following in DLS:

- *****--purpose type
- request date
- final disposition
- final disposition date
- disaster designation code
- set-aside addendum date
- installment date
- disaster set-aside amount
- amount approved.--*****

## 45 DSA Eligibility and Limitations

### A Borrower Eligibility

**[7 CFR 766.52(a)] The borrower must meet all of the following requirements to be eligible for a DSA:**

**(1) The borrower must have operated the farm in a county designated or declared a disaster area or a contiguous county at the time of the disaster. Farmers who have rented out their land base for cash are not operating the farm.**

**(2) The borrower must have acted in good faith, and the borrower's inability to make the upcoming scheduled loan payments must be for reasons not within the borrower's control.**

**(3) The borrower cannot have more than one installment set aside on each loan.**

**(4) As a direct result of the natural disaster, the borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors and debts to the Agency. This determination will be based on:**

**(i) The borrower's actual production, income and expense records for the year the natural disaster occurred;**

**(ii) Any other records required by the official;**

**(iii) Compensation received for losses; and**

**(iv) Increased expenses incurred because of the natural disaster.**

**(5) For the next production cycle, the borrower must develop a feasible plan showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including FLP debts. The borrower must provide any documentation required to support the farm operating plan.**

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

**(7) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718** (1-CM)**.**

**(8) The borrower must not become 165 days past due before the appropriate Agency DSA documents are executed.**

The borrowers must remain eligible until FSA-2501 is executed.

## 45 DSA Eligibility and Limitations (Continued)

### B Loan Eligibility

**[7 CFR 766.52(b)] (1) Any FLP loan to be considered for DSA must have been outstanding at the time the natural disaster occurred.**

**(2) All of the borrower's FLP program and Non-program loans must be current after the Agency completes a DSA of the scheduled installment.**

**(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.**

**(4) The Agency has not accelerated or applied any special servicing action under this part to the loan since the natural disaster occurred.**

**(5) For any loan that will receive a DSA, the remaining term of the loan must equal or exceed 2 years from the due date of the installment set-aside.**

**(6) The loan must not have a DSA in place.**

The loans must remain eligible until FSA-2501 is executed.

### C Borrowers in Bankruptcy

A borrower paying FSA debts under a confirmed bankruptcy plan may be eligible to receive relief similar to DSA through the court by modifying the bankruptcy plan. See Part 11, Section 1.

### D Borrowers Paying Under a Debt Settlement

A borrower paying FSA under a Debt Settlement Adjustment Agreement is not eligible for DSA.

## 45 DSA Eligibility and Limitations (Continued)

### E Limitations

**[7 CFR 766.53(a)] The DSA amount is limited to the lesser of:**

**(1) The first or second scheduled annual installment on the Agency loans due after the disaster occurred; or**

**(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.**

**[7 CFR 766.53(b)] The amount set-aside will be the unpaid balance remaining on the installment at the time the DSA is complete. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.**

**[7 CFR 766.53(c)] Recoverable cost items may not be set aside.**

## 46 DSA Approval

### A Eligibility Determination

**[7 CFR 766.55] Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.**

***--**The authorized agency official must prepare a credit presentation in FBP as part of the eligibility determination and notify the borrower as soon as possible after making the**--*** determination.

### B Borrower Acceptance of DSA

**[7 CFR 766.57] The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.**

Subject to the 165-calendar-day limitation in subparagraph 45 A, the borrower must sign FSA-2501 within 45 calendar days (48 calendar days if the letter is sent by mail to allow 3 calendar days for delivery) of the date of FSA's approval letter for each loan ISA. Any exception must be requested according to paragraph 4.

### C Required Forms

In closing a borrower's approved DSA request, the authorized agency official will:

- prepare an original and 2 copies of FSA-2501
- staple the signed original on top of the original promissory note or assumption agreement filed in the fire-proof safe
- staple 1 of the 2 copies of FSA-2501 to the copy of the promissory note or assumption agreement filed in position 2 of the borrower's case file
- give the second copy of FSA-2501 to the borrower.

### D Modifying FSA-2501

FSA-2501 may need to be modified and issued as a State form to comply with individual State laws. If SED, with OGC concurrence, modifies the form, it must still contain the date of the set-aside and the original date of the installment.

## 46 DSA Approval (Continued)

### E Installments To Be Set-Aside

**[7 CFR 766.58] (a) The Agency will set-aside the first installment due immediately after the disaster occurred.**

**(b) If the borrower has already paid the installment due immediately after the disaster occurred, the Agency will set aside the next annual installment.**

### F Interest Accrual

**[7 CFR 766.59(a)] (1) Interest will accrue on any principal portion of the set-aside installment at the same rate charged on the balance of the loan.**

**(2) If the borrower's set-aside installment is for a loan with a limited resource rate and the Agency modifies that limited resource rate, the interest rate on the set-aside portion will be modified concurrently.**

**[7 CFR 766.59(b)] The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.**

### G Recording DSA

The authorized agency official will use FSA-2501 as the source document to complete the DSA SI Other workflow to create and submit the 5S – Record Disaster Set-Aside DLS
***--**transaction. NFAOC borrower account status reports and inquiry screens will reflect the**--***
amounts set-aside for each loan. An ISA identifier will be displayed on RC 540 for loans with DSA.

### H Security Requirements

**[7 CFR 766.56] If the borrower is not current on all FLP loans prior to the borrower executing the appropriate DSA Agency documents, the borrower, and all obligors in the case of an entity, must execute and provide to the Agency a best lien obtainable on all their assets except those listed under section 766.112(b)** (paragraph 211)**.**

## 47 Adverse Determinations

### A Notifying Borrowers of Adverse Determinations

DSA applications that do not meet all DSA requirements will be rejected and the borrower will be notified of the decision and provided appeal rights according to 1-APP.

## 48 Canceling and Reversing DSA

### A Canceling DSA

**[7 CFR 766.60] The Agency will cancel a DSA if:**

**[7 CFR 766.60(a)] The Agency takes any primary loan servicing action on the loan;**

If FSA later restructures the borrower's loan, the authorized agency official must cancel DSA with a 5T – Cancel Disaster Set-Aside transaction when processing the restructuring through DLS Special Servicing.

**[7 CFR 766.60(b)] The borrower pays the current market value buyout in accordance with § 766.113; or**

**[7 CFR 766.60(c)] The borrower pays the set-aside installment.**

***--**If the borrower pays the set-aside installment, the office shall contact NFAOC, DLD to**--*** process the DSA cancellation with a 5T – Cancel Disaster Set-Aside transaction in DLS.

### B Reversing DSA

**[7 CFR 766.61] If the Agency determines that the borrower received an unauthorized DSA, the Agency will reverse the DSA after all appeals are concluded.**

If FSA determines that the borrower received unauthorized DSA assistance, the borrower will be notified and meetings scheduled according to Part 10.

If FSA still believes DSA was unauthorized after the meetings and once any borrower appeals have been exhausted in FSA's favor, FSA will reverse the set-aside by reinstating the borrower's original payment terms as if FSA had never granted DSA to the borrower. In reversing DSA, the authorized agency official must:

- ***--**notify NFAOC, DLD in writing to reverse DSA**--***
- attach this notification to FSA-2501, which should remain stapled to the promissory note or assumption agreement.

If a borrower becomes financially distressed or delinquent after FSA reverses DSA, the authorized agency official services the borrower's account according to Parts 3 and 4.

## 49 Borrower Payments

### A Applying and Processing Borrower Payments

**[7 CFR 766.59(c)] The Agency will apply borrower payments toward set-aside installments first to interest and then to principal.**

FSA processes a borrower payment made on a DSA installment as a normal collection and codes the installment as a "D" payment.

### B Applying Payments of Borrowers With Multiple Set-Asides

In cases where the borrower received multiple set-asides on 1 loan under previous regulations, the payments will be applied as noted in subparagraph A to the oldest set-aside until it is paid in full and then to the later set-aside.

## 50-65 (Reserved)

# Part 3 Loan Servicing – General Procedures

## Section 1 Notifying Borrowers of Loan Servicing

### 66 Borrower Notification

#### A General Requirements

**[7 CFR 766.101(a)] The Agency will provide servicing information under this section to borrowers who:**

**[7 CFR 766.101(a)] (1) Have a current farm operating plan that demonstrates the borrower is financially distressed;**

**[7 CFR 766.101(a)] (2) Are 90 days or more past due on loan payments, even if the borrower has submitted an application for loan servicing as a financially distressed borrower;**

The authorized agency official must provide a loan servicing notification package to a borrower before initiating liquidation, accelerating borrower loan accounts, or repossessing or foreclosing FSA security, unless the borrower was previously notified as 90 calendar days past due or nonmonetary default and is already being serviced according to this part.

**Example:** A borrower misses his January 1, 2006, payment and is properly notified when he becomes 90 calendar days past due. Processing is then delayed and while FSA continues Primary Loan Servicing (PLS) he makes the January 1, 2006, payment on January 15, 2007. At this point, he is less than 90 calendar days past due; however, since the delinquency was not cured at any point, FSA continues to process PLS. He is not renotified.

If a loan is past due, the far left-hand column of the 540 Report shows the number of days that the loan is past due. The code "PDD" (Past Due Days) is shown beside the number.

***--**The 540 Report should be printed and reviewed immediately by the authorized agency official once it becomes available. Both the "Borrowers with Loans 90 Days Past Due"**--*** and the "Borrowers with Loans Less Than 90 Days Past Due" should be reviewed to find all accounts that will need to be notified of primary loan servicing in the coming month.

The borrower will be notified within 15 calendar days of becoming 90 calendar days past due.

## 66 Borrower Notification (Continued)

### A General Requirements (Continued)

***--[7 CFR 766.101(a)] (3) Are in non-monetary default on any loan agreements;**

For further information about compliance with loan agreements, see 4-FLP, Part 6.

The borrower's noncompliance must be determined according to 4-FLP, subparagraph 100 before being provided with Primary Loan Servicing notifications.**--***

**[7 CFR 766.101(a)] (4) Have filed bankruptcy;**

When FSA learns that a borrower has filed for bankruptcy, FSA will service the borrower's account according to Part 11.

**[7 CFR 766.101(a)] (5) Request this information;**

The authorized agency official will record a borrower's request for a loan servicing notification package in the borrower's running record or place the written request in the borrower's file.

**[7 CFR 766.101(a)] (6) Request voluntary conveyance of security;**

The authorized agency official will send a loan servicing notification package to a borrower requesting full liquidation by voluntary conveyance, unless the borrower was previously notified and is already being serviced according to this part.

**[7 CFR 766.101(a)] (7) Have only delinquent SA; or**

FSA will notify delinquent NP borrowers who have only SA amortization agreements.

**[7 CFR 766.101(a)] (8) Are subject to any other collection action, except when such action is a result of failure to graduate. Borrowers who fail to graduate when required and are able to do so, will be accelerated without providing notification of loan servicing options.**

## 67 Providing Loan Servicing Notification Package

### A Forms for Notifying Borrowers

**[7 CFR 766.101(b)] The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement programs and homestead protection as follows:**

**[7 CFR 766.101(b)] (1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA-2512 (Appendix A to this subpart)** (appendix only in CFR)**;**

***--**Notification will be hand-delivered or sent by regular mail to borrowers who are current and requesting servicing.**--***

**[7 CFR 766.101(b)] (2) A borrower who is 90 days past due will be sent FSA-2510 (Appendix B to this subpart)** (appendix only in CFR)**;**

***--**The authorized agency official must send FSA-2510 within 15 calendar days of the determination of the default. Notification will be sent by certified mail. The account will be flagged "PLS" (Exhibit 11), using FSA-2562, until the primary loan servicing process has been completed or the account accelerated.**--***

**[7 CFR 766.101(b)] (3) A borrower who is non-monetary or both monetary and nonmonetary default will receive FSA-2514 (Appendix C to this subpart)** (appendix only in CFR);

***--**If a potential nonmonetary default cannot first be resolved through the steps in subparagraph 66 A, FSA-2514 will be sent by certified mail. The account will be flagged "PLS" (Exhibit 11), using FSA-2562, until the primary loan servicing process has been completed, the default resolved, or the account accelerated.**--***

**[7 CFR 766.101(b)] (4) A borrower who has only delinquent SA will be notified of available loan servicing;**

The borrower will be sent FSA-2547 within 15 calendar days of the missed payment. The borrower must submit the items specified in subparagraphs 81 C through I within 60 calendar days of the date on the notice. If a complete application has not been received within 30 calendar days FSA-2548 will be sent.

**[7 CFR 766.101(b)] (5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G** (Part 11) **of this part.**

**Note:** Part 11 only addresses who would be sent notification. The appropriate form used for notification is established by this subparagraph based on the borrower's status as current, financially distressed, 90 calendar days past due, or nonmonetary default.

## 67 Providing Loan Servicing Notification Package (Continued)

### B Using DLS Special Servicing

The authorized agency official must track all notification and servicing activity through DLS Special Servicing and FSA-2580.

### C Methods of Notifying Borrowers

**[7 CFR 766.101(c)] Notices to delinquent borrowers or borrowers in non-monetary default will 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. The appropriate response time will begin 3 days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand delivered.**

If the notification package is returned "address unknown", the authorized agency official will verify the borrower's current postal address using FSA-137 according to 5-AS, paragraph 77. If no new address can be obtained, the authorized agency official will continue to use the last known address.

Once the address verification process is completed, the authorized agency official will:

- record the date the original package was returned and the date the contents are re-mailed on the original envelope and file the original envelope in position 4 of the case file

- resend the contents of the loan servicing notification package in a new sealed envelope.

The timeframe for a complete application will be determined according to subparagraph 83 B.

### D Requests for Copies of Regulations

A borrower may request copies of regulations at any time. When asked, the authorized agency official must provide a borrower 1 free copy of a regulation within 10 workdays of the request. See 2-INFO for further guidance.

## 68 Other Loan Servicing Notification Requirements

### A Notifying All Parties on a Note of Loan Servicing

For Primary Loan Servicing purposes, all parties who signed the promissory note are considered borrowers and are liable for all the debt.

When a borrower subject to loan servicing notification is:

- an entity comprised of 2 or more individuals, the authorized agency official will provide a loan servicing notification package to the entity and each party who signed the promissory note or pledged security for the loan

- a married couple at the same address, the authorized agency official will provide them 1 loan servicing notification package that is addressed to both parties

- a married or divorced couple at different addresses, the authorized agency official will provide a loan servicing notification package to each person at their own address.

  **Note:** A divorced spouse who has left an operation may seek a release of liability. See paragraph 84 for more information on releasing divorced spouses from liability.

All required subsequent notifications are sent in the same manner.

Third parties who pledged property as security or borrowers with YL's will receive Exhibit 13 or 14, as appropriate, with the notification to explain why they are being notified and their servicing options.

**Note:** Exhibits 13 and 14 are both available electronically on the FFAS Employee Forms/Publications Online Website located at ***--http://intranet.fsa.usda.gov/dam/ffasforms/forms.html**. Select Find Current**--*** Forms Using Our Form Number Search and enter "5-FLP Exhibit 13" or "5-FLP Exhibit 14" in the "Form Number" search field. CLICK "Submit".

### B Internal Administrative Offset Notification

***--**The authorized agency official will send an offset notification according to 7-FLP, Part 3.

### C TOP Referral

Delinquent loans will be referred to TOP according to 7-FLP, Part 4.**--***

## 69-80 (Reserved)

## Section 2 Completing the Loan Servicing Application

### 81 Required Information

#### A General Application Requirements and Signatures

**[7 CFR 766.102(a)] Except as provided in paragraph (e)** (subparagraph 83 A) **of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:**

FSA will consider an application complete when the borrower has completed, signed, dated and submitted to the servicing office, the forms and reports listed in subparagraphs B through I to the extent that the borrower is responsible.

The authorized agency official will date stamp, on the date received, all material received from the borrower. Date of complete application is entered on FSA-2001.

#### B Acknowledgement Form

**[7 CFR 766.102(a)(1)] Completed acknowledgement form provided with the Agency notification and signed by all borrowers;**

To request loan servicing, all delinquent or distressed borrowers must sign and submit FSA-2511, FSA-2513, or FSA-2515 as appropriate unless the borrower is a divorced spouse seeking a release of liability.

#### C Application Form

**[7 CFR 766.102(a)(2)] Completed Agency application form;**

The borrower and, in the case of an entity, all entity members must complete FSA-2001. The authorized agency official will order personal and/or commercial credit reports immediately upon receipt of the signed FSA-2001 and acknowledgement form. No credit report fee is collected for applications for servicing only. Entity members may use FSA-2037 to provide financial information.

***--Note:** For FSA-2001 without initials only, authorized agency official will obtain initials before closing the servicing action requested.**--***

## 81 Required Information (Continued)

### D Financial Records

**[7 CFR 766.102(a)(3)] Financial records for the three most recent years, including income tax returns;**

The borrower must provide all farm and nonfarm income and expense records, including family living expenses. Financial records will be submitted through FSA-2002 or other similar format. FSA does not release a borrower's income tax records without OGC's consent.

### E Production Records

**[7 CFR 766.102(a)(4)] The farming operation's production records for the three most recent years or the years the borrower has been farming, whichever is less;**

Farm production records will be submitted through FSA-2003 or other similar format.

### F Compliance With Environmental Requirements

**[7 CFR 766.102(a)(5)] Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;**

AD-1026 and NRCS-CPA-026, which accurately reflect the current farm operation, must be used. FSA will not require new forms unless the existing forms no longer reflect the current operation.

### G Verification of Nonfarm Income

**[7 CFR 766.102(a)(6)] Verification of all non-farm income;**

Nonfarm income will be verified and documentation included in the case file according to 3-FLP, subparagraph 42 A.

### H Farm Operating Plan

**[7 CFR 766.102(a)(7)] A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and debt repayment plan. In the case of an entity, the entity and all entity members must provide current financial statements; and**

FBP will be prepared from FSA-2037 and FSA-2038 and the borrower's historical data.

## 81 Required Information (Continued)

### I Verification of Debt and Collateral

**[7 CFR 766.102(a)(8)] Verification of all debts and collateral.**

Debts will be verified and documentation included in the case file according to 3-FLP, subparagraph 42 A.

## 82 Additional Information Required if Applying for Other Loan Servicing Programs

### A Debt Settlement

**[7 CFR 766.102(c)] To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under *--subpart B of 7 CFR Part 1956.** (7-FLP, Part 12)

To apply for debt settlement, a borrower must complete and submit RD 1956-1 and may do so at any time. The loan account does not need to be delinquent and the borrower does not need to apply for primary loan serving before applying for debt settlement. See 7-FLP, Parts 8 and 12.**--***

### B Conservation Contract

**[7 CFR 766.102(b)] In addition to the requirements contained in paragraph (a) (**paragraph 81) **of this section, the borrower must submit an aerial photo delineating any land to be considered for a conservation contract.**

To apply for a conservation contract, a borrower must submit to the County Office:

- a complete application as described in paragraph 81
- an aerial photo or map of the tract and approximate legal description, outlining the proposed boundaries of the conservation area.

See Part 5 for more information on conservation contracts.

## 83 Borrower Response Timeframes

### A Borrower Response Timeframes

**[7 CFR 766.101(d)] To be considered for loan servicing, a borrower who is:**

**(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;**

If a distressed borrower becomes 90 calendar days past due before closing a loan restructure, processing will stop and the authorized agency official will send the 90-calendar-day past due notification.

**[7 CFR 766.102(d)] If a borrower who submitted a complete application while current or financially distressed is renotified as a result of becoming 90 days past due, the borrower must only submit a request for servicing in accordance with paragraph (a)(1) (**subparagraph 81 B) **of this section, provided all other information is less than 90 days old and is based on the current production cycle. Any information 90 or more days old or not based on the current production cycle must be updated.**

**[7 CFR 766.102(e)] The borrower need not submit any information under this section that already exists in the Agency's file and is still current as determined by the Agency.**

**[7 CFR 766.101(d)(2)] Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA-2510;**

**[7 CFR 766.101(d)(3)] In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA-2514.**

For borrowers who are 90 calendar days past due or in nonmonetary default, all items required from the borrower according to paragraph 81 must be received in the office by close of business on the last day. If the 60th calendar day is a Saturday, Sunday, or Federal holiday, FSA will accept the borrowers completed application the next workday.

## 83 Borrower Response Timeframes (Continued)

### B When Loan Servicing Application Timeframes Begin

***--**If the loan servicing notification package is sent by certified mail, the timeframes begin the day the certified mail is delivered.**--***

If the loan servicing notification package is sent by first class mail, the timeframes begin 3 calendar days after the mailing date.

If the borrower is an entity or 2 or more individuals not at the same address, the timeframes *** * *** begin the day the last borrower received the loan servicing notification package *** * *** .

### C Incomplete Applications

Borrowers who are notified with FSA-2510 or FSA-2514 and do not submit all required information will be sent FSA-2516 in approximately 30 calendar days to remind them of the final day to submit a complete application and all items still required. No further contact regarding incomplete applications or timeframes is required.

### D SED Extension Authority

SED has the authority to extend the deadline only for the submission of a complete application. This must be based only upon extraordinary circumstances that are beyond the borrower's control, such as serious illness. The authorized agency official must recommend this extension in writing to SED and include specific details of the circumstances. Such extensions normally will not exceed 30 calendar days.

## 84 Releasing Divorced Spouses of Liability

### A General

This paragraph applies only when a borrower requests, with a loan servicing request, a release from liability because of divorce. There is no authority to release individual members of an entity under this part.

FSA will consider releases of liability for borrowers who are current on all payments under 4-FLP.

A divorce does not release an FSA obligor from liability. The authorized agency official will provide a loan servicing notification package to divorced spouses who have not been released of liability according to paragraph 68.

A borrower is responsible for informing FSA of a divorce action and providing FSA with copies of divorce decrees, court sanctioned settlement agreements, and updated contact information, such as a new mailing address and telephone number.

### B Release of Liability Requirements

**[7 CFR 766.102 (f)] When jointly liable borrowers have been divorced and one has withdrawn from the farming operation, the Agency may release the withdrawing individual from liability, provided:**

**(1) The remaining individual submits a complete application in accordance with this section;**

**(2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all Agency loan payments;**

**(3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and**

**(4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.**

***--**The borrowers will submit any information required by the authorized agency official to**--***
address the items in this subparagraph. Common items required include a Divorce Decree, Property Settlement Agreements, Deeds, Bills of Sale, and financial information.

## 84 Releasing Divorced Spouses of Liability (Continued)

### C Applying for Loan Servicing

An application for loan servicing that requests release of liability of a withdrawing spouse is complete and can only be approved when:

- the withdrawing spouse submits the material and documentation required by subparagraph B within the timeframe required by subparagraph 83 A

- the remaining borrower submits all forms and documentation required in paragraph 81 within the required timeframe.

### D Approval or Disapproval of Release of Liability

***--**If a divorced spouse requests a release of liability under this paragraph, the authorized agency official will prepare and forward FSA-2080, all relevant case information, and a well-documented memo summarizing the request to SED. The authorized agency official**--*** will include a recommendation.

If SED approves the release of liability, the authorized agency official may then process the loan servicing request of remaining obligors who have submitted a complete and timely loan servicing application.

If the release cannot be approved by SED, the borrower requesting the release will be given appeal rights. After all appeals are concluded, FSA will continue processing the loan servicing application and both borrowers must jointly execute all remaining documents.

Once the application is complete and all required information is received from both parties, processing a release of a divorced spouse does not delay or suspend the time for FSA to process the application of the remaining borrower.

## 85 Borrowers Do Not Respond to Loan Servicing Notification

### A General Policy

**[7 CFR 766.103 (a)] If a borrower who is financially distressed or current requested loan servicing and received FSA-2512, but fails to respond timely and subsequently becomes 90 days past due, the Agency will notify the borrower in accordance with § 766.101(a)(2)** (subparagraph 67 A)**.**

**[7 CFR 766.103 (b)] If a borrower who is 90 days past due and received FSA-2510, or is in non-monetary, or both monetary and non-monetary default, and received FSA-2514 and fails to timely respond or does not submit a complete application within the 60-day timeframe, the Agency will notify the borrower by certified mail of the following:**

**(1) The Agency's intent to accelerate the loan; and**

**(2) The borrower's right to request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780.**

### B Intent to Accelerate

The authorized agency official must send FSA-2525 and FSA-2526 to a 90-calendar-day past due borrower or a borrower in nonmonetary default who fails to apply for loan servicing within 60 calendar days of borrower receipt of the loan servicing package. If the borrower is an entity or is comprised of 2 or more individuals, the same borrowers that received the original notice will be notified.

## 85 Borrowers Do Not Respond to Loan Servicing Notification (Continued)

### C Borrower's Response

After receiving FSA-2525, a borrower may pay current on delinquent loan installments (up to the point of acceleration) or correct the nonmonetary default. The borrower has 30 calendar days to:

- request reconsideration

  **Note:** The borrower will be given new appeal rights if a reconsideration meeting is held and no resolution is found.

- request Mediation/Alternative Dispute Resolution

  **Note:** The number of days remaining to request an appeal will be suspended while the case is in mediation.

- appeal according to 1-APP.

**86-100 (Reserved)**

## Section 3 Loan Servicing Processing and Requirements

### 101 Initial Processing

#### A General Policy

FSA will not begin processing a loan servicing application until the application is complete.

FSA must process a complete loan servicing application within 60 calendar days of receiving a complete application. See Part 6, Section 2 for application processing deadlines.

### 102 Eligibility

#### A General

**[7 CFR 766.104(a)] A borrower must meet the following eligibility requirements to be considered for primary loan servicing:**

Requirements specific to certain servicing actions are stated in Part 4.

#### B Entity Requirement

If the borrower is an entity or comprised of 2 or more individuals, the entity as well as each member must meet all eligibility requirements (as all are liable) and will be required to sign FSA-2026.

#### C Good Faith

***--[7 CFR 766.104(a)(4)] The borrower has acted in good faith.** If loan servicing is to be denied based on "lack of good faith", a determination must be made by OGC according to 4-FLP, paragraph 100.**--***

## 102 Eligibility (Continued)

### D Reason for Delinquency or Distress

**[7 CFR 766.104(a)(1)] The delinquency or financial distress is the result of reduced repayment ability due to one of the following circumstances beyond the borrower's control:**

**(i) Illness, injury, or death of a borrower or other individual who operates the farm;**

**(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;**

**(iii) Widespread economic conditions such as low commodity prices;**

**(iv) Damage or destruction of property essential to the farming operation; or**

**(v) Loss of, or reduction in, the borrower or spouse's essential non-farm income.**

If the borrower is delinquent or financially distressed because of an action within the borrower's control, the borrower is not eligible for loan servicing.

## 102 Eligibility (Continued)

### E NRV of Nonessential Assets

**[7 CFR 766.104(a)(2)] 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.**

***--**eDALR$ calculates NRV of a borrower's nonessential assets.**--***

### F Borrower in Nonmonetary Default

**[7 CFR 766.104(a)(3)] If the borrower is in non-monetary default, the borrower will resolve the non-monetary default prior to closing the servicing action.**

### G Financially Distressed Borrower

**[7 CFR 766.104(a)(5)] Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.**

A borrower who received FSA-2512 and is not delinquent must pay as much interest as feasible.

### H Federal Crop Insurance Violation

**[7 CFR 766.104(a)(6)] The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718** (1-CM)**.**

### I Debtors With SA Only

**[7 CFR 766.104(b)] Debtors with SA only must:**

**(1) Be delinquent due to circumstances beyond their control;**

**(2) Have acted in good faith.**

## 103 Consideration of Servicing

### A General Policy

*--The authorized agency official uses eDALR$ to determine which loan servicing authority or combination of authorities may be available to the borrower. For additional information on eDALR$ functions, see Exhibit 17.--*

### B Order in Which FSA Considers Servicing Options

**[7 CFR 766.105(a)] The Agency will consider loan servicing options and combinations of options to maximize loan repayment and minimize losses to the Agency. The Agency will consider loan servicing options in the following order for each eligible borrower who requests servicing:**

**(1) Conservation Contract, if requested;**

**(2) Consolidation and rescheduling or reamortization;**

**(3) Deferral;**

**(4) Writedown; and**

**(5) Current market value buyout.**

### C Debt Service Margin

**[7 CFR 766.105(b)] (1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4)** (subparagraph B) **of this section.**

**(2) If the borrower cannot develop a feasible plan with the 110 percent debt service margin, the Agency will reduce the debt service margin by one percent and reconsider all available servicing authorities. This process will be repeated until a feasible plan has been developed or it has been determined that a feasible plan is not possible with a 100 percent margin.**

**(3) The borrower must be able to develop a feasible plan with at least a 100 percent debt service margin to be considered for the servicing options listed in paragraphs (a)(1) through (4)** (subparagraph B) **of this section.**

## 104 Appraisals

### A Current Appraisals

**[7 CFR 766.105(c)] The Agency will obtain an appraisal on:**

**[7 CFR 766.105(c)(1)] All Agency security, non-essential assets, and real property unencumbered by the Agency that does not meet the criteria established in § 766.112(b)** (subparagraph 211 C)**, when:**

**(i) A writedown is required to develop a feasible plan;**

**(ii) The borrower will be offered current market value buyout.**

**[7 CFR 766.105(c)(2)] The borrower's non-essential assets when their net recovery value may be adequate to bring the delinquent loans current.**

***--**If preliminary eDALR$ calculations, with no security entered, show that a write-down or current market value buyout may be required:

- all security will need to be appraised for write-down or current market value calculations
- nonessential assets will need to be appraised as their value is required for eDALR$ calculations
- if FSA has real estate as security and the preliminary eDALR$ report shows a**--*** possible write-down, real estate security projected to be obtained as a best lien obtainable will need to be appraised as the value is required for shared appreciation agreement calculations.

To save appraisal funds, SED may issue a State supplement on obtaining appraisals in stages, such as waiting on the appraisal of essential, unencumbered real estate to determine whether a write-down and FSA-2543 will actually be required.

See 1-FLP, Part 6 for additional information on appraisals.

## 105-115 (Reserved)

## 116 Agency Notification of Servicing Decision

### A Notification Requirement

**[7 CFR 766.106] The Agency will send the borrower notification of the Agency's decision within 60 calendar days after receiving a complete application for loan servicing.**

### B Notifying Financially Distressed or Current Borrowers

**[7 CFR 766.106 (a)(1)] If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.**

***--**Upon approval by the authorized agency official, or SED if any debt is projected to be**--*** forgiven, the borrower will be sent FSA-2519 and FSA-2520 by the authorized agency official.

**[7 CFR 766.106 (a)(1)] (i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.**

**[7 CFR 766.106 (a)(1)] (ii) If the borrower does not accept the offer, the Agency will send the borrower another notification of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2)** (subparagraph 66 A)**.**

**[7 CFR 766.106 (a)(2)] If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will send the borrower the calculations used and the reasons for the adverse decision.**

***--**Upon denial by the authorized agency official, the borrower will be sent FSA-2523 and FSA-2524 by the authorized agency official. A copy of the eDALR$ report will be**--*** included.

**[7 CFR 766.106 (a)(2)] (i) The borrower may request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780 of this title.**

**[7 CFR 766.106 (a)(2)] (ii) The Agency will send the borrower another notification of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2)** (subparagraph 66 A)**.**

**116 Agency Notification of Servicing Decision (Continued)**

**C Notifying Borrowers 90 Days Past Due or in Nonmonetary Default**

**[7 CFR 766.106 (b)(1)] If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.**

***--**Upon approval by the authorized agency official, or SED if any debt is forgiven, the**--***
borrower will be sent FSA-2517 and FSA-2518 by the authorized agency official.

**[7 CFR 766.106 (b)(1)] (i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.**

**[7 CFR 766.106 (b)(1)] (ii) If the borrower does not timely accept the offer, or fails to respond, the Agency will notify the borrower of its intent to accelerate the account.**

**[7 CFR 766.106 (b)(2)] If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will send the borrower notification within 15 days, including the calculations used and reasons for the adverse decision, of its intent to accelerate the account in accordance with subpart H** (Part 15) **of this part, unless the account is resolved through any of the following options:**

***--**Upon denial by the authorized agency official, the borrower will be sent FSA-2521 and**--***
FSA-2522 by the authorized agency official.

**[7 CFR 766.106 (b)(2)] (i) The borrower may request reconsideration, mediation or voluntary meeting of creditors, or appeal in accordance with 7 CFR parts 11 and 780.**

**[7 CFR 766.106 (b)(2)] (ii) The borrower may request negotiation of appraisal within 30 days in accordance with § 766.115** (subparagraph 230 B)**.**

**[7 CFR 766.106 (b)(2)] (iii) If the net recovery value of non-essential assets is sufficient to pay the account current, the borrower has 90 days to pay the account current.**

**[7 CFR 766.106 (b)(2)] (iv) The borrower, if eligible in accordance with § 766.113** (paragraph 321)**, may buyout the loans at the current market value within 90 days.**

**[7 CFR 766.106 (b)(2)] (v) The borrower may request homestead protection if the borrower's primary residence was pledged as security by providing the information required under § 766.152** (Part 7)**.**

**117-125 (Reserved)**

## Section 4 Monitoring the Statute of Limitations (SOL's)

### 126 Monitoring Actions

#### A FLC Responsibilities

FLC's are responsible for monitoring delinquent accounts to ensure that deficiency judgment activities occur before the expiration of 6-year SOL's. In general, after 6 years from the date SOL begins to run, FSA may not obtain a deficiency judgment against a delinquent borrower. FSA may still pursue collection through liquidation of the security and other collection
***--**activities, such as offsets and referral of the debt to Treasury as set forth in 7-FLP.**--***

FLC's shall ensure that:

- the 6-year SOL's on delinquent accounts are monitored
- all cases in which 6-year SOL's have not yet run receive top servicing priority before the statute bars judicial collection through a deficiency judgment
- in cases where 6-year SOL's may bar collection through a deficiency, but the debtor has repayment ability or other assets, consult with the Regional Attorney to determine if a deficiency judgment can be sought.

*** * ***

If FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G
***--**and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.

Judgment debt will be serviced according to 7-FLP, Part 11.**--***

## 126 Monitoring Actions (Continued)

### *--B Authorized Agency Official Action

Each authorized agency official shall maintain a list of all delinquent accounts where--* 6-year SOL's may bar deficiency collection within the next 24 months.

**Note:** In certain situations, the time period remaining under SOL's may be suspended because of other actions that may have prohibited FSA from enforcing collection of the debt such as the debtor filing bankruptcy.

### C Quarterly Reports

Each quarter, authorized agency officials shall send an updated list of cases in subparagraph B to DD's and FLC's.

## *--127 Determining When SOL's Begin to Run

### A Acceleration

In general, when loans are accelerated, SOL's begin to run from the date of acceleration.

### B Delinquent

When a loan has not been accelerated in the loan servicing process or there is no remaining security, SOL generally begins to run on each installment as it comes past due. SOL begins to run when the installment is delinquent or past due, such as the day after the due date.

### C Loan Maturity

In some cases, the beginning date for SOL is the date the final payment was due on the loan.

### D Last Acknowledgement

SOL also runs from the date the borrower acknowledges the debt, such as when the borrower submits a debt settlement application or signs FBP acknowledging the debt.

### E OGC Guidance

States shall consult with their Regional Attorney in cases where the beginning date for SOL's cannot be determined.**--***

## 128-130 (Reserved)

# Part 4 Primary Loan Servicing Programs

## Section 1 Consolidation and Rescheduling

### 131 Eligibility and Loan Terms

#### A Loans Eligible for Consolidation

**[7 CFR 766.107(a)] The Agency may consolidate OL loans if:**

**(1) The borrower meets loan servicing eligibility requirements in § 766.104** (paragraph 102)**;**

**(2) The Agency determines that consolidation will assist the borrower to repay the loans;**

**(3) Consolidating the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;**

**(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;**

**(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR Part 12, if applicable** (see 6-CP)**;**

**(6) The loans are not secured by real estate;**

**(7) The Agency holds the same lien position on each loan;**

**(8) The Agency has not serviced the loans for unauthorized assistance under subpart F** (Part 10) **of this part; and**

**(9) The loan is not currently deferred, as described in § 766.109** (Section 3)**, or set-aside, as described in subpart B** (Part 2) **of this part. The Agency may consolidate loans upon cancellation of the deferral or DSA.**

eDALR$ will be used to determine whether consolidation will be used and if a repayment plan can be developed.

***--**When a restructure is processed, DLS transaction codes 5T – Cancel Disaster Set-Aside and 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Consolidation/Reschedule transaction in DLS Special Servicing.**--***

## 131 Eligibility and Loan Terms (Continued)

### B Loans Eligible for Rescheduling

**[7 CFR 766.107(b)] The Agency may reschedule loans made for chattel purposes, including OL, CL, SW, RL, EE, or EM if:**

**(1) The borrower meets loan servicing eligibility requirements in §766.104** (paragraph 102)**;**

**(2) Rescheduling the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;**

**(3) The Agency determines that rescheduling will assist the borrower to repay the loans;**

**(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;**

**(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable; and**

**(6) The loan is not currently deferred, as described in § 766.109** (Section 3)**, or set-aside, as described in subpart B** (Part 2) **of this part. The Agency may reschedule loans upon cancellation of the deferral or DSA.**

eDALR$ will be used to determine whether a repayment plan can be developed.

***--**When a restructure is processed, DLS transaction codes 5T – Cancel Disaster Set-Aside and 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Consolidation/Reschedule transaction in DLS Special Servicing.**--***

### C Loan Terms

**[7 CFR 766.107(c)] (1) The Agency determines the repayment schedule for consolidated and rescheduled loans according to the borrower's repayment ability.**

**(2) Except for CL and RL loans, the repayment period cannot exceed 15 years from the date of the consolidation and rescheduling.**

**(3) The repayment schedule for RL loans may not exceed 7 years from the date of rescheduling.**

**(4) The repayment schedule for CL loans may not exceed 20 years from the date of the original note or assumption agreement.**

## 132 Interest Rates

### A Consolidated and Rescheduled Loan Interest Rate

**[7 CFR 766.107(d)] The interest rate of consolidated and rescheduled loans will be as follows:**

**(1) The interest rate for loans made at the regular interest rate will be the lesser of:**

**(i) The lowest interest rate for that type of loan on the date a complete servicing application was received;**

**(ii) The lowest interest rate for that type of loan on the date of restructure; or**

**(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.**

**(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:**

**(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;**

**(ii) The limited resource interest rate for that type of loan on the date of restructure; or**

**(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.**

**(3) At the time of consolidation and rescheduling, the Agency may reduce the interest rate to a limited resource rate, if available, if:**

**(i) The borrower meets the requirements for the limited resource interest rate, and**

**(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.**

**(4) Loans consolidated and rescheduled at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51** (4-FLP, subparagraph 31 B) **of this chapter.**

## 132 Interest Rates (Continued)

### A Consolidated and Rescheduled Loan Interest Rate (Continued)

To obtain the original loan note interest rates, the authorized agency official will refer to the borrower's original promissory notes or, for accounts that have been reorganized in bankruptcy, the confirmed plan. See 1-FLP, Exhibit 17 for the current loan program interest rates.

If FSA reschedules a loan at the LR rate, the resulting FSA-2026 will be marked accordingly, and will be subject to annual LR review according to 4-FLP, Part 3.

YL's are **not** eligible for the LR interest rate.

### B Capitalizing Accrued Interest and Adding Protective Advances to the Loan Principal

**[7 CFR 766.107(e)] (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of consolidation and rescheduling.**

**(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of consolidation and rescheduling.**

**(3) The borrower must resolve all other protective advances not capitalized prior to closing the servicing actions.**

### C Installments

**[7 CFR 766.107(f)] If there are no deferred installments, the first installment payment under the consolidation and rescheduling will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is executed and the next installment due date.**

### D Preparing and Disposing of Promissory Notes

***--**The new FSA-2026 amounts and installments will match the eDALR$ output report. The**--***existing promissory note will be marked rescheduled and stapled to the new FSA-2026 that will be filed in the fireproof safe. A copy of the new FSA-2026 will be placed in the case file and attached to the copy of the existing promissory note and another given to the borrower.

## 133-144 (Reserved)

## Section 2 Reamortization

### 145 Eligibility and Loan Terms

#### A Loans Eligible for Reamortization

**[7 CFR 766.108(a)] The Agency may reamortize loans made for real estate purposes, including FO, SW, RL, SA, EE, RHF, CL and EM if:**

**(1) The borrower meets the loan servicing eligibility requirements listed in § 766.104** (paragraph 102)**;**

**(2) Reamortization will bring the borrower's account current or prevent the borrower from becoming delinquent;**

**(3) The Agency determines that reamortization will assist the borrower to repay the loan;**

**(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;**

**(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable; and**

**(6) The loan is not currently deferred, as described in § 766.109** (Section 3)**, or set-aside, as described in subpart B** (Part 2) **of this part. The Agency may reamortize loans upon cancellation of the deferral or DSA.**

eDALR$ will be used to determine whether a repayment plan can be developed.

***--**When a restructure is processed, DLS transaction codes 5T – Cancel Disaster Set-Aside and 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Reamortization transaction in DLS Special Servicing.**--***

**145 Eligibility and Loan Terms (Continued)**

**B Loan Terms**

**[7 CFR 766.108(b)] (1) Except as provided in paragraph (b)(2), the Agency will reamortize loans within the remaining term of the original loan or assumption agreement unless a feasible plan cannot be developed or debt forgiveness will be required to develop a feasible plan.**

**(2) If the Agency extends the loan term, the repayment period from the original loan date may not exceed the maximum number of years for the type of loan being reamortized as set forth below, or the useful life of the security, whichever is less.**

**(i) FO, SW, RL, EE real estate type, and EM loans made for real estate purposes may not exceed 40 years from the date of the original note or assumption agreement.**

**(ii) EE real estate-type loans secured by chattels only may not exceed 20 years from the date of the original note or assumption agreement.**

**(iii) RHF may not exceed 33 years from the date of the original note or assumption agreement.**

**(iv) SA loans may not exceed 25 years from the date of the original Shared Appreciation note.**

***--(v) CLs may not exceed 20 years from the date of the original note or assumption agreement.--***

## 146 Interest Rates

### A Reamortized Loan Interest Rate

**[7 CFR 766.108(c)] The interest rate will be as follows:**

**[7 CFR 766.108(c)] (1) The interest rate for loans made at the regular interest rate will be the lesser of:**

**(i) The lowest interest rate for that type of loan on the date a complete servicing application was received;**

**(ii) The lowest interest rate for that type of loan on the date of restructure; or**

**(iii) The original loan note rate of the note being reamortized.**

**[7 CFR 766.108(c)] (2) The interest rate for loans made at the limited resource interest rate will be the lesser of:**

**(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;**

**(ii) The limited resource interest rate for that type of loan on the date of restructure; or**

**(iii) The original loan note rate of the note being reamortized.**

**[7 CFR 766.108(c)] (3) At the time of reamortization, the Agency may reduce the interest rate to a limited resource rate, if available, if:**

**(i) The borrower meets the requirements for the limited resource interest rate; and**

**(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.**

**[7 CFR 766.108(c)] (4) Loans reamortized at the limited resource interest rate will be subject to annual limited resource review in accordance with 765.51 of this chapter.**

To obtain the original loan note interest rates, the authorized agency official will refer to the borrower's original promissory notes or, for accounts that have been reorganized in bankruptcy, the confirmed plan. See 1-FLP, Exhibit 17 for the current loan program interest rates.

If FSA reschedules a loan at the LR rate, the resulting FSA-2026 will be marked accordingly, and will be subject to annual LR reviews according to 4-FLP, Part 3.

**[7 CFR 766.108(c)] (5) SA payment agreements will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.**

## 146 Interest Rates (Continued)

### B Capitalizing Accrued Interest and Adding Protective Advances to the Loan Principal

**[7 CFR 766.108(d)] (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of reamortization.**

**(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of reamortization.**

**(3) The borrower must resolve all other protective advances not capitalized prior to closing the reamortization.**

### C Installments

**[7 CFR 766.108(e)] If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is executed and the next installment due date.**

### D Preparing FSA-2026's

***--**The new FSA-2026 amounts and installments will match the eDALR$ output report. The**--***
existing promissory note will be marked reamortized and stapled to the new FSA-2026 that will be filed in the fireproof safe. A copy of the new FSA-2026 will be placed in the case file and attached to the copy of the existing promissory note and another given to the borrower.

## 147-158 (Reserved)

## Section 3 Deferrals

### 159 Conditions and Operating Plans

#### A Conditions for approving Deferrals

**[7 CFR 766.109(a)] The Agency will only consider deferral of loan payments if:**

**(1) The borrower meets the loan servicing eligibility requirements of §766.104** (paragraph 102)**;**

**(2) Rescheduling, consolidation, and reamortization of all the borrower's loans, will not result in a feasible plan with 110 percent debt service margin;**

**(3) The need for deferral is temporary; and**

**(4) The borrower develops feasible first-year deferral and post-deferral farm operating plans subject to the following:**

**(i) The deferral will not create excessive net cash reserves beyond that necessary to develop a feasible plan.**

FSA does not allow net cash reserves for capital purchases beyond those required to develop a feasible plan, as such purchases are not considered operating expenses.

**(ii) The Agency will consider a partial deferral if deferral of the total Agency payment would result in the borrower developing more cash availability than necessary to meet debt repayment obligations.**

***--**eDALR$ will be used to determine whether a repayment plan can be developed.**--***

#### B First Year Plan

The plan developed according to subparagraph 81 H is the first year plan of the deferral.

#### C Post-Deferral Plan

A post-deferral plan is developed to project the borrower's operations for the year following the deferral period according to subparagraph 160 A.

## 160 Deferral Period and Associated Restructuring

### A Deferral period

**[7 CFR 766.109(b)] (1) The deferral term will not exceed 5 years and will be determined based on the post- deferral plan that results in the:**

**(i) Greatest improvement over the first year cash available to service FLP debt;**

**(ii) The shortest possible deferral period.**

**(2) The Agency will distribute interest accrued on the deferred principal portion of the loan equally to payments over the remaining loan term after the deferral period ends.**

Deferrals are beneficial only if the cash available to service the borrower's FSA debt increases in the year after the deferral period ends.

In some cases, such as in a major reorganization of the operation, debt structure, or essential development, it may be necessary to develop and consider plans for multiple years.
***--**Justification for length of deferral must be well documented in the case file.

FSA-2026 must identify debt as rescheduled or reamortized with deferral and include the addendum required by FSA-2026 instructions.**--***

### B Associated Loan Servicing

**[7 CFR 766.109(d)] (1) The Agency must cancel an existing deferral if the Agency approves any new primary loan servicing action.**

**(2) Loans deferred will also be serviced in accordance with §§ 766.107, 766.108 and 766.111** (paragraphs 131, 145, and 172)**, as appropriate.**

When a restructure is processed, the DLS transaction code 5Y – Cancel Loan Deferral will be sequenced to process before the 1M – Loan Consolidation/Reschedule/Reamortization transaction in DLS Special Servicing.

FSA-2026 rescheduled, reamortized or consolidated for the deferral will show "zero" as the installment due during the period of the deferral if the whole note is deferred. The authorized agency official will determine the amount of interest that will accrue during the deferral period and the installments using eDALR$ and calculations provided in FSA-2026 instructions.

## 161 Agency Actions When Borrower's Repayment Ability Improves

### A Obtaining a Supplementary Payment Agreement from the Borrower

**[7 CFR 766.109(c)(1)] If during the deferral period the borrower's repayment ability has increased to allow the borrower to make payments on the deferred loans, the borrower must make supplemental payments, as determined by the Agency. If the borrower agrees to make supplemental payments, but does not do so, the borrower will be considered to be in non-monetary default.**

As described in 1-FLP, Part 8, Section 5, FSA must perform a year-end analysis for a borrower with a loan deferral. If the year-end analysis reveals an increase in the borrower's net income, thereby allowing the borrower to make larger payments during the deferral period, the borrower must execute FSA-2027 within 30 calendar days.

FSA will consider refusal to sign FSA-2027 or make supplemental payments a nonmonetary default and the borrower will be notified according to Part 3.

### B Borrowers Able to Graduate

**[7 CFR 766.109(c)(2)] If the Agency determines that the borrower's improved repayment ability will allow graduation, the Agency will require the borrower to graduate in accordance with part 765, subpart C** (4-FLP, Part 4) **of this chapter.**

## 162-171 (Reserved)

## Section 4 Write-Down

### 172 Considering a Write-Down

**A Eligibility**

**[7 CFR 766.111(a)] The Agency will only consider a writedown if the borrower:**

**(1) Meets the eligibility criteria in § 766.104** (paragraph 102)**;**

**(2) Is delinquent;**

**(3) Has not previously received debt forgiveness on any FLP direct loan; and**

**(4) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR Part 12.**

**B Conditions**

**[7 CFR 766.111(b)] (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, including writedown is achieved with a debt service margin of 101 percent or more, the Agency will determine if a feasible plan can be achieved without a writedown. If a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.**

**(2) The present value of the restructured loan must be greater than or equal to the net recovery value of Agency security and any non-essential assets.**

**(3) The writedown amount, excluding debt reduction received through Conservation Contract, does not exceed $300,000.**

**(4) A borrower who owns real estate must execute an SAA in accordance with § 766.201** (subparagraph 249 C)**.**

**C Associated Loan Servicing**

**[7 CFR 766.111(c)] Loans written down will also be serviced in accordance with §§766.107 and 766.108** (Sections 1 and 2)**, as appropriate.**

### 173-190 (Reserved)

# Part 5 Conservation Contract

## 191 General Eligibility Requirements and Conservation Contract Limitations

### A Purpose of the Conservation Contract Program

A borrower may enter into a conservation contract in exchange for FSA reducing a portion of the FLP real estate indebtedness.

The Conservation Contract Program:

- helps protect and conserve important environmental resources on borrower land pledged as collateral to FSA
- provides debt relief to borrowers.

FSA may consider a request for a conservation contract from any FLP borrower who has program loans with real estate security.

FSA also notifies borrowers of the Conservation Contract Program when offering loan servicing according to Part 3.

**[7 CFR 766.110(a)] (1) A debtor with only SA or Non-Program loan is not eligible for a Conservation Contract. However, an SA or Non-Program loan may be considered for a Conservation Contract if the borrower also has FLP program loans.**

**(2) A current or financially distressed borrower may request a Conservation Contract at any time prior to becoming 90 days past due.**

**(3) A delinquent borrower may request a Conservation Contract during the same 60-day time period in which the borrower may apply for primary loan servicing. The borrower eligibility requirements established at § 766.104 will apply.**

## 191 General Eligibility Requirements and Conservation Contract Limitations (Continued)

### B Offering Conservation Contract

**[7 CFR 766.110(g)] The Conservation Contract must meet the following conditions:**

**(1) Result in a feasible plan for current borrowers; or**

**(2) Result in a feasible plan with or without primary loan servicing for financially distressed or delinquent borrowers; and**

**(3) Improve the borrower's ability to repay the remaining balance of the loan.**

FSA may offer a delinquent or financially distressed borrower a conservation contract if all of the following conditions are met:

- conservation contract, alone or in combination with loan servicing programs, enables the borrower to develop a feasible plan
- conservation contract improves the borrower's ability to repay the remaining balance of the loan
- borrower is eligible for loan servicing
- conservation contract review team determines that the borrower's land is eligible for a conservation contract and all other requirements of this part are met.

See Part 3 for more information on loan servicing and loan servicing eligibility.

FSA may offer a current borrower, who is not financially distressed, a conservation contract if all of the following conditions are met:

- conservation contract must result in a feasible plan
- conservation contract improves the borrower's ability to repay the remaining balance of the loan
- conservation contract review team determines the borrower's land is eligible for a conservation contract and all requirements of this part are met.

See paragraph 195 for more information on the conservation contract review team.

## 191 General Eligibility Requirements and Conservation Contract Limitations (Continued)

### C Eligible Debt

Only FLP debt secured by the real estate under consideration can be canceled by a conservation contract.

### D Contract Term

**[7 CFR 766.110(d)] The borrower selects the term of the contract, which may be 10, 30, or 50 years.**

### E Conservation Contracts and CRP

A borrower may place a conservation contract on real estate already contracted to CRP if both terms of:

- FSA-2535 do not violate the terms of the CRP contract
- the CRP contract do not violate the terms of FSA-2535.

## 192 Eligible Land and Purposes

### A Eligible Land

**[7 CFR 766.110(a)(6)] Only loans secured by the real estate that will be subject to the *--Conservation Contract may be considered for debt reduction under this section.--***

**[7 CFR 766.110(b)] The following types of land are eligible to be considered for a Conservation Contract by the Conservation Contract review team:**

**[7 CFR 766.110(b)] (1) Wetlands or highly erodible lands; and**

**[7 CFR 766.110(b)] (2) Uplands that meet any one of the following criteria:**

**[7 CFR 766.110(b)(2)] (i) Land containing aquatic life, endangered species, or wildlife habitat of local, State, tribal, or national importance;**

Wildlife habitat is land that provides direct support for wildlife, species life stages, wildlife populations, or wildlife communities identified by either:

- the conservation agency within the State as being of State, regional, local, or tribal importance
- FWS to be of national importance.

This wildlife habitat area must have all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

**[7 CFR 766.110(b)(2)] (ii) Land in 100-year floodplains;**

**[7 CFR 766.110(b)(2)] (iii) Areas of high water quality or scenic value;**

**[7 CFR 766.110(b)(2)] (iv) Historic or cultural properties listed in or eligible for the National Register of Historic Places;**

**[7 CFR 766.110(b)(2)] (v) Aquifer recharge areas of local, regional, State, or tribal importance;**

**[7 CFR 766.110(b)(2)] (vi) Buffer areas necessary for the adequate protection of *--proposed Conservation Contract areas, or other areas enrolled in other conservation programs;--***

**[7 CFR 766.110(b)(2)] (vii) Areas that contain soils generally not suited for cultivation; or**

**[7 CFR 766.110(b)(2)] (viii) Areas within or adjacent to Federal, State, tribal, or locally administered conservation areas.**

## 192 Eligible Land and Purposes (Continued)

### A Eligible Land (Continued)

These areas are within or adjacent to the following:

- National Park
- FWS-administered area
- State fish and wildlife agency administered area
- National Forest
- Bureau of Land Management administered area
- Wilderness Area
- National Trail
- unit of the Coastal Barrier Resource System
- abandoned railroad corridors contained in local, State, or Federal open space, recreation, or trail plans
- Federal or State wild or scenic river
- U.S. Army Corps of Engineers land designated for flood control or recreation purposes
- State and local recreation, natural, or wildlife areas
- State conservation agency administered areas.

### *--B Unsuitable Acreage

**[7 CFR 766.110 (c)] Notwithstanding paragraph (b) (**subparagraph 192 A) **of this section, acreage is unsuitable for a Conservation Contract if:--***

**(1) It is not suited or eligible for the program due to legal restrictions;**

**(2) It has on-site or off-site conditions that prohibit the use of the land for conservation, wildlife, or recreational purposes; or**

**192 Eligible Land and Purposes (Continued)**

***--B Unsuitable Acreage (Continued)**

**(3) The Conservation Contract review team determines that the land does not provide measurable conservation, wildlife, or recreational benefits;**

**(4) There would be a duplication of benefits as determined by the Conservation Contract review team because the acreage is encumbered under another Federal, State, or local government program for which the borrower has been or is being compensated for conservation, wildlife or recreation benefits;**

**(5) The acreage subject to the proposed Conservation Contract is encumbered under a Federal, State, or Local government cost share program that is inconsistent with the purposes of the proposed Conservation Contract, or the required practices of the cost share program are not identified in the conservation management plan.**

**(6) The tract does not contain a legal right of way or other permanent access for the term of the contract that can be used by the Agency or its designee to carry out the contract; or**

**(7) The tract, including any buffer areas, to be included in a Conservation Contract is less than 10 acres.--***

**C Eligible Purposes**

**[7 CFR 766.110(a)(4)] A Conservation Contract may be established for conservation, recreation, and wildlife purposes.**

FSA-2535 must establish a conservation easement that either:

- conserves or protects wetlands, highly erodible land, upland, or wildlife habitat
- provides recreation land for public use
- conserves or protects wildlife habitat that contains fish and wildlife habitats of local, State, tribal, or national importance
- provides a combination of conservation and protection of wetlands, highly erodible land, upland, or wildlife habitat and recreation.

Recreational easements may be used for both consumptive, such as hunting and fishing, and nonconsumptive, such as camping and hiking, activities. Recreational easements must protect wildlife, conserve wildlife's habitats, ensure public safety, and comply with all applicable laws, regulations, and ordinances. Recreational easements cannot inhibit the operation of the remaining farm enterprise.

## 192 Eligible Land and Purposes (Continued)

### D Ineligible Purposes

**[7 CFR 766.110(a)(5)] The land under a Conservation Contract cannot be used for the production of agricultural commodities during the term of the contract.**

Unless explicitly authorized by FSA-2535 or a conservation contract management plan, the borrower is prohibited from using the conservation easement for any of the following purposes or activities:

- haying, mowing, seed harvesting, or timber harvesting
- altering grassland, woodland, wildlife habitat, or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover
- dumping refuse, wastes, sewage, or other debris
- draining, dredging, channeling, filling, leveling, pumping, impounding, or other related activities, as well as altering or tampering with water control structures or devices
- diverting, or causing, or permitting the diversion of surface or underground water into, within, or out of the contract area by any means
- building or placing structures on the contract area
- planting or harvesting any crop
- grazing or allowing livestock on the contract area.

## 193 Amount of Debt Canceled by Conservation Contract

### A Maximum Debt Reduction for a Financially Distressed or Current Borrower

**[7 CFR 766.110(h)] The amount of debt reduction by a Conservation Contract is calculated as follows:**

**(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.**

| _____ divided by | _____ = | _____ |
|---|---|---|
| Contract acres | Total acres | Percent of contract acres to total acres |

**(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by the percentage calculated under paragraph (h)(1) of this section to determine the amount of Agency debt that is secured by the contract acreage.**

| _____ x | _____ = | _____ |
|---|---|---|
| Total FLP debt under (h)(1) | Percent calculated contract acres | FLP debt secured by |

**(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by 33 percent.**

_____ x 33% = _____
Total FLP debt

**(4) The lesser of the amounts calculated in paragraphs (h)(2) and (h)(3) of this section is the maximum amount of debt reduction for a 50-year contract.**

**(5) The borrower will receive 60 percent of the amount calculated in paragraph (h)(4) of this section for a 30-year contract.**

_____ x 60% = _____
Result from (h)(4) Maximum debt reduction for a 30-year contract

**(6) The borrower will receive 20 percent of the amount calculated in paragraph (h)(4) of this section for a 10-year contract.**

_____ x 20% = _____
Result from (h)(4) Maximum debt reduction for a 10-year contract

## 193 Amount of Debt Canceled by Conservation Contract (Continued)

### A Maximum Debt Reduction for a Financially Distressed or Current Borrower (Continued)

**Example:** A financially distressed or current borrower has a 1,000-acre farm. All 1,000 acres are pledged as security for FO. The unpaid FLP loan balance is $100,000 (principal, interest, and recoverable costs already paid by FSA). The *** * *** market value of the farm is $150,000. The borrower proposes to set aside 100 acres for a 30-year FSA-2535.

Step 1. 100 acres ÷ 1,000 acres = 10 percent
Step 2. $100,000 x 10 percent = $10,000
Step 3. $100,000 x 33 percent = $33,000
Step 4. The maximum amount of debt reduction for a 50-year contract = $10,000
Step 5. Maximum debt reduction for a 30-year contract: $10,000 x 60% = $6,000
Step 6. Maximum debt reduction for a 10-year contract: $10,000 x 20% = $2,000

### B Maximum Debt Reduction for a Delinquent Borrower

***--[7 CFR 766.110(i)] The amount of debt reduction by a Conservation Contract is--* calculated as follows:**

**(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.**

| _____ divided by | _____ = | _____ |
|---|---|---|
| **Contact acres** | **Total acres** | **Percent of contract acres to total acres** |

**(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by the percentage calculated in paragraph (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.**

| _____ x | _____ = | _____ |
|---|---|---|
| **Total FLP debt in (i)(1)** | **Percent calculated contract acres** | **FLP debt secured by** |

***--(3) Multiply the market value of the total acres, less contributory value of any--* structural improvements, that secure the borrower's FLP loans by the percent calculated in paragraph (i)(1) of this section to determine the current value of the acres in the contract.**

| _____ x | _____ = | _____ |
|---|---|---|
| **Market value of total acres less contributory value of structural improvements** | **Percent calculated in (i)(1)** | **Market value of acres in the contract** |

**193 Amount of Debt Canceled by Conservation Contract (Continued)**

**B Maximum Debt Reduction for a Delinquent Borrower (Continued)**

***--(4) Subtract the market value of the contract acres calculated in paragraph (i)(3) of this section from the FLP debt secured by the contract acres as calculated in paragraph--* (i)(2) of this section.**

**_____ - _____ = _____**
**Result from (i)(2) Result from (i)(3) Difference**

**(5) Select the greater of the amounts calculated in paragraphs (i)(3) and (i)(4) of this section.**

**(6) The lesser of the amounts calculated in paragraphs (i)(2) and (i)(5) of this section will be the maximum amount of debt reduction for a 50-year contract term.**

**(7) The borrower will receive 60 percent of the amount calculated in paragraph (i)(6) of this section for a 30-year contract term.**

**_____ x 60% = _____**
**Result from (i)(6) Maximum debt cancellation for a 30-year term**

**(8) The borrower will receive 20 percent of the amount calculated in paragraph (i)(6) of this section for a 10-year contract term.**

**_____ x 20% = _____**
**Result from (i)(6) Maximum debt cancellation for a 10-year term**

**Example:** A delinquent borrower has a 1,000-acre farm. All 1,000 acres are pledged as security for FO. The unpaid FLP loan balance is $100,000 (principal, interest, and recoverable costs already paid by FSA). The *** * *** market value of the farm is $150,000. The contributory value of structural improvements is $20,000. The borrower proposes to set aside 100 acres for a 30-year FSA-2535.

Step 1. 100 acres ÷ 1,000 acres = 10 percent
Step 2. $100,000 x 10 percent = $10,000
Step 3. ($150,000-$20,000) x 10 percent = $13,000
Step 4. $10,000 - $13,000 = -$3,000
Step 5. The greater of steps 3 and 4 is $13,000
Step 6. Maximum amount of debt reduction for a 50-year contract term: the lesser of steps 2 and 5 is $10,000
Step 7. Maximum debt cancellation for a 30-year term: $10,000 x 60 percent = $6,000
Step 8. Maximum debt cancellation for a 10-year term: $10,000 x 20 percent = $2,000

## 193 Amount of Debt Canceled by Conservation Contract (Continued)

### C Debt Forgiveness

The debt reduced through FSA-2535 is **not** considered debt forgiveness under CONACT.

## 194 Processing Conservation Contract Request

### A Applying for Conservation Contract

***--**All requests for conservation contracts must be tracked using DLS Special Servicing.**--***

A borrower who is delinquent, financially distressed, or in nonmonetary default and is interested in receiving loan servicing, including a conservation contract, must submit:

- a loan servicing application package according to paragraphs 81 and 82
- an aerial photo or map of the borrower's land that delineates the proposed conservation area according to subparagraph 82 B.

A current borrower who is not financially distressed may request a conservation contract by submitting:

- all the information and documentation required to develop feasible plan according to 1-FLP, Part 8
- an aerial photo or map that delineates the proposed conservation area according to subparagraph 82 B.

## 194 Processing Conservation Contract Request (Continued)

### B Processing a Delinquent or Financially Distressed Borrower's Request

*--If the borrower is eligible for loan servicing, the authorized agency official uses eDALR$--* to determine which loan servicing program or combination of programs may enable the borrower to develop a feasible plan.

*--When using eDALR$ to process a loan servicing application that includes a request for a conservation contract, the authorized agency official shall input into eDALR$ the contract--* term and conservation acreage.

- The authorized agency official should determine the financial effect of the different *--contract lengths by running the 3 contract term scenarios on eDALR$, such as 10-, 30-, and 50-year contract terms. By varying the contract term and holding all other eDALR$ input parameters constant, the authorized agency official and borrower may compare--* the magnitude of debt cancellation across contract terms.

- The authorized agency official also should vary the conservation acreage to determine the effect of changing the size of the proposed conservation contract area. The authorized agency official extrapolates the size of the proposed conservation area from the area marked on the borrower's aerial photo or map. For each contract term that enables a borrower to develop a feasible plan, the authorized agency official should record the minimum conservation acreage that is needed to create a feasible plan.

**Example:** A delinquent borrower applies for loan servicing and indicates an interest in FSA-2535. The aerial photo the borrower submits indicates the proposed *--conservation area is 1,000 acres. Using eDALR$, the authorized agency official determines that the borrower can develop a feasible plan if the borrower accepts FSA-2535 for 30 or 50 years. eDALR$ indicates that a 50-year contract reduces the borrower's debt by $20,000, while a 30-year contract reduces the borrower's debt by $12,000. By adjusting the number of acres inputted into eDALR$, the--* authorized agency official determines that at a minimum, the borrower has to place 700 acres of land into a conservation easement under a 30-year contract or 500 acres of land into a conservation easement under a 50-year contract to develop a feasible plan.

## 194 Processing Conservation Contract Request (Continued)

### C Processing a Current Borrower's Request

Once the authorized agency official receives all necessary information and documentation required to apply for a conservation contract from a current borrower who is not financially distressed, the authorized agency official:

•*****--may use eDALR$ to determine the amount of debt to be canceled--*****

- must verify that the farm operation would remain feasible after the proposed conservation easement is implemented.

*****--The authorized agency official may use eDALR$ to determine what effect varying--***** contract terms and conservation contract area has on the debt cancellation amount when processing the borrower's conservation contract request.

### D Preliminary Approval of Conservation Contract for a Delinquent or Distressed Borrower

*****--If eDALR$ determines that a conservation contract, alone or in combination with other--***** loan servicing programs, could enable a delinquent or financially distressed borrower to develop a feasible plan, the authorized agency official informs the borrower of the:

- potential contract terms
- amount of real estate debt that could be canceled by setting aside the area indicated on the aerial photo or map under each eligible contract term
- minimum amount of acres that must be set aside under each contract term
- amount of real estate debt that is canceled if the minimum number of acres under each contract term is set aside
- other loan servicing programs, if any, that must be implemented along with FSA-2535.

## 194 Processing Conservation Contract Request (Continued)

### D Preliminary Approval of Conservation Contract for a Delinquent or Distressed Borrower (Continued)

If the borrower wants to pursue a contract with a term and acreage that enables the borrower to develop a feasible plan, the authorized agency official must explain to the borrower that:

- FSA will establish a conservation contract review team
- conservation contract review team may survey the entirety of the borrower's land so that all sensitive areas may be included for consideration, not just the area marked on the photo or map submitted by the borrower, and delineate conservation contract eligible areas
- issuing FSA-2535 depends on conservation contract review team approval
- conservation contract plan must be adhered to for the term of the contract.

### E Preliminary Approval of Conservation Contract for a Current Borrower That Is Not Financially Distressed

If the farm operation will remain feasible after a current borrower who is not distressed implements FSA-2535, the authorized agency official will notify the borrower of preliminary approval. The authorized agency official should indicate the amount of real estate debt canceled by setting aside the area indicated on the aerial photo or map under each contract term.

The authorized agency official must explain to the borrower that has been tentatively approved and wants to pursue a contract, that:

- conservation contract review team will be established

  **Note:** See paragraph 195 for more information on conservation contract review teams.

- conservation contract review team may survey the entirety of the borrower's land so that all sensitive areas may be included for consideration, not just the area marked on the photo or map submitted by the borrower, and delineate conservation contract eligible areas
- issuing FSA-2535 depends on conservation contract review team approval.

## 195 Conservation Contract Review Team

### A Policy

The conservation contract review team determines whether a borrower possesses any land that can fulfill the land eligibility and conservation purpose requirements discussed in paragraph 192.

### B When to Establish Conservation Contract Review Team

The authorized agency official establishes a conservation contract review team after conducting a preliminary financial analysis that indicates that a conservation contract could enable either:

- a delinquent or financially distressed borrower to develop a feasible plan with or without primary loan servicing

- a current borrower to develop a feasible plan.

See subparagraphs 194 C and D for more information on conducting a preliminary financial analysis of a conservation contract.

### C Conservation Contract Review Team Membership

The authorized agency official establishes a conservation contract review team by inviting representatives from NRCS, FWS, and FSA to participate on the team. At a minimum, a conservation contract review team must have 1 representative from each of these Agencies.

FSA, NRCS, or FWS also may invite representatives of other entities that may have an interest in a conservation contract or may qualify to be a management authority for a conservation contract. Examples of these entities include the following:

- State fish and wildlife agencies
- conservation districts
- National Park Service
- Forest Service
- State Historic Preservation Officer
- State conservation agencies
- State environmental protection agencies
- State natural resource agencies.

The authorized agency official should provide information on the location of the farm FSA is considering for a conservation contract and a general description of the farm's land to all individuals invited to participate on the conservation contract review team.

## 195 Conservation Contract Review Team (Continued)

### D Conservation Contract Review Team's Site Visit

The conservation contract review team should visit the farm within **15 workdays** of the date the authorized agency official extended invitations to potential conservation contract review team participants.

To facilitate the conservation contract review team's site visit, the authorized agency official may appoint a conservation contract review team coordinator. The coordinator is responsible for establishing the date and time the team meets to review the farm FSA is considering for a conservation contract.

The authorized agency official must invite all affected lienholders and the borrower who applied for a conservation contract to the conservation contract review team's site visit.

During the site visit, the conservation contract review team should survey the entire farm to:

- delineate land tracts that meet conservation contract land eligibility requirements

  **Note:** See subparagraph 192 A for land types eligible for a conservation contract.

- consider which conservation contract purpose, if any, is most appropriate for each eligible land tract, as described in subparagraph 192 D

- consider management plans most appropriate for each land tract where an eligible conservation contract purpose can be established

***--Note:** The FSA representative on the conservation contract review team will complete FSA-851 for all property proposed to be placed under the conservation contract.**--***

## 195 Conservation Contract Review Team (Continued)

### E Conservation Management Plan

***--[7 CFR 766.110(e)] The Agency, with the recommendations of the Conservation Contract review team, is responsible for developing a conservation management plan. The conservation management plan will address the following:**

**(1) The acres of eligible land and the approximate boundaries, and**
**(2) A description of the conservation, wildlife, or recreation benefits to be realized.--***

Within 30 calendar days of visiting a farm, the conservation contract review team should submit a report to FSA indicating whether a conservation contract is appropriate given the nature of the land. The report must address:

- how many conservation eligible tracts could be established on the farm
- each tract's approximate boundaries, which may extend beyond wetland, highly erodible land, upland, and wildlife habitat if necessary for either the establishment of identifiable contract boundaries or for the efficient management of the tract
- each tract's land type
- the eligible conservation purposes that could be established on the tract.

The report must indicate any special terms or conditions that FSA would need to place on FSA-2535 because of unique or important features that would not be adequately addressed by the standard contract terms and conditions.

The conservation contract review team must develop a management plan for each conservation eligible tract. The management plans should:

- include detailed instructions on establishing and maintaining the conservation easement
- estimate the costs to the borrower involved in establishing and maintaining the conservation easement.

The management plan should specifically recommend whether public recreational use and public hunting should be allowed and justify these recommendations.

Each conservation contract review team member must sign the report. Any dissenting opinions should be included in the report.

### F FSA's Review of Conservation Contract Review Team's Report

The conservation contract review team sends the finished report to the authorized agency official servicing the borrower's account. The authorized agency official must review the report for consistency with FSA requirements and goals. See subparagraphs 195 G and H for more information on processing FSA-2535 after reviewing the conservation contract review team's report.

## 195 Conservation Contract Review Team (Continued)

### G Actions After Reviewing Conservation Contract Review Team Report

The authorized agency official reviews the completed conservation contract review team report. If the report recommends a conservation contract, the authorized agency official determines the boundaries for each contract eligible area by the most appropriate method including, but not limited to, rectangular surveys, aerial photographs, or GPS waypoints. FSA does not require a professional survey of the contract area, but one can be used where FSA determines one is needed.

The authorized agency official must determine the costs that the borrower will incur to create and maintain each contract eligible conservation area. Before signing FSA-2535, FSA must ensure that a borrower has sufficient funds to create and maintain a conservation area.

For a delinquent or distressed borrower, the authorized agency official must determine which areas recommended in the report enable the borrower to develop a feasible plan. The authorized agency official should have determined through earlier financial analysis the contract term and minimum number of acres that must be set aside to enable the borrower to
***--**develop a feasible plan. The authorized agency official must rerun eDALR$ to verify that each contract eligible area enables the borrower to develop a feasible plan.

For a current borrower who is not financially distressed, the farm operation must remain**--***
feasible after FSA-2535 is implemented.

## 195 Conservation Contract Review Team (Continued)

### G Actions After Reviewing Conservation Contract Review Team Report (Continued)

If the contract review team has recommended a conservation contract and the authorized agency official determines that the report identifies at least 1 contract eligible area that produces or maintains a feasible plan, the authorized agency official must notify the borrower of the available contract options.

To notify a borrower who is delinquent or financially distressed, the authorized agency official sends the appropriate offer of loan servicing according to Part 3 and a copy of the contract review team's report to the borrower. To notify a current borrower of the borrower's servicing options, the authorized agency official must send the borrower a memo on FSA letterhead and include a copy of the contract review team's report.

The notification for both delinquent and current borrowers must identify the:

- tracts on the borrower's land that are eligible for a conservation contract
- amount of debt canceled by each contract term on each eligible tract
- tracts that would provide the most benefit for conservation
- costs the borrower will incur to create and maintain a conservation contract
- requirements of FSA-2535
- *****--corrective action required by FSA-851 which must be completed by the borrower before FSA approval of the conservation contract.**--***

The notification for a delinquent or financially distressed borrower also should include contract terms for each eligible tract that produces a feasible plan.

Final approval authority for a conservation contract will be SED.

## 195 Conservation Contract Review Team (Continued)

### H Adverse Decision on Conservation Contract Request

***--**The authorized agency official sends a borrower that is delinquent or financially distressed a notice of mediation and appeal rights according to Part 6 when either:

- FSA finds the borrower to be ineligible for loan servicing, including a conservation contract
- eDALR$ determines that loan servicing, including a conservation contract, does not enable the borrower to develop a feasible plan
- the authorized agency official determines that the borrower does not possess contract eligible land that enables the borrower to develop a feasible plan.

The authorized agency official sends a current borrower who is not financially distressed a**--***letter of denial with mediation and appeal rights according to 1-APP when either:

- the authorized agency official determines that the farm operation will not remain feasible after the borrower implements FSA-2535
- the contract review team determines that the borrower's land does not possess a conservation eligible tract.

The authorized agency official sends the borrower a copy of the contract review team's report with the adverse decision notice.

**[7 CFR 766.110(l)] Borrower appeals of the Natural Resources Conservation Service's (NRCS) technical decisions made in connection with a Conservation Contract will be handled in accordance with applicable NRCS regulations. Other aspects of the denial of a Conservation Contract may be appealed in accordance with 7 CFR parts 11 and 780.**

### I Timeframe for Processing Conservation Contract Request

See Part 3 for more information on loan servicing application processing timeframes.

The authorized agency official should process the request for a conservation contract by a current borrower who is not financially distressed in a timely manner.

## 196 Establishing Conservation Contract

### A Borrower's Response to Conservation Contract Offer

See Part 6 for information on borrower response deadlines to FSA loan servicing offers for delinquent or financially distressed borrowers.

If the authorized agency official offers a current borrower who is not financially distressed a conservation contract and the borrower decides to accept FSA's loan servicing offer, the borrower must respond to the authorized agency official within 45 calendar days of receiving the offer.

If the borrower possesses more than 1 contract eligible tract, the borrower must indicate both of the following:

- the tracts to be set aside for a conservation easement
- FSA-2535's term.

### B FSA-2535

**[7 CFR 766.110(j)] The borrower must sign the Conservation Contract Agreement establishing the contract's terms and conditions.**

To establish a conservation contract, the authorized agency official and borrower shall complete and sign FSA-2535.

- All recorded owners of a property receiving a conservation contract must sign FSA-2535.

- If State law allows, the contract is recorded in the real estate records according to a State supplement.

The authorized agency official must review and write a legal description of conservation contract boundaries based on information in the farm's deed.

The authorized agency official attaches the legal description of conservation contract boundaries and a map or aerial photo marked with conservation contract boundaries to the completed and signed FSA-2535.

The authorized agency official must retain a copy of the contract in the borrower's file as long as the borrower has an active FLP account. The authorized agency official also will provide the borrower a copy of the contract.

**[7 CFR 766.110(k)] If the borrower or any subsequent landowner transfers title to the property, the Conservation Contract will remain in effect for the duration of the contract term.**

## 196 Establishing Conservation Contract (Continued)

### C FSA-2535 Management Authority

**[7 CFR 766.110(f)] The Agency has enforcement authority over the Conservation Contract. The Agency, however, may delegate contract management to another entity if doing so is in the Agency's best interest.**

Under no circumstances will the borrower be delegated as conservation contract manager.

***--Note:** See subparagraph 195 C for a list of agencies that may be considered for delegation of contract management authority.**--***

## 197 Handling Noncash Credit

### A General

FSA applies the debt canceled by the conservation contract against the borrower's real estate debt as a noncash credit. This noncash credit action does not affect the borrower's current payment amount and debt repayment schedule unless the loan is otherwise serviced.

The authorized agency official may reamortize any FLP debt that remains on a borrower's account after the noncash credit has been applied.

### B Applying Noncash Credit to a Borrower's Account

FSA applies noncash credit from the conservation contract only to FLP loans secured in whole or in part by real estate. If the borrower receiving a conservation contract has more than 1 outstanding loan secured by real estate, FSA credits the loan with the lowest security priority first. If the borrower possesses 2 or more outstanding loans secured by real estate with equal security priority, FSA credits the loan with the largest amortization factor first.

FSA applies noncash credit to the borrower's account in the following manner.

- The authorized agency official uses eDALR$ to determine the amount of debt canceled by the conservation contract.

- FSA reduces the real estate debt in the first loan selected for crediting by the amount of debt canceled by the conservation contract.

- If the authorized agency official cancels all the real estate debt in the first loan and conservation contract's debt cancellation figure has not been exhausted, the authorized agency official selects a loan secured by real estate with the next highest security position for crediting.

- The authorized agency official repeats this process until the conservation contract's debt cancellation figure is exhausted or the authorized agency official has written down all FLP debt secured by real estate.

## 197 Handling Noncash Credit (Continued)

### C Processing Noncash Credit for a Delinquent Borrower

***--**The authorized agency official will use FSA-2597 as the source document to complete the 3H – Conservation Contract transaction in DLS Special Servicing.

Before the 3H transaction can be processed in DLS, the authorized agency official must process a 1M transaction to reamortize or reschedule the loan with the same effective date as FSA-2535.

This process does **not** apply, however, to loans receiving both a conservation contract and a write-down with SAA. If any loan receives both a conservation contract and write-down with SAA, the authorized agency official must process a 1M transaction, 3H transaction, and 3R transaction in DLS, using the same effective date.

### D Processing Noncash Credit for a Current Borrower

The authorized agency official will use FSA-2597 as the source document to complete the 3H – Conservation Contract transaction in DLS Special Servicing.**--***

## 198 Rights and Responsibilities Under Conservation Contract

### A Borrower's Rights Under Conservation Contract

Unless explicitly prohibited by FSA-2535 or a conservation contract management plan, the borrower has the right to:

- prevent trespassing by the general public and control public access to the conservation contract property
- use the conservation contract property for recreational purposes, including hunting and fishing

## 198 Rights and Responsibilities Under Conservation Contract (Continued)

### A Borrower's Rights Under Conservation Contract (Continued)

- receive economic gain from the leasing of the conservation contract property for recreational use, including hunting and fishing, pursuant to applicable State and Federal hunting and fishing regulations

- retain oil, gas, minerals, and geothermal resources beneath the conservation contract property, provided that the extracting activities are established outside the conservation contract's boundaries and do not adversely affect the conservation contract property

- record title, along with the right to convey and transfer title.

### B Borrower's Request for Government Authorization Under FSA-2535

If the borrower wants to pursue any action on the land covered by a conservation contract not explicitly allowed by the terms and conditions of FSA-2535, the borrower must obtain the Government's written authorization in advance. The borrower must make the request for authorization in writing.

To provide the borrower authorization, the authorized agency official must:

- determine that the proposed action does not violate a conservation contract's terms and conditions

- receive the written concurrence of the conservation contract management authority if the authority is outside FSA

- develop and approve a revised conservation contract management plan with the participation of the conservation contract review team.

The authorized agency official consults with SED and OGC as necessary.

### C Responsibilities and Enforcement Under FSA-2535

Borrower responsibilities, FSA's rights, and contract enforcement will be according to the provisions of FSA-2535.

## 199 Subordination Requirements for Conservation Contracts

### A Subordination

**[7 CFR 766.110 (m)] For real estate with a Conservation Contract:**

**(1) Subordination will be required for all liens that are in a prior lien position to the Conservation Contract.**

**(2) The Agency will not subordinate Conservation Contracts to liens of other lenders or other Governmental entities.**

## 200 Failure to Comply With Conservation Contract

### A Breach of Conservation Contract

**[7 CFR 766.110 (n)] Breach of Conservation Contract. If the borrower or a subsequent owner of the land under the Conservation Contract fails to comply with any of its provisions, the Agency will declare the Conservation Contract breached. If the Conservation Contract is breached, the borrower or subsequent owner of the land must restore the land to be in compliance with the Conservation Contract and all terms of the conservation management plan within 90 days. If this cure is not completed, the Agency will take the following actions:**

**(1) For borrowers who have or had a loan in which debt was exchanged for the Conservation Contract and breach the Conservation Contract, the Agency may reinstate the debt that was cancelled, plus interest to the date of payment at the rate of interest in the promissory note, and assess liquidated damages in the amount of 25 percent of the debt cancelled, plus any actual expenses incurred by the Agency in enforcing the terms of the Conservation Contract. The borrower's account will be considered in non-monetary default; and**

**(2) Subsequent landowners who breach the Conservation Contract must pay the Agency the amount of the debt cancelled when the contract was executed, plus interest at the non-program interest rate to the date of payment, plus liquidated damages in the amount of 25 percent of the cancelled debt, plus any actual expenses incurred by the Agency in enforcing the terms of the Conservation Contract.**

*** * ***

## 201-210 (Reserved)

# Part 6 Common Requirements and Final Processing

## Section 1 Security

### 211 Additional Security for Servicing Actions

#### A Requirements

**[7 CFR 766.112(a)] If the borrower is delinquent prior to restructuring, the borrower, and all entity members in the case of an entity, must execute and provide to the Agency a lien on all of their assets, except as provided in paragraph (b)** (subparagraph 211 C) **of this section, when the Agency is servicing a loan.**

FSA will take the best lien obtainable on all assets the borrower owns at the time of a primary loan servicing action. If the borrower is an entity, FSA will take the best lien obtainable on all assets owned by the entity and all assets owned by the individual members of the entity. These assets are additional security for the restructured loans and for any FSA-2543 that may be executed according to paragraph 249. An appraisal is not required to take security as a best lien obtainable unless the property will be covered by FSA-2543.

#### B Allowable Security

Security may include but is not limited to:

- land, mineral rights, water rights, buildings, fixtures, machinery, and equipment
- livestock, livestock products, growing crops, stored crops, inventory, supplies, and accounts receivable
- cash or cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance
- assignments on leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents, copyrights, and pledges of security from third parties.

**211 Additional Security for Servicing Actions (Continued)**

**C Exceptions**

**[7 CFR 766.112(b)] The Agency will take the best lien obtainable on all assets the borrower owns, except:**

**(1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;**

**(2) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;**

**(3) When the Agency cannot obtain a valid lien;**

**(4) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or**

**(5) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.**

**212-225 (Reserved)**

## Section 2 FSA's Decision

### 226 Approval Authority

#### A Approval Authority for Servicing Actions

Any authorized agency official has the authority to approve primary loan servicing options, except for those involving any write-down or a buyout that would result in debt forgiveness. SED's must approve all servicing actions that result in debt forgiveness under this part.

***--Note:** Once SED approval has been obtained, the authorized agency official may approve the credit action in FBP and complete the loan servicing action.**--***

### 227, 228 (Reserved)

## 229 State Mediation and Voluntary Meeting of Creditors

### A Introduction

The FSA representative can make no agreement with the borrower that does not comply with FSA regulations or policies. Further, FSA is not obligated by the terms of the mediation agreement if the terms are contrary to Federal statute, regulations, handbooks, notices, or instructions.

**[7 CFR 766.114(a)] A borrower who is unable to develop a feasible plan but is otherwise eligible for primary loan servicing may request:**

**[7 CFR 766.114(a)] (1) State-certified mediation; or**

This also applies to USDA certified mediation States.

**[7 CFR 766.114(a)] (2) Voluntary meeting of creditors when a State does not have a certified mediation program.**

**[7 CFR 766.114(b)] Any negotiation of the Agency's appraisal must be completed before State-certified mediation or voluntary meeting of creditors.**

Within 15 calendar days of determining that the borrower is ineligible or cannot develop a feasible plan, the authorized agency official will offer the borrower mediation or a voluntary meeting of creditors through FSA-2523 and FSA-2524 **or** FSA-2521 and FSA-2522, as appropriate.

### B States With Certified Mediation Programs

If the borrower requests mediation, FSA will participate regardless of the participation of the other creditors.

FSA participates in mediation under the same terms as other creditors, including payment of mediation fees if required.

SED will designate an Agency representative to represent FSA in the mediation. SED sets the authority limit of the representative and arranges for preparation of the FSA representative.

SED will issue a State supplement detailing State Certified Mediation requirements.

## 229 State Mediation and Voluntary Meeting of Creditors (Continued)

### C States Without Certified Mediation Programs

***--**SED will contract with qualified mediators within their State according to 1-APP, Part 5.**--***

The mediator will schedule the meeting of creditors and encourage the borrower's other creditors to participate.

It is expected the mediator will:

- conduct the meeting according to accepted mediation practices
- advise, counsel, and facilitate the development of an agreement
- demonstrate good human relation skills, ability to resolve problems, and settle disputes
- remain neutral
- review the proposed solution to determine whether it can be effectively implemented
- review the participants' obligations, including but not limited to confidentiality
- promote good faith discussions.

### D Documenting Mediation or Voluntary Meeting of Creditors

At the conclusion of mediation or a voluntary meeting of creditors, the mediator will provide SED with a written document signed by the parties in attendance, which specifies the outcome of the meeting and any agreements reached. The mediator provides a copy of this document to the participating creditors and to the borrower. The authorized agency official will file a copy of this document in the borrower's case file.

## 230 Appraisals

### A Overview of Options to Challenge Appraisals

The borrower has 30 calendar days to request an appeal on the appraisal according to 1-APP.

FSA will maintain a list of State-certified appraisers. FSA must review any appraisal or review obtained to determine compliance with the requirements of 1-FLP, Part 6. A copy of the appraisal or review will be provided to FSA before any negotiation, reconsideration or appeal hearing.

### *--B Challenging the Agency Appraisal--*

**[7 CFR 766.115(a)] A borrower considered for primary loan servicing who does not agree with the Agency's appraisal of the borrower's assets may:**

***--(1) Obtain a USPAP compliant technical appraisal review prepared by a State Certified General Appraiser of the Agency's appraisal and provide it at the Agency prior to reconsideration or the appeal hearing;--***

**(2) Obtain an independent appraisal completed in accordance with § 761.7 as part of the appeals process. The borrower must:**

**(i) Pay for this appraisal;**

**(ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is 5 percent or less.**

## 230 Appraisals (Continued)

### *--B Challenging the Agency Appraisal (Continued)--*

**[7 CFR 766.115(a)(3)] Negotiate the Agency's appraisal by obtaining a second appraisal.**

Within 30 calendar days of submitting the request to negotiate the appraisal, the borrower may:

**[7 CFR 766.115(a)(3)] (i) If the difference between the two appraisals is 5 percent or less, the borrower will choose the appraisal to be used in Agency calculations.**

**[7 CFR 766.115(a)(3)] (ii) If the difference between the two appraisals is greater than 5 percent, the borrower may request a third appraisal. The Agency and the borrower will share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.**

FSA, the borrower, and the appraiser will sign FSA-2529 to agree on paying for the third appraisal. The borrower will select the appraiser from a list provided by FSA. The list shall include at least 3 appraisers that did not conduct either of the 2 appraisals.

The authorized agency official will compare the 3 appraisals and average the 2 appraisals closest in value. This is the final appraised value. The borrower may not appeal the negotiated appraised value.

**[7 CFR 766.115(a)(3)] (iii) A borrower may request a negotiated appraisal only once in connection with an application for primary loan servicing.**

**[7 CFR 766.115(a)(3)] (iv) The borrower may not appeal a negotiated appraisal.**

### C Continued Processing

**[7 CFR 766.115(b)] If the appraised value of the borrower's assets change as a result of *--the challenge, the Agency will reconsider its previous primary loan servicing decision--* using the new appraisal value.**

**[7 CFR 766.115(c)] If the appeal process results in a determination that the borrower is eligible for primary loan servicing, the Agency will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the appeal decision letter.**

## 231 Additional Servicing Information Applicable to Adverse Decisions

### A Reconsideration

Reconsideration is an opportunity for a borrower to request a meeting with FLM, SFLO, or FLO about an adverse decision.

The borrower has 30 calendar days from the date of the notice of adverse decision to request reconsideration. The borrower may present additional information at this meeting or explain why they believe the adverse decision is in error.

The borrower will get only 1 reconsideration for each adverse decision.

The authorized agency official will send the borrower a letter stating the results of the reconsideration meeting. If the decision is favorable to the borrower, the authorized agency official will resume processing of the borrower's request for primary loan servicing. If FSA's decision has not changed, the borrower will be provided with new mediation and appeal rights.

### B Appeals

The borrower has 30 calendar days from the receipt of the notice of adverse decision to request an appeal.

The borrower may request an appeal of an appraisal after receiving an adverse decision from FSA. The borrower may not appeal if the appraised value was previously negotiated according to subparagraph 230 B.

FSA will handle a borrower's appeal request according to 1-APP.

### C Buyout at Current Market Value

FSA will offer a buyout at current market value to eligible borrowers who have not developed a feasible plan through primary loan servicing according to Part 8.

### D Debt Settlement

Borrowers may apply for debt settlement at any time during the primary and preservation loan servicing process.

If SED denies the borrower's debt settlement request, the borrower can appeal the adverse
***--**decision. See 7-FLP, Part 12 for information on debt settlement.**--***

## 232-245 (Reserved)

## 246 Closing Consolidated/Rescheduled Loans

### A Introduction

eDALR$ adds the amount of accrued interest and any outstanding protective advances to the principal balance at the time of rescheduling according to Exhibit 17.

### B Closing Rescheduled Loans

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR$ report
- mark the existing promissory note or assumption agreement "rescheduled" and attach it to the new FSA-2026
- file the new FSA-2026 according to 25-AS
- file a copy of the new rescheduled FSA-2026 with the copy of the existing promissory note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new rescheduled FSA-2026 to the borrower at closing
- file the original eDALR$ report in position 3.

***--**A 1M – Loan Reschedule transaction will be processed in DLS Special Servicing to record the rescheduled loans.**--***

## 247 Closing Reamortized Loans

### A Introduction to Reamortization

eDALR$ adds the accrued interest and any outstanding protective advances to the principal balance at the time of reamortization according to Exhibit 17.

### B Closing Reamortized Loans

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR$ report
- mark the existing promissory note or assumption agreement "reamortized" and attach it to the new FSA-2026
- file the new FSA-2026 according to 25-AS
- file a copy of the new reamortized FSA-2026 with the copy of the existing note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new reamortized FSA-2026 to the borrower at closing
- file the original eDALR$ report in position 3.

***--**A 1M – Loan Reamortization transaction will be processed in DLS Special Servicing to record the reamortized loans.**--***

SED will issue a State supplement ensuring that existing liens and title insurance or opinions are extended and preserved.

## 248 Closing Deferred Loans

### A Introduction to Deferrals

FSA will also reschedule or reamortize, as applicable, all loans deferred through primary loan servicing.

FSA may defer all or part of a loan according to eDALR$.

### B Closing Deferrals

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR$ report
- complete the addendum to FSA-2026 addressing repayment of deferred interest according to FSA-2026 instructions
- mark the existing promissory note or assumption agreement "rescheduled/reamortized with full/partial deferral," as appropriate, and attach it to the new FSA-2026
- file the new deferred FSA-2026 according to 25-AS
- file a copy of the new note with the copy of the existing promissory note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new deferred FSA-2026 to the borrower at closing
- file the original eDALR$ report in position 3.

***--**1M and 5W – Record Loan Deferral transactions will be processed in DLS Special Servicing to record the deferred loans as well as record the "DEF" flag on the account. These transactions will be created and processed in the correct sequence by DLS Special Servicing.**--***

## 248 Closing Deferred Loans (Continued)

### C Ongoing Servicing of Deferrals

*--Review the NFAOC quarterly status report to determine borrowers who have deferrals--* expiring.

Review the borrower's financial progress during the annual analysis according to paragraph 161.

Send the borrower a letter 6 months before the expiration of the deferral stating the amount and due date of the first payment.

After all deferrals on a borrower's account have expired, the "DEF" flag (Exhibit 11) will be *--converted to a "DEF3" flag by NFAOC, DLD. This flag is not required to be removed--* and is used to indicate which accounts have previously been serviced with deferral servicing actions. If all deferrals on an account must be canceled before their expiration, the "DEF" flag must be removed from the account by completing FSA-2562 and processing a 5H transaction.

## 249 Closing Write-Downs

### A Introduction

FLP loans can be fully or partially written down.

Loans that are partially written down must be fully restructured. FSA will also reschedule, reamortize, or defer, as applicable, all loans written down through primary loan servicing according to paragraphs 247, 248, and/or this paragraph.

### B Closing Write-Down

The authorized agency official will:

•*****--ensure that the payments on FSA-2026's match the final eDALR$ report--*****

- mark the existing promissory note or assumption agreement "Satisfied by Approved Debt Writedown" if the loan is completely written down or "Restructured with Partial Debt Writedown" if the loan is partially written down, and attach it to the new FSA-2026

- attach the promissory note, if required, to the new FSA-2026

- file FSA-2026 according to 25-AS

- provide a copy of the new FSA-2026 to the borrower at closing

•*****--file the original eDALR$ report in Position 3.--*****

## 249 Closing Write-Downs (Continued)

### C SAA Required

**[7 CFR 766.201] (a) The Agency requires a borrower to enter into a SAA with the Agency covering all real estate security when the borrower:**

**(1) Owns any real estate that serves or will serve as loan security; and**

**(2) Accepts a writedown in accordance with section 766.111** (paragraph 172)**.**

FSA requires FSA-2543 when debt is written down on a loan secured by real estate.

See Part 9, Section 1 for details on servicing SAA's.

A borrower will execute FSA-2543 and it will remain attached to the new FSA-2026. Copies of FSA-2543 will be attached to all copies of FSA-2026.

### D Processing Write-Down

***--**The authorized agency official will process a 3R – Shared Appreciation Writedown transaction in DLS Special Servicing to record the write-down and to establish an equity**--*** record for the debt written down. The equity record will establish an account for the amount of the SAA recapture that may come due.

### E Additional Security Required

The borrower must agree to additional liens on available security according to paragraph 211.

FSA's real estate and chattel liens will be maintained by cross collateralization even if all real estate or chattel type loans are written off.

## 250-280 (Reserved)

# Part 7 Homestead Protection Program

## Section 1 Determining and Notifying Eligible Borrowers

### 281 Homestead Protection Program

#### A Pre-Acquisition

**[7 CFR 766.151(a)] (1) If the borrower requested primary loan servicing but cannot develop a feasible plan, the Agency will notify the borrower of any additional information needed to process the homestead protection request. The borrower must provide this information within 30 days of Agency notification.**

If a borrower cannot develop a feasible plan and is unwilling or unable to buy out at current market value, the borrower will be considered for homestead protection and will be mailed FSA-2537 and its attachment FSA-2538 if FSA has a lien on their residence. Servicing will continue to be processed up to acceleration during the consideration of homestead protection and the account will be immediately accelerated at the conclusion of all appeals.

**[7 CFR 766.151(a)] (2) If the borrower does not timely provide the information requested, the Agency will deny the homestead protection request and provide reconsideration and appeal rights.**

**[7 CFR 766.151(a)] (3) A complete application for homestead protection will include:**

**(i) Updates to items required under § 766.102** (Part 3, Section 2)**;**

**(ii) Information required under § 766.353** (Part 14)**; and**

**(iii) Identification of land and buildings to be considered.**

## 281 Homestead Protection Program (Continued)

### B Post-Acquisition

**[7 CFR 766.151(b)] (1) After the Agency acquires title to the real estate property, the Agency will notify the borrower of the availability of homestead protection. The borrower must submit a complete application within 30 days of Agency notification.**

**(2) If the borrower does not respond to the Agency notice, the Agency will dispose of the property in accordance with 7 CFR part 767.**

**(3) A complete application for homestead protection will include:**

**(i) Updates to items required under § 766.102; and**

**(ii) Identification of land and buildings to be considered.**

Within 30 calendar days of FSA obtaining title to the property, the authorized agency official sends the borrower FSA-2540 by certified mail. If FSA obtains title to the property while FSA is processing homestead protection, the borrower does not need to respond to FSA-2540. FSA considers the pre-acquisition request as the borrower's application and continues to process the homestead protection request to completion.

In requesting homestead protection, the borrower must:

- provide the authorized agency official with updated servicing application materials if the necessary documentation is not already on file

  **Note:** For a list of items the borrower must submit to FSA, see Part 3.

- specifically identify the land and buildings the borrower wants to include in the request.

FSA and the borrower, if eligible for homestead protection, enter into a lease by signing FSA-2591.

## 282 Transfer of Homestead Protection

### A Transferring Right to Request Homestead Protection

**[7 CFR 766.153] Homestead protection rights are not transferable or assignable, unless the eligible party dies or becomes legally incompetent in which case the homestead protection rights may be transferred to the spouse only upon the spouse's agreement to comply with the terms and conditions of the lease.**

## 283 Homestead Protection Leases

### A Transferring Right to Request Homestead Protection

**[7 CFR 766.154(a)] (1) The Agency may approve a lease-purchase agreement on the appropriate Agency form subject to obtaining title to the property.**

**(2) If a third party obtains title to the property:**

**(i) The applicant and the property are no longer eligible for homestead protection;**

**(ii) The Agency will not implement any outstanding lease-purchase agreement.**

**(3) The borrower may request homestead protection for property subject to third party redemption rights. In such case, homestead protection will not begin until the Agency obtains title to the property.**

As stated in FSA-2539, FSA's obligation to enter into the lease of homestead protection property is subject to satisfaction of all State and local laws.

If FSA does not obtain title to the property within 2 years of the date that FSA and the borrower signed FSA-2539, homestead protection is terminated.

## 284 Determining Applicant and Property Eligibility

### A Applicant Eligibility Requirements

**[7 CFR 766.152(b)] To be eligible for homestead protection, the applicant:**

**(1) Must be the owner, or former owner from whom the Agency acquired title of the property pledged as security for an FLP loan. For homestead protection purposes, an owner or former owner includes:**

**(i) A member of an entity who is or was personally liable for the FLP loan secured by the homestead protection property when the applicant or entity held fee title to the property; or**

**(ii) A member of an entity who is or was personally liable for the FLP loan that possessed and occupied a separate dwelling on the security property.**

**(2) Must have earned gross farm income commensurate with:**

**(i) The size and location of the farm; and**

**(ii) The local agricultural conditions in at least 2 calendar years during the 6-year period immediately preceding the calendar year in which the borrower applied for homestead protection.**

**(3) Must have received 60 percent of gross income from farming in at least two of the 6 years immediately preceding the year in which the borrower applied for homestead protection;**

Gross farm income can include income from the rental or lease of FSA security if the lease meets the criteria of 4-FLP, subparagraph 99 E.

**(4) Must have lived in the home during the 6-year period immediately preceding the year in which the applicant applied for homestead protection. The applicant may have left the home for not more than 12 months if it was due to circumstances beyond their control;**

**(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease, and maintain the property in good condition. The lessee will be responsible for any normal maintenance; and**

FSA will make repairs to leased property only according to subparagraph 743 C.

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

## 284 Determining Applicant and Property Eligibility (Continued)

### B Property Eligibility Requirements

**[7 CFR 766.152(a)] (1) The principal residence and the adjoining land of up to 10 acres, must have served as real estate security for the FLP loan and may include existing farm service buildings. Homestead Protection does not apply if the FLP loans were secured only by chattels.**

**(3) The proposed homestead protection site must meet all State and local requirements for division into a separate legal lot.**

The property must comply with all environmental considerations described in 1-EQ.

If the site cannot be approved by local officials because of local zoning regulations, homestead protection must be concluded and servicing will continue.

If necessary, FSA grants or retains reasonable easements for ingress, egress, utilities, and water rights for the benefit of the adjoining property.

## 284 Determining Applicant and Property Eligibility (Continued)

### C Negotiating Eligible Land and Buildings With the Borrower

**[7 CFR 766.152(a)(2)] The applicant may propose a homestead protection site. Any proposed site is subject to Agency approval.**

If the authorized agency official does not agree with the proposed size or shape of the property, FSA negotiates the configuration with the borrower. If the borrower and the authorized agency official still cannot agree on the proposed shape and size of the property, the authorized agency official determines the property's configuration and provides appeal rights.

### D Surveying Homestead Protection Property

When FSA and the borrower agree on the property's configuration and FSA finds the borrower eligible for homestead protection, the authorized agency official has:

- a licensed surveyor survey the property, if needed
- the property's legal description prepared
- the property lines marked with permanent markers.

The reasonable customary cost of these services will be paid by FSA.

### E Appraising Homestead Protection Property

**[7 CFR 766.154(e)] The Agency will use an appraisal obtained within 6 months from the date of the application for considering homestead protection. If a current appraisal does not exist, the applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official.**

FSA pays for the appraisal according to 1-FLP, Part 6.

## 284 Determining Applicant and Property Eligibility (Continued)

### F Conveyance of Homestead Protection Property

**[7 CFR 766.152(a)(4)] Where voluntary conveyance of the property to the Agency is required to process the homestead protection request, the Agency will process any request for voluntary conveyance according to § 766.353** (Part 14)**.**

### G Homestead Protection Agreement

If the authorized agency official determines that the borrower is eligible for homestead protection, the borrower and FSA enter into FSA-2539.

- The authorized agency official attaches an unexecuted FSA-2591 to FSA-2539.
- The borrower must provide FSA with:
  - an executed FSA-2539
  - a completed FSA-2570
  - all documents required for voluntary conveyance according to Part 14 for a pre-acquisition situation.

### H Notifying Borrower of Appeal Rights

If FSA rejects a borrower's request for homestead protection, or the borrower disagrees with the configuration of the property or the appraisal, the authorized agency official notifies the borrower of the reasons for FSA's decision. In the letter, FSA offers the borrower appeal rights according to 1-APP.

## 285-296 (Reserved)

## Section 2 Processing Homestead Protection Requests

### 297 Leasing the Homestead Protection Property

#### A Lease Terms and Conditions

**[7 CFR 766.154(b)] (1) The amount of rent will be based on equivalent rents charged for similar residential properties in the area in which the dwelling is located.**

**(2) All leases will include an option to purchase the homestead protection property as described in paragraph (c)** (subparagraph 300 A) **of this section.**

**(3) The lease term will not be less than 3 years and will not exceed 5 years.**

A borrower may extend a lease with an original term of less than 5 years, but not beyond 5 years from the beginning date of the original lease.

FSA applies the lease payments to the homestead protection account according to Part 20. FSA does not apply lease payments to the purchase price of the property.

The borrower may exercise the option to purchase at any time.

#### B Lessee Requirements

**[7 CFR 766.154(b)(4)] The lessee must agree to make lease payments on time and maintain the property.**

**[7 CFR 766.154(b)(5)] The lessee must cooperate with Agency efforts to sell the remaining portion of the farm.**

### 298 (Reserved)

## 299 Defaults and Ramifications of Lease Defaults

### A Terminating Homestead Protection Leases

**[7 CFR 766.154(d)] The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.**

Examples of lease defaults may include nonpayment of monthly lease payments or failure to maintain the property.

If the former borrower is in default on the terms of the lease, the authorized agency official must notify the former borrower in writing. If the former borrower does not cure a lease default within 30 calendar days of the date of the default notice from FSA, the authorized agency official notifies the former borrower in writing that FSA is terminating the lease and purchase option. This notification must include appeal rights.

## 300 Exercising Option to Purchase Homestead Protection Property

### A Timeframe for Exercising Option

**[7 CFR 766.154(c)] (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.**

***--(2) If the lessee is a member of a socially disadvantaged group, the lessee may designate a member of the lessee's immediate family (that is, parent, sibling, or child) (designee) as having the right to exercise the option to purchase.** See Exhibit 2 for the definition of socially disadvantaged group.

**Note:** The former owner must be eligible for Homestead Protection and successfully lease the property (be the lessee) under Homestead Protection before they can choose an immediate family member to purchase the property.

The lessee or designee may exercise the purchase option by completing the repurchase of the homestead protection property within the term of the lease. The lessee or designee must initiate the purchase option by submitting a signed statement to FSA. The option is not exercised until FSA receives the purchase money. If closing extends beyond the term of the lease, the lessee will continue to make lease payments to FSA until the purchase is closed.**--***

Failure to exercise the purchase option within the lease period terminates the lessee's rights under the option.

### B Determining Sale Price of Homestead Protection Tract

***--[7 CFR 766.154(c)(3)] The purchase price is the market value of the property when--* the option is exercised as determined by a current appraisal obtained by the Agency.**

FSA determines the current market value of the property through an appraisal that is less than 1 year old. If the appraisal is older than 1 year, the authorized agency official requests a new appraisal according to subparagraph 284 E.

## 301 Purchasing Homestead Protection Property

### A Borrower Financing Options

***--[7 CFR 766.154(c)] (4) The lessee or designee may purchase homestead protection property with cash or other credit source.**

**(5) The lessee or designee may receive Agency program or non-program financing provided:**

**(i) The lessee or designee has not received previous debt forgiveness;**

**(ii) The Agency has funds available to finance the purchase of homestead protection property;**

**(iii) The lessee or designee demonstrates an ability to repay such an FLP loan; and**

**(iv) The lessee or designee is otherwise eligible for the FLP loan.--***

### B Lessee Repayment Ability

A lessee wanting to purchase the homestead protection property using credit sale funds must provide all information required for FSA to:

- determine whether the lessee has adequate repayment ability
- grant final homestead protection approval.

FSA requires a feasible payment plan.

### C Credit Sale Interest Rate

The interest rate for a credit sale is the interest rate for a homestead protection loan as published in 1-FLP, Exhibit 17.

## 301 Purchasing Homestead Protection Property (Continued)

### D Closing the Credit Sale

The closing procedures for a lessee purchasing homestead protection property are the same as for any NP borrower who obtains FSA financing.

### E Defaults on Homestead Protection Loans

FSA homestead protection loans are NP's, and are **not** eligible for loan servicing. If a borrower with a homestead protection loan defaults, FSA accelerates the loan according to Part 15.

## 302 Conflict With State Law

### A Prevalence of State Law

**[7 CFR 766.155] If there is a conflict between a borrower's homestead protection rights and any provisions of State law relating to redemption rights, the State law prevails.**

SED's should issue a State supplement in States where the State law provides for specific rights that differ.

## 303-320 (Reserved)

# Part 8 Current Market Value Buyout

## 321 Buyout at Current Market Value

### A Introduction

If a feasible plan cannot be developed through primary loan servicing, FSA will offer the borrower current market value buyout if they are determined eligible according to subparagraph B.

Current market value allows the borrower to pay FSA the current market value of the security less any prior liens. FSA will release all of the borrower's debt and security instruments when current market value is paid in full within the required timeframes. If the total FLP debt is less than current market value, FSA will accept payment in full at any time.

### B Borrower Eligibility

**[7 CFR 766.113 (a)] A delinquent borrower may buy out the borrower's Agency loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:**

**(1) The borrower has not previously received debt forgiveness on any other FLP direct loan;**

**(2) The borrower has acted in good faith;**

**(3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;**

**(4) The borrower is unable to develop a feasible plan through primary loan servicing programs or a Conservation Contract, if requested;**

**(5) The present value of the restructured loans is less than the net recovery value of Agency security;**

**(6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and**

**(7) The amount of debt forgiveness does not exceed $300,000.**

## 321 Buyout at Current Market Value (Continued)

### B Borrower Eligibility (Continued)

Debt reduction from FSA-2535's is not included in the $300,000 limit described in this subparagraph.

If eDALR$ shows that FSA would write off more than $300,000 of the borrower's debt in restructuring the debt or accepting the current market value, the borrower is not eligible for primary loan servicing or current market value buyout. The borrower may be considered for ***--**debt settlement according to 7-FLP, Part 12.**--***

### C Approval of Buyout

SED must approve all current market value buyouts unless the account is paid in full.

### D Recapture Agreements

FSA borrowers who received approval of buyout at NRV before July 3, 1996, entered into NRBRA with FSA. FSA services NRBRA according to Part 9, Section 2.

Borrowers who received approval to buyout their loans after July 3, 1996, must pay current market value. FSA does not require these borrowers to enter into NRBRA.

## 322 Processing a Buyout at Current Market Value

### A Notifying Borrower of Buyout

The authorized agency official will notify the borrower of the opportunity to buyout the FSA loans at current market value by sending the borrower a copy of the signed eDALR$ Report, along with FSA-2521 and FSA-2522 or FSA-2523 and FSA-2524 showing the buyout amount by certified mail.

### B Timeframe for Borrower to Pay Buyout Amount

**[7 CFR 766.113(b)] After the Agency offers current market value buyout of the loan, the borrower has 90 days from the date of Agency notification to pay that amount.**

If the borrower exercises the right to an independent appraisal, negotiation of appraisal, reconsideration, mediation, or appeal, the 90-calendar-day time limit will start on the day the borrower receives the final Agency and/or NAD decision.

### C Processing Buyout Payment

If the borrower accepts FSA's buyout offer, the borrower must pay the entire buyout amount according to 4-FLP, subparagraph 65 F. The buyout amount will be established by processing a 3Q – Market Value Buyout transaction in DLS Special Servicing after the payment has been processed. The payment will be submitted as "other collection" according to 3-FI. The borrower's security instruments will be released according to 4-FLP, subparagraph 65 F. The borrower's original promissory notes will be marked "satisfied at current market value" and returned to the borrower.

### D Borrower Nonresponse or Inability to Pay Current Market Value

If the borrower does not accept FSA's buyout offer and FSA has a lien on the home of the borrower or any person that pledged their home as collateral, homestead protection will continue to be processed according to Part 7. If the borrower does not elect or is not eligible for homestead protection or does not pay the FLP account current, FSA will, after conclusion of all appeals, accelerate the borrower's account according to Part 15.

***--**The borrower can also still apply for debt settlement according to 7-FLP, Part 12.**--***

## 323-340 (Reserved)

# Part 9 Servicing Shared Appreciation Agreements and NRBRA's

## Section 1 Servicing Shared Appreciation Agreements

### 341 Monitoring Shared Appreciation Agreements

#### *--A NFAOC Reports

NFAOC sends a monthly report to the County Office listing:**--***

- shared appreciation agreements that will soon be maturing
- past due amounts owed by borrowers on shared appreciation agreements that have been triggered or have matured.

#### B Borrower Reminder of Shared Appreciation Agreement

The authorized agency official will send Exhibit 25 to all borrowers who executed a shared appreciation agreement as a reminder of shared appreciation agreement requirements. This letter will be sent in the fourth quarter of every FY during the term of the shared appreciation agreement, starting 1 year after the shared appreciation agreement is signed.

#### C Consideration of Shared Appreciation Amounts

FSA considers the amount of shared appreciation as a contingent liability of the borrower until it is determined whether there is any shared appreciation due and payable according to paragraph 342.

FSA includes shared appreciation amounts that are due and payable or amortized as part of the borrower's total FSA debt.

## 342 Triggering Shared Appreciation Agreements

### A When Shared Appreciation Agreement Is Due

**[7 CFR 766.201(b)] The borrower must repay the calculated amount of shared appreciation after a term of 5 years from the date of the writedown, or earlier if:**

Shared appreciation agreements signed before August 18, 2000, continue to mature after 10 years.

**[7 CFR 766.201(b)] (1) The borrower sells or conveys all or a portion of the Agency's real estate security, unless real estate is conveyed upon the death of a borrower to a spouse who will continue farming;**

**[7 CFR 766.201(b)] (2) The borrower repays or satisfies all FLP loans;**

**[7 CFR 766.201(b)] (3) The borrower ceases farming; or**

**[7 CFR 766.201(b)] (4) The Agency accelerates the borrower's loans.**

## 343 Determining Amount of Shared Appreciation Due

### A Determining Whether Shared Appreciation Is Due

The authorized agency official will obtain a current appraisal of real estate security covered by a shared appreciation agreement if any of the events listed in paragraph 342 occur.

### B Partial Sale of Shared Appreciation Security

**[7 CFR 766.202(b)] In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the SAA was signed if such value cannot be obtained through another method.**

If the borrower sells only a portion of the real estate security before the maturity of a shared appreciation agreement, recapture is due on the tract that is sold. FSA may require 1 or more appraisals to determine the amount of recapture that may be due from the partial sale. SED may issue a State supplement to identify the appropriate method to be used based upon the following examples.

**Example 1:** The borrower has 400 acres of similar farm ground, with no buildings, that secure the shared appreciation agreement. Four years after signing the shared appreciation agreement, the borrower decides to sell 100 acres, 25 percent of the total acres. FSA obtains an appraisal on the entire 400 acres as described in 1-FLP, Part 6. The authorized agency official compares the contributory value of the 100 acres (25 percent of the current appraisal) to the contributory value at the time of the write-down (25 percent of the appraisal done at the time of the write-down).

**Example 2:** The borrower has 400 acres with a house and outbuildings that secure the shared appreciation agreement. Four years after signing the shared appreciation agreement, the borrower decides to sell 100 acres with no buildings. FSA obtains an appraisal on the 100 acres being sold and on the entire 400 acres. The authorized agency official compares the 2 appraisals and determines the percentage of value of the 100 acres. The authorized agency official then applies this percentage to the appraised value at the time of write-down to determine the value of the 100 acres at the time of the write-down.

**Example 3:** The borrower has 400 acres that secure the shared appreciation agreement. Four years after signing the shared appreciation agreement, the borrower decides to sell 2 acres in a corner of the farm for a residence. FSA obtains a ***--**current appraisal on the 2 acres, and an appraisal of the 2 acres as of the**--*** date of the write-down. The authorized agency official then compares the 2 appraisals to determine the amount of appreciation due on the 2 acres.

## 343 Determining Amount of Shared Appreciation Due (Continued)

### C Calculating Shared Appreciation

**[7 CFR 766.202(a)] The value of the real estate security at the time of maturity of the SAA (market value) shall be the appraised value of the security at the highest and best use, less the increase in the value of the security resulting from capital improvements added during the term of the SAA (contributory value). The market value of the real estate security property will be determined based on a current appraisal completed within the previous 12 months in accordance with § 761.7** (1-FLP, Part 6) **of this chapter, and subject to the following:**

**[7 CFR 766.202(a)] (1) Prior to completion of the appraisal, the borrower will identify any capital improvements that have been added to the real estate security since the execution of the SAA.**

Approximately 6 months before the maturity of the shared appreciation agreement and before the completion of the appraisal, FSA will contact the borrower with FSA-2544 to determine whether any capital improvements have been added to the security during the term of the shared appreciation agreement.

**[7 CFR 766.202(a)] (2) The appraisal must specifically identify the contributory value of capital improvements made to the real estate security during the term of the SAA to make deductions for that value.**

**[7 CFR 766.202(a)] (3) For calculation of shared appreciation recapture, the contributory value of capital improvements added during the term of the SAA will be deducted from the market value of the property. Such capital improvements must also meet at least one of the following criteria:**

**[7 CFR 766.202(a)(3)] (i) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a residence which existed on the security property when the SAA was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the market value.**

**Example:** At the time of the write-down the contributory value of a house on the property was $60,000. The house was destroyed by fire and replaced with a house that cost $150,000. However, the contributory value of the new house at the time the shared appreciation agreement matured was $170,000 because of appreciation. The value added to the real property in this case is $110,000. ($170,000 value of the new house at maturity – $60,000 value of the old house at the time FSA-2543 was executed.)

## 343 Determining Amount of Shared Appreciation Due (Continued)

### C Calculating Shared Appreciation (Continued)

**[7 CFR 766.202(a)(3)] (ii) It is an improvement to the real estate with a useful life of over one year and is affixed to the property, the following conditions must be met:**

**(A) The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax returns. The borrower must provide copies of appropriate tax returns to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized.**

**(B) If the new item is affixed to the real estate as a replacement for an item that existed on the real estate at the time the SAA was originally executed, only the value added by the new item will be deducted from the market value.**

The authorized agency official will use Exhibit 26 to calculate the amount of shared appreciation due and file a copy of Exhibit 26 in the borrower's case file.

### D Payment of Recapture

**[7 CFR 766.203] (a) The borrower must pay on the due date or 30 days from Agency notification, whichever is later:**

**(1) Seventy-five percent of the appreciation in the real estate security if the agreement is triggered within four years or less from the date of the writedown; or**

**(2) Fifty percent of such appreciation if the agreement is triggered more than four years from the date of the writedown or when the agreement matures.**

**(b) If the borrower sells a portion of the security, the borrower must pay shared appreciation only on the portion sold. Shared appreciation of the remaining portion will be due in accordance with paragraph (a) of this section.**

**(c) The amount of recapture cannot exceed the amount of the debt written off through debt writedown.**

## 343 Determining Amount of Shared Appreciation Due (Continued)

### E When Shared Appreciation Is Not Due

If the authorized agency official determines that no shared appreciation is due, the authorized agency official will:

- document this finding in the borrower's case file
- mark SAA "Satisfied", make a copy for the case file, and return the original to the borrower
- release the lien instruments securing SAA if the security instruments do not secure other FSA-2026's or SAA's
- ***--**process a 3V – Equity Receivable transaction in DLS to record that no shared**--***
  appreciation is due and close the equity receivable record.

The authorized agency official will send the borrower a letter with supporting calculations (Exhibit 26) stating that no SAA recapture is due.

## 344 Notifying Borrower That Shared Appreciation Is Due

### *--A FSA Review of Maturing SAA's--*

To allow for appraisals and consideration of capital improvements, the authorized agency official will begin determination of the SAA recapture amount due approximately 6 months before the maturity of SAA. The authorized agency official will contact the borrower with FSA-2544 to determine whether any improvements have been made that meet the required criteria. If there is any shared appreciation due according to paragraph 343, the borrower will be notified according to subparagraph B. If no SAA recapture is due, FLM or SFLO will wait until SAA has matured and complete the actions in subparagraph 343 E.

Use the DLS SI Other Shared Appreciation Amortization workflow to track and monitor the SAA processing to completion.

### B Borrower Notification of Shared Appreciation Due

The authorized agency official will notify the borrower of any SAA recapture due at least 60 calendar days before the maturity date of the agreement or if any of the events described in paragraph 342 occur by use of FSA-2545. This notification will include:

- the amount of the SAA recapture due
- the date the SAA recapture is due, which is the latter of the maturity of SAA or 30 calendar days from the borrower's receipt of the letter
- how FSA calculates the amount due
- the borrower's options for repaying the shared appreciation amount, including:
  - FSA's offer to consider amortization of the amount due as NP if the borrower cannot pay the amount due
  - a list of items required for a complete application for amortization
  - the application due date
  - borrower's appeal rights.

After all appeal rights have been concluded, FSA will process a 3V – Equity Receivable transaction in DLS to establish the recapture due.

## 344 Notifying Borrower That Shared Appreciation Is Due (Continued)

### C Complete Application for Shared Appreciation Amortization

The borrower has 60 calendar days from the date of FSA-2545 to submit a complete application to amortize the shared appreciation amount according to paragraph 346. If the application is submitted while the borrower is disputing the recapture amount, the final decision on the application will not be made until all dispute resolution options are concluded.

For the application for shared appreciation amortization to be complete, the borrower must submit:

- FSA-2001
- records showing the borrower's actual income, production, and expenses, including income tax returns and supporting documents for the most recent 3-year period
- verifications of debts and nonfarm income according to 3-FLP, subparagraph 42 A
- proper fee for a credit report
- any other items determined by the authorized agency official as necessary for completing FBP.

At 30 calendar days, the authorized agency official will notify the borrower the following 1 time in writing:

- of all required items that the borrower has not submitted
- the final due date by which the borrower must submit all items
- that no further reminders will be sent and that the borrower will be in default if the amount is not paid or amortized.

### D Borrower Does Not Pay Shared Appreciation Due

The borrower is in nonmonetary default if the amount is not paid or amortized by the due date. The borrower will be notified according to Part 3 after all dispute resolution is concluded. Servicing will continue to liquidation if the recapture is not paid or amortized.

## 345 Processing Shared Appreciation Agreement Recapture Payments

### A Processing Shared Appreciation Agreement Recapture Payments

Payment on unamortized recapture will be processed as a miscellaneous payment and indicated as an “Equity Receivable Payment”.

### B Applying Sale Proceeds of Shared Appreciation Security

Creditors will be paid in lien priority. Proceeds from a full or partial sale of shared appreciation agreement security submitted to FSA will be applied first to recapture and then to the loan.

### C Satisfying Shared Appreciation With Payment in Full

If the borrower fully pays the Shared Appreciation amount due and the borrower’s remaining FLP debt is fully paid, the authorized agency official will release the satisfied debt and lien instruments and close the equity receivable record.

If the borrower pays the Shared Appreciation amount in full but still has remaining FLP debt, FSA will release only those documents pertaining to loans that have been fully paid. FSA will mark the shared appreciation agreement paid in full but will not release the borrower’s mortgage if it secures promissory notes that the borrower has not fully paid.

If Shared Appreciation is due because of a partial sale of the shared appreciation agreement security, the shared appreciation agreement is not satisfied and the lien instruments will not be released. See 4-FLP, Part 7 about partial releases of security.

SED may issue a State supplement on satisfying shared appreciation agreements if required by State law.

### D Cash Sale of Shared Appreciation Security

Subject to prior lien debt, FSA collects the shared appreciation agreement recapture amount first from the sale proceeds in a cash sale of the shared appreciation security.

## 346 Amortizing Shared Appreciation

### A Requirements for a Shared Appreciation Payment Agreement

**[7 CFR 766.204(a)] The Agency will amortize the recapture into a Shared Appreciation Payment Agreement provided the borrower:**

**(1) Has not ceased farming and the borrower's account has not been accelerated;**

**(2) Provides a complete application in accordance with 764.51(b)** (3-FLP, subparagraph 42 A)**, by the recapture due date or within 60 days of Agency notification of the amount of recapture due, whichever is later;**

**(3) Is unable to pay the recapture and cannot obtain funds from any other source;**

**(4) Develops a feasible plan that includes repayment of the shared appreciation amount;**

**(5) Provides liens on all assets, except those listed in 766.112(b)** (subparagraph 211 C)**; and**

**(6) Signs loan agreements and security instruments as required.**

### B Calculating the Amortized Payment

The authorized agency official will calculate the amortized payment according to FSA amortization tables and document the calculations in the borrower's case file.

### C Amortized Loan Term

**[7 CFR 766.205(b)] The term of the Shared Appreciation Payment Agreement is based on the borrower's repayment ability and the useful life of the security. The term will not exceed 25 years.**

## 346 Amortizing Shared Appreciation (Continued)

### D Amortized Loan Interest Rate

**[7 CFR 766.205(a)] The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.**

### E Amortized Loan Security

The Shared Appreciation Payment Agreement must retain the same security position of the original notes identified in SAA. SED will issue a State supplement on maintaining FSA's lien position. The authorized agency official will take the best obtainable lien on all assets according to subparagraph 211 A. The Shared Appreciation Payment Agreement does not have to be fully secured if the borrower meets all requirements in subparagraph A and the borrower provides the best lien obtainable on all assets.

***--**The authorized agency official will close the Shared Appreciation Payment Agreement only after the equity recapture amount has been established by the processing of a 3 V - Equity Receivable transaction in DLS. The interest rate to be used for the amortization must be the SA rate in effect at the time of approval. The amortization will be closed according to the requirements listed in subparagraphs F through I and 3-FLP, Part 16. The amortization approval date shall not be before the date shared appreciation is due as described in subparagraph 342 A.**--***

### F Amortized Loan Processing

The authorized agency official will mark SAA "Amortized," attach it to the new FSA-2026, and file the original promissory note and its copies according to 25-AS. The copies of the new FSA-2026 and SAA will be filed in position 2 of the borrower case file.

If a Shared Appreciation Payment Agreement becomes due because of a partial sale of security and SAA has not yet matured, the authorized agency official will attach a copy of SAA to the new FSA-2026.

The authorized agency official will process a 3O – Equity Receivable Amortization transaction in the DLS SI Other Shared Appreciation Amortization workflow to record the Shared Appreciation Payment Agreement.

## 346 Amortizing Shared Appreciation (Continued)

### G Amortized Loan Approval

The authorized agency official will use FSA-2025 to notify the borrower of approval of shared appreciation agreement amortization. FSA-2026, with all covenants relating to graduation, credit elsewhere, restrictions on leasing, and FLP operating requirements removed, will be used as the loan agreement.

### H Amortized Loan Application Denied

If amortization cannot be approved, the authorized agency official will deny the application to amortize the shared appreciation amount and servicing will continue according to Part 3 as the borrower is in nonmonetary default.

### I Servicing SA

**[7 CFR 766.204(b)] If the borrower later becomes delinquent or financially distressed, reamortization of the Shared Appreciation Payment Agreement can be considered under subpart C** (Part 3) **of this part.**

If the borrower has other program loans, the Shared Appreciation Payment Agreement will be considered as a part of the overall restructure process, but can only be reamortized.

Borrowers who do not have any program loans will be notified according to subparagraph 67 A.

Shared Appreciation Payment Agreements cannot be consolidated, deferred, or written down.

***--**The DLS SI "Other Shared Appreciation (SA)" workflow shall be completed upon satisfaction of the SA amortization loan.**--***

## 347 (Reserved)

## 348 Additional Servicing of Shared Appreciation Agreements

### A Subordination of Shared Appreciation Agreement

FSA may subordinate its lien on real property securing the shared appreciation agreement only if the borrower's debt to prior lienholders will not increase during the term of the shared appreciation agreement. The borrower must meet the requirements for subordinations described in 4-FLP, Part 6. If the shared appreciation agreement recapture is also secured by chattels, the chattel security may be subordinated according to 4-FLP, paragraph 118.

*** * ***

### B Assumption of Shared Appreciation Amount

A transferee may assume the shared appreciation payment agreement or unamortized shared appreciation agreement recapture on program or NP terms based on eligibility and loan limitations.

## 349-360 (Reserved)

## Section 2 Servicing NRBRA's

### 361 Events Triggering Recapture

#### A Servicing Existing NRBRA's

**[7 CFR 766.206(a)] Prior to July 3, 1996, the Agency was authorized to offer borrowers buy out their loans at the net recovery value. A Net Recovery Buyout Agreement was required for borrowers who bought out their loans at the net recovery value. The Agency services existing Net Recovery Buyout Recapture Agreements as described in this section.**

#### B Requirements and Terms of NRBRA's

**[7 CFR 766.206(b)] (1) The term of a Net Recovery Buyout Recapture Agreement is 10 years. Net Recovery Buyout Recapture Agreements are secured by a lien on the former borrower's real estate.**

**(2) If the former borrower sells or conveys real estate within the 10-year term, the former borrower must repay the Agency the lesser of:**

**(i) The market value of the real estate parcel at the time of sale or conveyance, as determined by an Agency appraisal, minus the portion of the recovery value of the real estate paid to the Agency in the buyout;**

**(ii) The market value of the real estate parcel at the time of the sale or conveyance, as determined by an Agency appraisal, minus:**

**(A) The unpaid balance of prior liens at the time of the sale or conveyance; and**

**(B) The net recovery value of the real estate the borrower paid to the Agency in the buyout if this amount has not been accounted for as a prior lien;**

**(iii) The total amount of FLP debt the Agency wrote off for loans secured by real estate.**

## 361 Events Triggering Recapture (Continued)

### B Requirements and Terms of NRBRA's (Continued)

Net Recovery Recapture amounts become due only if the former borrower sells or conveys the buyout property before the expiration of NRBRA.

FSA does not consider transfer of a buyout property to be a conveyance if the transfer is made to the borrower's spouse or child because of the borrower's death or retirement, and the spouse or child is actively engaged in the farming operation and assumes full liability of the provisions of NRBRA according to instructions from OGC.

## 362 FSA Bi-Annual Review

### A FSA Review

The authorized agency official will review courthouse records every 2 years to determine whether the former borrower sold or transferred the security for the Recapture Agreement. If the security is sold, the authorized agency official will service the account according to paragraph 363.

***--**The authorized agency official will post all scheduled reviews to DLS using the Office Management function and document the review results in the FBP running record and**--***
borrower's case file.

## 363 Determining Amount of Recapture Due

### A Obtaining a Current Appraisal

If the former borrower sells or transfers Recapture Agreement security, the authorized agency official will obtain an appraisal of the real estate security as of the date of transfer according to 1-FLP, Part 6 to determine the amount of recapture due.

If the former borrower is selling or conveying a portion of the security, the authorized agency official will obtain a current appraisal on only that portion of the security being sold or transferred. FSA may require 1 or more appraisals to determine the amount of recapture that may be due from a partial sale as described in subparagraphs 343 B and 361 B.

### B Determining Amount of Recapture Due

The authorized agency official will determine and document the amount of recapture due according to the calculations on NRBRA.

## 364 Notifying Borrower That Recapture Is Due

### A Notifying Borrower Recapture Is Due

After the authorized agency official determines that the real estate security has been sold or conveyed, the borrower should be notified of the recapture amount due. The disposition of security will be processed according to 4-FLP, Part 7.

## 365 Processing Net Recovery Recapture

### A Collection if Recapture Is Due

If the authorized agency official determines that recapture is due because the former borrower sold or conveyed the security the County Office will accept and process the Net Recovery Recapture payments as a miscellaneous collection payment code 16.

The Net Recovery Recapture Agreement and mortgage are satisfied after the former borrower pays the full recapture amount and FSA credits this amount to the former borrower's account.

The authorized agency official will mark the Net Recovery Recapture Agreement with "Recapture Agreement Satisfied," return it to the former borrower, and release the security instruments.

### B Borrower Does Not Pay Recapture Amount Due

**[7 CFR 766.206(b)(3)] If the former borrower does not pay the amount due, the Agency will liquidate the Net Recovery Buyout account in accordance with Subpart H** (Part 12) **of this part.**

If the former borrower fails to pay the recapture amount due, the authorized agency official will notify the former borrower of appeal rights according to 1-APP and accelerate the former borrower's Net Recovery Recapture Agreement and mortgage according to Part 15 at the conclusion of any appeal.

### C No Recapture Is Due

If the authorized agency official determines that no recapture is due after the sale or conveyance of the security property, the authorized agency official will:

- mark NRBRA with "Recapture Agreement Satisfied" and return it to the former borrower
- release the security instruments
- ***--**process a 3V – Equity Receivable transaction in DLS to close the equity record.**--***

## 365 Processing Net Recovery Recapture (Continued)

### D Recapture Agreement Expires

**[7 CFR 766.206(b)(4)] If the former borrower does not sell or convey the real estate within the 10-year term, no recapture is due.**

If the authorized agency official determines that the former borrower has not sold or conveyed the property and the Recapture Agreement expires, FSA will notify the former borrower in writing that:

- NRBRA has expired
- there is no recapture due.

The authorized agency official marks the Recapture Agreement, “Recapture Agreement Satisfied”, and returns it to the former borrower, and releases the security instruments.

***--**The authorized agency official processes a 3V – Equity Receivable transaction in DLS to**--***
close the equity record.

## 366-380 (Reserved)

# Part 10 Unauthorized Assistance

## 381 Unauthorized Assistance Policy

### A Corrective Action Policy

When FSA determines that a borrower received unauthorized assistance, FSA will attempt to collect the unauthorized assistance from the borrower, regardless of the amount. FSA does not have the authority to leave unauthorized assistance outstanding, regardless of the cause or circumstances.

*--If FLM or SFLO is responsible for the unauthorized assistance, DD must approve the--* corrective action. If DD is responsible for the unauthorized assistance, SED must approve the corrective action.

If OIG determines that a borrower received unauthorized assistance, FSA must resolve the case according to OIG instructions.

If FSA determines that an inactive or former borrower received unauthorized assistance, SED, with advice from OGC, will determine how FSA will handle the case.

## 382 Initial Consideration

### A Repayment of Unauthorized Assistance

**[7 CFR 766.251] (a) Except where otherwise specified, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice. The Agency may reverse any unauthorized loan servicing actions, when possible.**

**(b) The borrower has the opportunity to meet with an Agency representative to discuss or refute the Agency's findings.**

## 383 Causes of Unauthorized Assistance

### A Three Causes of Unauthorized Assistance

Unauthorized assistance can be caused by any of the following:

- incomplete or false information submitted by the applicant/borrower or third party
- inaccurate information submitted by the applicant/borrower or third party
- FSA error.

### B False Information

**[7 CFR 766.252] A borrower is ineligible for continued Agency assistance if the borrower, or a third party on the borrower's behalf, submits information to the Agency that the borrower knows to be false.**

FSA considers information to be false when the borrower or a third party on the borrower's behalf provides FSA information that the borrower knows to be incomplete or false.

### C Inaccurate Information

FSA considers information to be inaccurate when the borrower or third party provides FSA information that the borrower does not know is false.

### D FSA Processing or Closing Errors

FSA errors can include but are not limited to incorrect calculations, use of incorrect or improper completion of debt instruments, or noncompliance with FSA regulations or policies.

## 384 Determining That Unauthorized Assistance Was Given

### A Unauthorized Assistance Identified by FSA

FSA may determine that unauthorized assistance was given to a borrower through:

- OIG audit
- Agency review
- information from third parties.

### B Unauthorized Assistance Identified by OIG Audits

OIG periodically audits FSA to verify compliance with FSA regulations when processing and closing loans. To verify regulatory compliance, OIG may review loan files in National, State, District, and County Offices during an audit. If OIG determines that FSA provided unauthorized assistance to a borrower because of processing or closing errors, the authorized agency official who acts on this determination will refer to 9-AO for required FSA actions.

### C Unauthorized Assistance Identified by FSA Personnel

If FSA personnel determine that FSA gave a borrower unauthorized assistance, the authorized agency official will document the following in the borrower's case file:

- how FSA determined unauthorized assistance was given to the borrower

- whether it appears the unauthorized assistance was caused by:

  - false information
  - inaccurate information
  - FSA processing or closing error

- the conditions surrounding the unauthorized assistance, including the amount of unauthorized assistance. See paragraph 385 for more information on determining the amount of unauthorized assistance.

## 384 Determining That Unauthorized Assistance Was Given (Continued)

### D Notifying Borrower if Unauthorized Assistance Is Because of Inaccurate Information or FSA Error

If the authorized agency official determines that the unauthorized assistance is because of inaccurate information or FSA error, the authorized agency official will notify the borrower of the unauthorized assistance according to paragraph 386.

### E Unauthorized Assistance Because of False Information

If an authorized agency official suspects or determines that unauthorized assistance was given to a borrower because of false information, the authorized agency official will notify DD. The authorized agency official will send DD a copy of the documentation created according to subparagraph C. DD will then notify SED of the unauthorized assistance case. FSA will immediately seek guidance from OGC and/or OIG before final completion of servicing.

If SED concurs with DD's findings, SED will request OGC and OIG guidance according to Part 11, Section 2 before any further action is taken.

## 385 Determining the Value of Unauthorized Assistance

### A Amount of Unauthorized Assistance

If FSA determines that a borrower received unauthorized assistance on a loan, FSA will consider the entire loan unauthorized. For example, if a borrower received a $100,000 EM but was eligible for only a $90,000 EM, the entire $100,000 EM is unauthorized, not just the $10,000 above the EM eligibility limit. However, a borrower may continue with an unauthorized loan if the borrower remits the portion of a loan that made the loan unauthorized. For example, if a $100,000 EM was made, but the borrower was only eligible for a $90,000 EM, the borrower can continue with the loan on program terms if the $10,000 is remitted to FSA. A borrower who received an interest subsidy may also continue with a loan after remitting the amount of the interest subsidy the borrower was not eligible to receive. If the $10,000 is not remitted, then processing will continue according to paragraph 387.

## 386 Notifying Borrower of Unauthorized Assistance

### A General Policy

When FSA has fully documented a borrower's receipt of unauthorized assistance, the borrower will be notified.

### B Notifying Borrowers Who Received Unauthorized Assistance Because of Inaccurate Information or FSA Error

The authorized agency official will notify the borrower of the initial unauthorized assistance determination with Exhibit 30. *** * *** The letter will address the type of unauthorized assistance, and the amount calculated according to paragraph 385 that could be paid to correct the unauthorized assistance. *** * *** FSA will *** * *** consider the borrower notified of unauthorized assistance 3 calendar days after the letter is sent *** * ***.

If the unauthorized assistance meeting cannot be held or corrective action taken within 30 calendar days, the account will be in nonmonetary default and the borrower will be notified according to Part 3.

### C Notifying Borrowers Who Received Unauthorized Assistance Identified by an OIG Audit

If the unauthorized assistance is identified by an OIG audit, the authorized agency official will notify the borrower according to 9-AO.

### D Notifying Borrowers Who Received Unauthorized Assistance Because of False Information

If the unauthorized assistance is because of false information, the authorized agency official will notify the borrower according to OIG or SED instructions.

## 387 Recovering Unauthorized Assistance

### A Meeting With the Borrower

At the meeting, the reason for the assistance being unauthorized will be explained to the borrower and options for correcting the unauthorized assistance will be discussed.

The borrower has 15 calendar days to provide evidence that refutes FSA's determination.

### B Final Notification

Once all meetings are concluded, the proposed corrective action will be sent to the approval official designated in paragraph 381 for consideration. The approval official will make any changes necessary to the plan and return it to the authorized agency official. The borrower will be informed of the final outcome with Exhibit 31. *** * *** FSA will *** * ***consider the borrower notified of unauthorized assistance 3 calendar days after the letter is sent *** * ***.

The borrower must respond within 30 calendar days of the date of receipt of the letter and be prepared to complete the corrective action within 90 calendar days from the date of receipt. If the unauthorized assistance corrective action is not completed, the account will be in nonmonetary default and the borrower will be notified according to Part 3.

## 387 Recovering Unauthorized Assistance (Continued)

### C Unauthorized Assistance Remittance in a Lump Sum

**[7 CFR 766.253(a)(1)] The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.**

The authorized agency official must make every reasonable attempt to collect the amount of the unauthorized assistance calculated in paragraph 385 from the borrower in a lump sum. If the borrower agrees to remit the unauthorized assistance in a lump sum, the borrower must remit the unauthorized assistance within 90 calendar days of receipt of Exhibit 31.

FSA can make the borrower a new loan or a subordination to refinance the unauthorized loan as long as the new action meets all requirements for the type of new loan or subordination.

### D Other Unauthorized Assistance Remittance Options

**[7 CFR 766.253(a)] (2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower's ability to repay.**

**(3) If the borrower is unable to repay all or part of the unauthorized amount, the loan will be converted to a Non-program loan under the following conditions:**

**(i) The borrower did not provide false information;**

**(ii) It is in the interest of the Agency;**

**(iii) The debt will be subject to the interest rate for Non-program loans;**

The borrower must develop a feasible plan which includes the unauthorized assistance amount at NP rates and terms.

**(iv) The debt will be serviced as a Non-program loan;**

**(v) The term of the Non-program loan will be as short as feasible, but in no case will exceed:**

**(A) The remaining term of the FLP loan;**

**(B) Twenty-five (25) years for real estate loans; or**

**(C) The life of the security for chattel loans.**

***--**A new FSA-2026 will not be taken. Instead NFAOC, DLD will be informed of the**--***
change by memorandum identifying the loan to be affected, noting the new rates and terms, and referring to the authority in the regulation in this subparagraph. Copies of the memorandum will be attached to FSA-2026 of affected loan and all copies.

## 387 Recovering Unauthorized Assistance (Continued)

### E Borrower Refusal to Pay

**[7 CFR 766.254(b)] If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C** (Part 3) **of this part.**

Borrowers who can pay but refuse are in nonmonetary default.

### F When FSA Pursues Legal Action to Collect Unauthorized Assistance

The authorized agency official will move toward liquidation by notification of the borrower according to Part 3 if:

- the borrower fails to attend the scheduled meeting
- the borrower fails to respond to FSA within 30 calendar days of the date of receipt of Exhibit 31
- the borrower has not completed the corrective action within 90 calendar days of the date of receipt of Exhibit 31.

If OIG determines that unauthorized assistance was caused by incomplete or false information, the authorized agency official services the borrower's account and recovers unauthorized assistance according to OIG instructions.

### G Processing Any Account Adjustments

The authorized agency official will process any payment made to resolve the unauthorized assistance case as an extra payment according to 4-FLP, subparagraph 63 A.

## 388-400 (Reserved)

# Part 11 Bankruptcies and Civil and Criminal Cases * * *

## Section 1 Bankruptcy

### 401 FSA Actions When Borrower Files for Bankruptcy

#### A Suspending Loan Servicing

If a borrower files bankruptcy, the authorized agency official will suspend all pending special servicing and collection actions, but will continue to monitor the account and conduct regular servicing to protect the interests of the Government.

#### B Flagging the Account

Upon notification that the borrower has filed bankruptcy, the authorized agency official will flag the account as "BAP" by using FSA-2562 and processing a 5G transaction. The "BAP" flag will remain on the account until 1 of the following occurs:

- bankruptcy is dismissed
- there is a confirmed plan and the case is closed
- the account is settled.

**Note:** The "51-S" flag must be removed with a 5H transaction before a "BAP" flag can be established (Exhibit 11).

#### C Notifying the Borrower's Attorney of Loan Servicing Options if Borrower Was Not Previously Notified

**[7 CFR 766.301] If a borrower files for bankruptcy, the Agency will provide written notification to the borrower's attorney with a copy to the borrower as follows:**

**(a) The Agency will provide notice of all loan servicing options available under Subpart C** (Part 3) **of this part, if the borrower has not been previously notified of these options.**

Within 15 calendar days of receiving a notice of bankruptcy, the authorized agency official will send all borrowers and the borrowers' attorney Exhibit 34, the appropriate notice, and the response form according to subparagraph 67 A. If the borrower does **not** have an attorney, the borrower only will receive the FSA forms.

## 401 FSA Actions When Borrower Files for Bankruptcy (Continued)

### D Notifying the Borrower's Attorney of Servicing Options if the Borrower Was Previously Notified

**[7 CFR 766.301(b)] If the borrower received notice of all loan servicing options available under Subpart C** (Part 3) **of this part prior to the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available.**

If FSA notified the borrower of primary loan servicing before the borrower filed for bankruptcy and some servicing options are still available, the authorized agency official will send Exhibit 34 and the appropriate servicing forms along with any required application forms to all borrowers and the borrowers' attorney (if the borrowers have no attorney, then all notifications and timeframes will apply to the borrowers only) explaining what options remain. Servicing and servicing timeframes suspended on the date the borrower files for bankruptcy resume on the date the attorney receives Exhibit 34. If no servicing options remain, send Exhibit 34 to inform the borrower and attorney that no primary loan servicing options remain.

***--**If the borrower or borrower's attorney does not request any remaining servicing options, or no servicing options remain, the authorized agency official will not take any further action**--*** to liquidate the account until the stay is lifted and they are notified by the State Office.

### E Referring a Bankruptcy to the State Office

The authorized agency official will inform the State Office of any developments in the borrower's bankruptcy case, but will take no action against the security unless directed by SED.

SED should issue a State supplement describing what information is to be forwarded to the State Office in the event of a borrower filing bankruptcy. SED may issue additional State supplements as required to comply with State laws with regional OGC guidance/advice.

## 402 Borrowers' Rights and Responsibilities About Loan Servicing

### A Application Requirements for a Borrower Not Previously Notified of Loan Servicing Options

**[7 CFR 766.302(a)] To be considered for loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within 60 days of the date of receipt of Agency notice on loan servicing options.**

### B Application Requirements for a Borrower With Previous Monetary and Nonmonetary Notification Pending

**[7 CFR 766.302(b)] To be considered for continued loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within the greater of:**

**(1) Sixty days after the borrower's attorney received the notification of any remaining loan servicing options; or**

**(2) The remaining time from the Agency's previous notification of all servicing options that the Agency suspended when the borrower filed bankruptcy.**

### C Acknowledgment of Agency Noninterference With the Bankruptcy Code

**[7 CFR 766.303(a)] Any request for servicing is the borrower's acknowledgment that the Agency will not interfere with any rights or protections under the Bankruptcy Code and its automatic stay provisions.**

### D Obtaining Court Approval Before Exercising Servicing Rights

**[7 CFR 766.302(c)] The borrower is responsible for obtaining court approval prior to exercising any available servicing rights.**

## 402 Borrowers' Rights and Responsibilities About Loan Servicing (Continued)

### E When a Bankruptcy Plan Is Confirmed Before Servicing or Appeals Are Completed

**[7 CFR 766.303(b)] If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and subpart C** (Part 3) **of this part, as appropriate.**

### F Chapter 7 Servicing Requirements

**[7 CFR 766.303(c)] A borrower filing for bankruptcy under Chapter 7 of the Bankruptcy Code may not receive primary loan servicing unless the borrower reaffirms the entire Agency debt. A borrower who filed chapter 7 does not have to reaffirm the debt in order to be considered for homestead protection.**

If the borrower decides to reaffirm the entire FLP debt, FSA will accept the reaffirmation.

Once the borrower obtains permission from the court and reaffirms the debt, the authorized
***--**agency official will process the primary loan servicing application, or remaining servicing options as indicated in Exhibit 34.**--***

The borrower may use a court-approved Reaffirmation Agreement (B240A) found at **http://www.uscourts.gov/bkforms/index.html** to request debt reaffirmation. SED may:

- with advice from the regional OGC and/or the U.S. Attorney's office, authorize use of another form/format by issuing a State supplement

- issue a State supplement about procedures for reaffirmation of debt.

***--**If the borrower reaffirms the debt in order to be considered for primary loan servicing as indicated in Exhibit 34, but FSA later denies the servicing, the borrower may revoke the**--*** reaffirmation subject to the provisions of the Bankruptcy Code.

## 403 Filing Proof of Claim

### A Role of the State Office

In a bankruptcy case, the State Office will determine whether FSA has security for the debt and whether the debtor has other assets from which FSA could make a substantial collection. In making this determination, the State Office should request additional information as needed from the authorized agency official.

### B Actions for Borrower Under Chapter 7 With No Loan Security or Other Assets

Unless otherwise advised by OGC, if FSA cannot make a substantial recovery from the security and other assets, the State Office will return the file and related material to the authorized agency official. The State Office will provide the authorized agency official with a memorandum indicating SED's determination and advising that FSA will not file a proof of claim unless the authorized agency official learns that the debtor has assets not previously identified.

The deadline for filing claims in a bankruptcy proceeding is 90 calendar days from the first date set for the meeting of creditors, except governmental units, such as FSA, shall be timely filed if the Proof of Claim is filed 180 calendar days after the date of the order of relief. If FSA learns before the deadline that the borrower has previously unreported assets, the authorized agency official will resubmit the case to the State Office.

### C Actions for Borrower Under Chapters 7, 11, 12, or 13 With Potential for Substantial Recovery

When working with a borrower under Chapter 7, 11, 12, or 13 and there is potential for substantial recovery, the State Office will prepare Proof of Claim (B10) found at ***--http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Current/B_010.pdf--*** or other form approved by OGC to submit a proof of claim. The proof of claim covers all of the borrower's indebtedness to FSA and any SAA's.

The identification of FSA security and Proof of Claim will be submitted to OGC and the U.S. Attorney. Central Intake Facilities will be used if required.

If the proof of claim is submitted to OGC, SED will identify in a memo the security that FSA took for each FLP loan.

If SED knows that the U.S. Attorney has obtained a judgment against the borrower, SED will notify OGC even though the debt has been charged off.

SED, on OGC's advice, will instruct the authorized agency official about actions to take with respect to meetings of creditors.

SED will take no other actions without OGC's or DOJ's approval.

## 403 Filing Proof of Claim (Continued)

### D Chapter 13 Bankruptcies When FSA Has a Lien on the Debtor's Principal Residence

Because of Federal bankruptcy rule notification requirements in Chapter 13 bankruptcies where FSA has a lien on the debtor's principal residence and the case is still under court jurisdiction, OGC will be specifically notified when 1 of the following occurs:

- FSA plans on making any changes in the planned payments or interest rate on the account
- FSA plans on charging any recoverable cost items to the account
- FSA receives a notice from the trustee or debtor that payment has been made in full.

The Federal bankruptcy rules require FSA to serve upon the debtor, debtor's counsel, and trustee a notice of any payment changes, including any changes resulting from interest rate or escrow account adjustments, at least 21 calendar days before the new amount is due.

FSA must also serve upon the debtor, debtor's counsel, and trustee a notice of any fees, expenses, or charges incurred after the bankruptcy petition was filed that are recoverable against the borrower, within 180 calendar days of the date that the fees, expenses, or charges were incurred.

If FSA receives a notice that payment has been made in full, the Government must, within 21 calendar days, file and serve the debtor, debtor's counsel, and trustee a notice for either of the following:

- agreeing that full payment has been made
- itemizing any required cure or post-petition amounts that are unpaid.

Notices must be cleared through OGC unless other arrangements have been made.

## 404 Adjustment of Debts When Borrowers Are in Bankruptcy

### A Referral and Recommendation to SED

The authorized agency official will send to SED any plans submitted by debtors. SED will refer the plans to the U.S. Attorney through OGC.

SED will provide OGC with a recommendation to accept or reject any debtor's plan that calls for adjustment of FSA debt.

### B FSA Actions After Court Confirms Plan

Upon receiving notification of the bankruptcy reorganization plan confirmation, SED will
***--**notify NFAOC, DLD of the terms and conditions of the plan including any adjustment of**--***
the FSA debt, using FSA-2574. SED should attach to FSA-2574 a copy of the reorganization plan, signed order of confirmation, and discharge order if applicable.

## 404 Adjustment of Debts When Borrowers Are in Bankruptcy (Continued)

### B FSA Actions After Court Confirms Plan (Continued)

***--**NFAOC, DLD will establish the borrower's account according to the reorganization plan**--*** and flag the account "SAA" (Exhibit 11) when it is applicable. The "SAA" flag will remain on the account until either the bankruptcy plan is completed and the case is closed, or the bankruptcy is dismissed.

The authorized agency official will file a copy of the plan, order of confirmation, and the original promissory notes according to 25-AS.

The authorized agency official must indicate that the borrower is paying under a reorganization plan in the borrower's case file and in DLS Special Servicing.

## 405 FSA Actions When Borrower Defaults on Reorganization Plan or Court Dismisses Bankruptcy While Under Court Jurisdiction

### A Borrower Becomes 90 Calendar Days Past Due on a Chapter 11, 12, or 13 Reorganization Plan

When a borrower becomes 90 calendar days past due on a Chapter 11, 12, or 13 reorganization plan while still under Bankruptcy Court jurisdiction, the authorized agency official will immediately notify the State Office of the facts of the case. The State Office will contact OGC for advice as required.

The authorized agency official will notify the borrower and the borrower's attorney of remaining primary and preservation servicing options not exhausted before filing for bankruptcy or during bankruptcy proceedings using Exhibit 34 and FSA-2510 and FSA-2511 unless either:

- OGC advises that notification is inconsistent with the confirmed reorganization plan and the Bankruptcy Code, 11 U.S.C. §101 et seq.
- FSA has referred the borrower's loan to DOJ
- FSA has previously accelerated the loan.

If all servicing options were exhausted before the bankruptcy filing or during bankruptcy, Exhibit 34 only will be prepared stating that no further servicing options remain.

A borrower operating under a confirmed plan applying and qualifying for loan servicing under Part 3 must comply with the Bankruptcy Code requirements regarding plan modification.

The authorized agency official may request updated information to decide on a previous request for loan servicing. The authorized agency official will send a copy of this notice to the Bankruptcy Trustee unless otherwise advised by OGC.

## 405 FSA Actions When Borrower Defaults on Reorganization Plan or Court Dismisses Bankruptcy While Under Court Jurisdiction (Continued)

### B Servicing When the Bankruptcy Is Dismissed Without a Confirmed Plan and the Borrower Is in Default

***--**If the Court dismisses a bankruptcy case and the borrower is in default on FLP loans, the**--***
authorized agency official will notify the borrower of any remaining servicing options unless:

- OGC advises that notification is inconsistent with the Bankruptcy Code, 11 U.S.C. §101 et seq.
- FSA has referred the borrower's loan to DOJ
- FSA has previously accelerated the loan.

If the borrower is in default and all loan servicing options are exhausted, FSA will proceed to liquidate the security according to Part 15.

If FSA previously accelerated the account, all of the borrower's servicing rights are exhausted and FSA liquidates the account.

### C Servicing a Borrower When a Bankruptcy Is Dismissed After a Confirmed Plan

If the borrower makes at least 1 full payment to FSA on the confirmed plan before the bankruptcy is dismissed, the authorized agency official will send the borrower a new servicing notification package.

If the borrower does not make at least 1 full payment to FSA, the authorized agency official will send notification of the remaining servicing options based on the previous notification. If the borrower is in default and all loan servicing options are exhausted, FSA will proceed to liquidate the security according to Part 15.

## 406 Servicing Chapter 11, 12, and 13 Cases After the Bankruptcy Case Is Closed

### A Removing the "SAA" Flag and Writing Off Discharged Debt

Upon receipt of the discharge order from the Bankruptcy Court, the authorized agency official will review the borrower records to determine whether FSA will cancel any discharged debt.

If all liable parties are discharged and the bankruptcy is closed, the authorized agency official
*--will debt settle the remaining discharged debt according to 7-FLP, Part 12.

The State Office will forward the approved FSA-2731, with a copy of the discharge, to NFAOC, DLD for processing the debt cancellation.

NFAOC, DLD will remove the "SAA" flag and process the necessary transactions to write off any portion of the debt.

### B Servicing Remaining Liable Parties--*

If some, but not all, of the liable parties were discharged of the debt, the authorized agency official will:

- consult with the regional OGC to determine what, if any, collection action can be taken against nondischarged individuals, entities, etc., and any remaining security

- take all allowable collection actions in a timely manner, including collection of unsecured
*--account balances through offset and referral to Treasury as set forth in 7-FLP

- determine whether a partial cancellation of the debt, such as canceling the discharged debt amount that is still owed by the nondischarged individuals, would be appropriate and/or financially beneficial to the Government

  **Note:** See paragraph 409.--*

- monitor these accounts closely to ensure timely resolution.

* * *

## 406 Servicing Chapter 11, 12, and 13 Cases After the Bankruptcy Case Is Closed (Continued)

### C Returning to Regular Servicing

After the bankruptcy case is closed, the authorized agency official will service bankruptcy loans according to 4-FLP, subject to the confirmed reorganization plan.

### D Servicing if the Borrower Defaults on the Confirmed Reorganization Plan

If a borrower becomes 90 calendar days past due or is in nonmonetary default after the court issued a discharge order and after the case is closed under Chapter 11, 12, or 13 of the Bankruptcy Code, the authorized agency official will notify the borrower of loan servicing options according to Part 3, unless servicing actions would be inconsistent with the confirmed bankruptcy plan or the Bankruptcy Code or FSA has referred the account to DOJ.

If the account is in nonmonetary default, OGC concurrence will be obtained before acceleration.

## 407 Liquidation During Bankruptcy

### A Automatic Stay Requirements

FSA must receive relief from the automatic stay from the Court before liquidating the borrower's security. If the Court allows, and all servicing requirements are met, FSA may liquidate the security before the discharge of debt or as otherwise addressed by OGC.

### B Chapter 7 Cases After Discharge

In Chapter 7 cases after discharge, FSA will liquidate the account as authorized by OGC if both of the following are true:

- the borrower has not reaffirmed the debt
- an Abandonment Order for the FSA security has been issued by the court or the bankruptcy case is closed.

In cases when 1 or more borrowers have received a discharge, but at least 1 borrower remains liable:

- DLS must be updated with either a 4A or 4D transaction to list the account in the name of any remaining liable debtors
- related entity status of the discharged individuals or entities should be updated in the DLS Customer Profile Related Entity function to reflect they are no longer a co-borrower/ co-signer/guarantor
- the Chapter 7 discharge order must be maintained in the case file.

## 407 Liquidation During Bankruptcy (Continued)

### B Chapter 7 Cases After Discharge (Continued)

Collection of unsecured account balances will continue for all remaining liable borrowers *--through offset and referral to Treasury as set forth in 7-FLP.--*

In community property States:

- the authorized agency official will consult with the regional OGC, as needed, before pursuing separate collection action against a nondischarged borrower who is the spouse of a discharged borrower

- when collection action cannot be taken against a nondischarged spouse and the nondischarged spouse is the only remaining liable obligor for the unsecured loan balance, *--only the individual or entity receiving the discharge will be listed on FSA-2731.--*

* * *

### C Canceling the Debt When All Liable Parties Are Discharged

If all liable parties are discharged and the FSA security is liquidated, FSA may cancel the *--debt using FSA-2731 according to 7-FLP, Part 12.--*

### D Notifying Borrower if Servicing Options Are Remaining

If the authorized agency official did not previously notify the borrower's attorney or borrower of any servicing options before or during the course of the bankruptcy proceedings, FSA will send the notices according to subparagraph 401 C before liquidating any security property.

### E When FSA Previously Notified the Borrower of Servicing Options

If the authorized agency official previously notified the borrower's attorney or borrower of the remaining servicing options and none remain, FSA will accelerate the account and liquidate according to Part 16 and any instructions from OGC.

**Note:** The borrower may **not** appeal the acceleration.

## 407 Liquidation During Bankruptcy (Continued)

### F Discharged Borrower Keeps FLP Loans Current

Borrowers who have received a bankruptcy discharge may continue to pay FLP loans that are secured by real estate. In these cases, OGC may advise that foreclosing against the security is **not** possible unless the secured loans become delinquent.

The authorized agency official will:

- ensure that the account remains flagged "BAP" according to subparagraph 401 B

- monitor the TOP screens to ensure that all unsecured discharged loans are removed from *****--TOP consideration according to 7-FLP, Part 4--*****

- continue monitoring the account until the secured loans are paid in full or become delinquent.

If the secured loans become delinquent, consult with the regional OGC, as needed, to determine whether any additional notices must be sent before liquidating the security.

In some cases, it may be appropriate and/or in the Government's best interest to process *****--partial cancellation of debt. See paragraph 409.--*****

*** * ***

Partial cancellation in these situations may assist FSA to:

- comply with the bankruptcy discharge order by ensuring that no erroneous offset collection is taken on the discharged unsecured loans that are still showing as delinquent in FSA's financial system

- reduce the amount of uncollectible debt FSA must continue to monitor and include in reports.

## 408 Acceptance of Conveyed Property From Trustee in Bankruptcy

### A Conditions for Acceptance of Conveyed Property

FSA may accept conveyance of property by the Trustee in a bankruptcy case if:

- the automatic stay has been lifted
- conveyance will permit a substantial recovery of FSA debt
- FSA will acquire title free of all liens and encumbrances except for FSA's liens
- conveyance is in FSA's interest.

SED is authorized to accept a conveyance of property to the Government.

### B Fees Connected With the Conveyance

FSA may voucher and charge to the borrower's account any necessary and proper fees approved by the Bankruptcy Court in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of $1,000 for FLP loans, the authorized agency official must obtain approval from the Administrator. SED will process payment of fees as outlined in 4-FLP, Part 6.

### C Deeds

Conveyance of the borrower's property to FSA may be by a Trustee's Deed instead of FSA-2569 if, upon advice of OGC, FSA determines that such a deed is necessary to obtain clear title.

### D Crediting the Borrower's Account

FSA will credit the borrower's account after accepting a conveyance of property. If the market value of the acquired property equals or exceeds the debt, the account is satisfied. If the debt exceeds the market value of the acquired property, FSA will credit the account by the market value of the security.

### E Property Acquisition Reporting Requirements

FSA will report property acquisitions according to Part 14.

## *--409 Administrator's Exception Request for Partial Cancellation of Debt After Discharge

### A Requesting Administrator's Exception

If partial cancellation is appropriate, submit a request for an exception to 7 CFR 1956.57(k) to the National Office. For debt settlement exception authority and information on submitting an exception request, see 7-FLP, Part 12.

### B Processing Partial Cancellation for Nondischarged Individuals

Partial cancellation for nondischarged individuals (subparagraph 406 A) requires a complete debt settlement application from each. The partial debt settlement application will be processed according to 7-FLP, Part 12.

In cases where partial cancellation is completed, the cancellation of debt for the nondischarged individuals will be debt forgiveness for FLP purposes, and IRS Form 1099-C will be issued for the amount of the canceled debt.

### C Processing Partial Cancellation for Discharged Individuals

For discharged individuals who continue to make payments (subparagraph 407 F), the partial cancellation will be completed using FSA-2731 according to 7-FLP, Part 12.--*

## 410-420 (Reserved)

## Section 2 Civil and Criminal Cases

### 421 Handling Civil and Criminal Cases

#### A Criteria for Pursuing Civil Cases

FSA will pursue a civil court action against a borrower or third party when:

- the borrower fails to make required payments or to cure nonmonetary default
- all administrative authorities to protect FSA's interests have been exhausted.

#### B Pursuing Criminal Cases

If it appears that an applicant, borrower, or third party committed a criminal violation in any manner, SED will refer the case to the appropriate authorities for investigation and possible prosecution.

If it appears that an applicant, borrower, or third party committed a criminal violation related to the loan, SED will notify OIG for possible criminal investigation according to *****--subparagraph C and 9-AO, paragraph 53. SED must also send a copy of this notification--***** to OGC. If OIG decides to investigate, SED will consult with OIG before taking any action against the borrower.

#### C Collection of Information and Referral to State Office

*****--The authorized agency official will refer civil and criminal cases to the State Office.

If the County Office believes the default is because of conversion, fraud, or waste, the initial report to the State Office can be made by completing FSA-2551, page 3 for conversion, page 5 for fraud, or page 6 for waste. The State Office will then report this information by whatever means is convenient and effective to OIG and/or OGC, as appropriate. If OGC or OIG determines it might pursue the case further, the authorized agency official will be informed of the decision, by memorandum, and will prepare FSA-2550, FSA-2551, and, if applicable, a Claims Collection Litigation Report, for submission to SED. SED will submit the referral to OGC and/or OIG, as appropriate. If neither a criminal or civil case will be pursued, the authorized agency official will be informed and should proceed as directed by the State Office.

SED may issue a State Supplement as required.--*****

#### D Role of State Office

*** * *** The State Office will flag the account "CAP" upon referral to OGC. If a judgment is:

- obtained against a borrower, the account must be set up with judgment coding using a 3B transaction and FSA-2576, and the "CAP" flag should be removed from the borrower's account

## 421 Handling Civil and Criminal Cases (Continued)

### D Role of State Office (Continued)

- obtained against a third party, the State Office will complete and send FSA-2562 to *--NFAOC, DLD attached to the 5G transmittal letter to be flagged "TPJ" (Exhibit 11), and the "CAP" flag should be removed

- to be reversed, the State Office must send FSA-2562 to NFAOC, DLD attached to a 5H transmittal letter.

  **Note:** Only NFAOC, DLD can assign or reverse a "TPJ" flag.--*

### E Notification to Third Party Purchasers When a Borrower Has Not Properly Accounted for Proceeds

When a borrower has not properly accounted for the proceeds of the sale of security, FSA will first look to the borrower for restitution. If FSA is in liquidation, FSA will usually attempt to liquidate remaining chattel security on which FSA holds a first lien before making demand or taking civil action against third party purchasers. However, FSA will, with SED concurrence, notify a third party purchaser according to 4-FLP, paragraph 181 when it is necessary to protect the interest of the Government.

### F Notification When a Borrower Has Not Properly Accounted for Proceeds

When a borrower has not properly accounted for the proceeds of the sale of security, FSA will service the account according to 4-FLP, Part 7.

### G Deficiency Judgment

In some cases, it is in the Government's best interest to obtain a deficiency judgment for balances remaining after all security has been liquidated.

The authorized agency official shall:

- make a recommendation about whether a deficiency judgment should be pursued according to subparagraph 533 F

- include information about nonsecurity assets on which a judgment lien may be obtained when referring cases to the State Office according to subparagraph C.

**Note:** Pursuing a deficiency judgment on every case is **not** advisable and may not be a good use of Government resources.

*--Deficiency judgments are serviced under 7-FLP, Part 11.--*

## 422-430 (Reserved)

## Section 3 (Withdrawn--Amend. 34)

**431-434 (Withdrawn--Amend. 34)**

**435-440 (Reserved)**

# Part 12 Liquidation Overview

## 441 Introduction to Liquidation

### A General Information

Parts 13 through 17 address complete liquidation of security. Partial disposition of security is handled according to 4-FLP, Part 7. The liquidation parts are:

- Part 13, Voluntary Liquidation
- Part 14, Voluntary Conveyance of Security
- Part 15, Loan Acceleration
- Part 16, Involuntary Liquidation
- Part 17, Liquidation by a Third Party.

While FSA works with a borrower to complete voluntary liquidation, FSA does not delay involuntary liquidation procedures to accommodate the borrower.

### B Voluntary Liquidation

A borrower may voluntarily liquidate FSA loan security by 1 or more of the following:

- selling security as described in Part 13
- transferring security as described in 4-FLP, Part 9
- conveying security as described in Part 14.

A current borrower or a borrower in default may voluntarily liquidate FSA security.

FSA does not set any time limits or establish formal procedures for the current borrower who voluntarily decides to sell farming assets, as long as the borrower continues to meet all FSA loan obligations and liquidates the security according to FSA requirements.

### C Involuntary Liquidation

If a borrower in default has received all servicing options, is unable to develop a feasible plan, and does not voluntarily liquidate FSA security according to FSA mandated servicing timeframes, FSA will initiate or continue involuntary liquidation actions according to Part 16.

## 442 Conditions for Liquidation

### A Current Borrowers

With prior Agency approval, a borrower who is not in default may voluntarily liquidate the security to repay FSA loans in full. The borrower may apply for debt settlement according to ***--**7-FLP, Parts 8 and 12 if complete liquidation of all FSA loan collateral will not satisfy the FSA debt.

If FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.**--***

### B Program Borrowers in Default

**[7 CFR 766.351(b)] (1) If the borrower does not apply, does not accept, or is not eligible for primary loan servicing, conservation contract, market value buyout or homestead protection, and all administrative appeals are concluded, the Agency will accelerate the borrower's account in accordance with §§766.355 and 766.356** (Part 15)**, as appropriate.**

**(2) Borrowers may voluntarily liquidate their security in accordance with §§ 766.352, 766.353 and 766.354** (Part 13)**. In such case, the Agency will:**

**(i) Not delay involuntary liquidation action.**

**(ii) Notify the borrower in accordance with subpart C** (Part 3) **of this part, prior to acting on the request for voluntary liquidation, if the conditions of paragraph (b)(1) of this section have not been met.**

If a borrower in default wants to voluntarily liquidate security before FSA accelerates the borrower's loans, the borrower must pursue voluntary liquidation according to the applicable liquidation method as described in Parts 13 and 14 or 4-FLP, Part 9. However, FSA will continue to notify the borrower of primary loan servicing according to Parts 3 and 6 and to follow the process of acceleration and involuntary liquidation without delay. When discussing voluntary liquidation with the borrower, they should be informed that if they are in default and the default cannot be cured, FSA cannot pause and will continue to process the account to acceleration and liquidation if necessary. The authorized agency official must be aware that several actions may need to be taken simultaneously.

## 443 Protecting FSA Interests

### A Protective Advances

**[7 CFR 766.351(a)(2)] The Agency will charge protective advances against the borrower's account as necessary to protect the Agency's interests during liquidation in accordance with §765.203** (4-FLP, Part 6) **of this chapter.**

### B Recoverable Costs

During the liquidation process, FSA will take timely and appropriate action to protect its security and loan recovery interests. In so doing, the authorized agency official will charge recoverable costs associated with security protection and loan liquidation to the borrower's account according to 4-FLP, Part 6.

In some cases, it may be in FSA's best financial interest to deduct certain recoverable liquidation costs from the liquidation proceeds. In such cases, FSA will not charge these costs against the borrower's account as recoverable costs. Rather, these costs will be subtracted from the security sale proceeds, resulting in lower net sale credit to the borrower's account. Examples of costs FSA will usually pay from liquidation proceeds include the following:

- making emergency repairs to abandoned property
- maintaining security the borrower has not adequately maintained.

Examples of costs FSA will usually charge to the borrower's account include the following:

- paying borrower real estate taxes and assessments
- paying prior or junior liens to protect FSA's interest
- maintaining property, hazard or flood insurance coverage.

Further guidance regarding these costs are provided in 4-FLP, Part 6.

## 443 Protecting FSA Interests (Continued)

### C State Supplements

The authorized agency official should be familiar with State laws and any guidance issued by SED concerning liquidation policies or procedures specific to that State. This handbook provides general guidance on liquidation, but State laws may require implementation of specific policies and actions not detailed in this handbook. SED will issue State supplements that address these policies and procedures.

### D Authorities and Communication

The authorized agency official must know the responsibilities and authorities of all officials involved in the liquidation process, including the DD, SED, and OGC. Authorities are summarized in 1-FLP, Part 2. Clear and open communication must be maintained with DD, SED, and OGC to ensure that FSA completes all liquidation requirements.

## 444 General Issues

### A Deceased Borrower

**[7 CFR 766.351(a)(3)] When no surviving family member or third party assumes or repays a deceased borrower's loan in accordance with part 765, subpart J, of this chapter, or when the estate does not otherwise fully repay or sell loan security to repay a deceased borrower's Agency loans, the Agency will liquidate the security as quickly as possible in accordance with State and local requirements.**

The authorized agency official will send the executor of the estate or other appropriate entity FSA-2514's and FSA-2515's according to Part 3. See 4-FLP, Part 10 for a complete discussion on handling deceased borrower cases.

## 444 General Issues (Continued)

### B NP Borrowers

**[7 CFR 766.351(c)] If a borrower has both Program and Non-program loans, the borrower's account will be handled in accordance with paragraph (b)** (subparagraph 442 B) **of this section. If a borrower with only Non-program loans is in default, the borrower may liquidate voluntarily, subject to the following:**

**(1) The Agency may delay involuntary liquidation actions when in the Agency's financial interest for a period not to exceed 60 days.**

**(2) The borrower must obtain the Agency's consent prior to the sale of the property.**

**(3) If the borrower will not pay the Agency in full, the minimum sales price must be the market value of the property as determined by the Agency.**

**(4) The Agency will accept a conveyance offer only when it is in the Agency's financial interest.**

Exhibit 37 will be used to help determine whether an offer of voluntary conveyance is in FSA's best interest.

**(5) If a Non-program borrower does not cure the default, or cannot or will not voluntarily liquidate, the Agency will accelerate the loan.**

Exhibit 38 will be used to notify NP borrowers of the default 10 calendar days after a payment is missed. At 30 calendar days past due, NP borrowers will then be informed by Exhibit 39 that the account must be brought current or a liquidation plan submitted and that no further notice will be given before acceleration. FSA will begin servicing toward
***--**acceleration at 60 calendar days, according to paragraph 533. DD will send Exhibit 40 or 41 (for NP borrower who were discharged in bankruptcy) as soon as possible after the account is 90 calendar days past due by certified and regular mail on the same day.**--***

## 444 General Issues (Continued)

### C Multiple Loans and Multiple Types of Security

When a borrower has more than one FSA loan, FSA will involuntarily liquidate real estate and chattel security for all the borrower's loans within a similar time period according to Part 16.

When a borrower liquidates both real property and chattel security, the borrower must follow the applicable procedures for liquidating each type of security. If a borrower intends to liquidate chattel security that may be considered a fixture on real property, the authorized agency official will determine whether the borrower may liquidate the chattel as part of the real property. This approach may be appropriate for irrigation equipment or other fixtures that serve as security for FO or other FSA loans. If the equipment or fixture does not contribute to the value of the real property or it is otherwise in FSA's best interest, FSA may require the borrower to sell the equipment or fixture as chattel.

## 445-460 (Reserved)

# Part 13 Voluntary Liquidation

## 461 General Requirements

### A Voluntary Sale of Property

**[7 CFR 766.352(a)] A borrower may voluntarily sell real property or chattel security to repay Agency debt in lieu of involuntary liquidation if all applicable requirements of this section are met. Partial dispositions are handled in accordance with part 765, subparts G and H** (4-FLP, Part 7) **of this chapter.**

**(1) The borrower must sell all real property and chattel that secure Agency debt until the debt is paid in full or until all security has been liquidated.**

There are several types of voluntary liquidation including sale, transfer, and conveyance of security. This part addresses voluntary sale of real property and chattel security. Voluntary conveyance is discussed in detail in Part 14 and transfers in 4-FLP, Part 9.

### B Notifying the Borrower

With Agency approval, a current borrower may initiate voluntary liquidation at any time.

For a borrower in monetary or nonmonetary default, FSA will notify the borrower of the default according to Part 3. The authorized agency official will work with a borrower in default to voluntarily liquidate security; however, the authorized agency official will not delay FSA's required servicing, acceleration, and involuntary liquidation to accommodate the borrower's liquidation efforts.

## 462 Voluntary Liquidation of Real Property

### A Approval Request

**[7 CFR 766.352(a)(2)] The Agency must approve the sale and approve the use of proceeds.**

The borrower must:

- complete and sign FSA-2060 with the assistance of the authorized agency official
- provide a sales contract for the property indicating the price and terms of the sale
- sell the property for not less than the *** * *** market value unless FSA is being paid in full.

### B Title Search

The authorized agency official will conduct a new lien search if adequate title information is not available in the borrower's case file. The purpose of the search is to:

- determine the liens of other parties on the property and their effect on liquidation
- ensure proper distribution of sale proceeds.

The borrower pays the cost of all title searches or it will be charged to the borrower's account ***--**if they are unable to pay. The authorized agency official will obtain a title search according to the procedures used in the State where the property is located. SED will issue a State**--***supplement as appropriate.

### C Appraisal and Disposition of Collateral Proceeds

FSA will appraise the property according to 1-FLP, Part 6 to determine the property's market value only after receipt of a sales contract. Any sale proceeds received by the borrower over and above the FSA-determined *** * *** market value must be applied to the borrower's FSA debt until the FSA loans secured by the collateral are paid in full. The authorized agency official will apply sale proceeds *** * *** according to 4-FLP, Part 5.

## 462 Voluntary Liquidation of Real Property (Continued)

### D Sales That Do Not Satisfy the Borrower's Debt

**[7 CFR 766.352(a)] (4) The Agency will approve the sale of property when the proceeds do not cover the borrower's full debt only if:**

**(i) The sales price must be equal to or greater than the market value of the property; and**

**(ii) The sale is in the Agency's financial interest.**

If the borrower submits a debt settlement application with the sale request, the authorized agency official will forward the file to SED with the required debt settlement information as *****--required by 7-FLP, Part 12.--*****

### E Approving the Sale

After the authorized approval official signs FSA-2060 approving the borrower's request for sale of real property, FSA will provide a copy of the signed form to the borrower.

The authorized agency official may, but is not required to, attend the closing of the sale. If necessary, the authorized agency official may contact the borrower's closing agent to ensure proper distribution of the sale proceeds.

### F Rejecting the Sale Request

If the request for sale is not approved, the authorized agency official will notify the borrower in writing of the reasons for not approving the sale and offer appeal rights. See 1-APP for explanation of borrower's appeal rights.

## 463 Closing the Sale of Real Property

### A Processing the Sale Proceeds

After the sale, the authorized agency official will record the transaction and credit the borrower's account.

**[7 CFR 766.352(a)(3)] The sale proceeds are applied in order of lien priority, except that proceeds may be used to pay customary costs appropriate to the transaction provided:**

**[7 CFR 766.352(a)(3)] (i) The costs are reasonable in amount;**

Any costs beyond those believed reasonable by the authorized agency official must be supported by the borrower as being typical for similar transactions in the area.

**[7 CFR 766.352(a)(3)] (ii) The borrower is unable to pay the costs from personal funds or have the purchaser pay;**

**[7 CFR 766.352(a)(3)] (iii) The costs must be paid to complete the sale;**

Only costs essential for the actual sale will be released. Capital gains taxes are not considered essential for completing an actual sale and are not FSA's responsibility.

**[7 CFR 766.352(a)(3)] (iv) Costs are not for postage and insurance of the note while in transit when required for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real property from the mortgage.**

Examples of customary costs may include the following:

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

The borrower's closing agent will distribute sale proceeds according to lien priority, as specified on FSA-2060.

The authorized agency official will apply the proceeds from the sale to the borrower's FSA loan account according to 4-FLP, Part 5.

The authorized agency official will record the sale through appropriate issuance, distribution, and filing to FSA records of the appropriate deeds and settlement documents.

## 463 Closing the Sale of Real Property (Continued)

### B Release of Liens

If the proceeds pay the borrower's FSA debts in full, FSA will release its liens and return the appropriate documents to the borrower according to 4-FLP, paragraph 65.

### C Remaining Balance

**[7 CFR 766.352(a)(5)] If an unpaid loan balance remains after the sale, the Agency will *--continue to service the loan in accordance with subpart B of 7 CFR part 1956.** (7-FLP, Part 12)

If FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.

Judgment debt will be serviced according to 7-FLP, Part 11.**--***

## 464 Voluntary Liquidation of Chattel

### A Methods of Voluntary Liquidation

**[7 CFR 766.352(b)] If the borrower complies with paragraph (a)** (paragraphs 461 through 463) **of this section, the borrower may sell chattel security by:**

**[7 CFR 766.352(b)] (1) public sale if the borrower obtains the agreement of lienholders as necessary to complete the public sale; or**

For a public sale, the borrower must assist the authorized agency official in completing FSA-2571 and revising FSA-2040. FSA-2571 can be completed to give FSA custodial possession (not ownership) of the collateral or as an agreement for the borrower to sell the property.

**[7 CFR 766.352(b)] (2) private sale if the borrower:**

**(i) Sells all of the security for not less than the market value;**

**(ii) Obtains the agreement of lienholders as necessary to complete the sale;**

**(iii) Has a buyer who is ready and able to purchase the property; and**

**(iv) Obtains the Agency's agreement for the sale.**

For a private sale, the borrower must assist the authorized agency official in completing FSA-2571 and FSA-2040. The authorized agency official must document the reasons a public sale is not in FSA's best interest. If the account is in default, servicing will continue without delay.

## 464 Voluntary Liquidation of Chattel (Continued)

### B Lien Search

The authorized agency official will obtain a lien search on the security being sold unless accurate and complete lien information is available in the borrower's case file. The purpose of the search is to:

- determine the liens of other parties on the property and their effect on liquidation
- ensure proper distribution of sale proceeds.

The borrower will pay the cost of all lien searches. See 3-FLP, Part 16 on conducting a lien search. SED may issue a State supplement as appropriate.

### C Appraisal

FSA will appraise the property according to 1-FLP, Part 6 if the borrower pursues a private sale. FSA will not generally appraise chattel property to be sold at public auction.

### D Sales That Do Not Satisfy the Borrower's Debt

If the estimated net sale proceeds of the property will not fully pay a borrower's secured debts, but the sale price is at least equal to the market value of the security, the authorized agency official may approve the sale. If the borrower submits a debt settlement application with the sale request, the authorized agency official will forward the file to SED with the ***--**documentation required by 7-FLP, Part 12.**--***

### E Approving the Sale

The authorized agency official may attend the sale at their discretion and must contact the auctioneer or clerk of the sale to ensure proper distribution of the sale proceeds.

### F Rejecting the Sale Request

If the authorized agency official does not approve the request for sale, the borrower will be notified in writing of the reasons for not approving the sale and offered appeal rights according to 1-APP.

## 465 Closing the Sale of Chattel

### A Processing the Sale Proceeds

The auctioneer or clerk of sale will distribute the sale proceeds according to lien priority as specified on FSA-2571.

After the sale, the authorized agency official will:

- record the transaction and credit the borrower's account
- record the sale of chattel on FSA-2040
- apply the proceeds from the sale to the borrower's FSA loan account according to 4-FLP, Part 5.

### B Release of Liens

If the proceeds pay the borrower's FSA debts in full, FSA releases its liens and returns the appropriate documents to the borrower according to 4-FLP, paragraph 65.

### C Remaining Balance

If the proceeds do not pay the borrower's FSA debt in full, FSA will continue to service the borrower's account.

If FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G
*--and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.

Judgment debt will be serviced according to 7-FLP, Part 11.--*

## 466-480 (Reserved)

# Part 14 Voluntary Conveyance of Security

## Section 1 General Information

### 481 Introduction

#### A General Policy

Voluntary conveyance is a method by which the borrower transfers title and possession of all security property to FSA in exchange for credit to the borrower's FSA loan account. FSA can accept conveyance of both real property and chattel; however, FSA considers voluntary conveyance a last resort, does not usually accept a conveyance of chattel, and makes every effort to assist the borrower in liquidating chattel by other means. An example of when FSA might accept a voluntary conveyance of chattel would be when fixtures, such as granaries or irrigation equipment are conveyed along with the real estate.

**[7 CFR 766.353(e)] After voluntary conveyance, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights under an approved lease-purchase agreement executed according to § 766.115** (Part 7) **or required by State law.**

After the borrower conveys property to FSA, it becomes inventory property. FSA will dispose of inventory property according to Part 21.

### 482-495 (Reserved)

## Section 2 Voluntary Conveyance of Real Property

### 496 Before Receiving Conveyance Offers of Real Property

#### A Borrower Meeting

Before accepting the conveyance of real estate, FSA will schedule a meeting with the borrower to discuss FSA's conveyance requirements, and ensure that FSA has provided a loan servicing notification package to the borrower according to paragraph 66.

***--**The authorized agency official will provide the borrower with FSA-2569, FSA-2570, RD 1956-1, and a list of the requirements to make a complete conveyance offer.**--***

The authorized agency official will inform the borrower that:

- voluntary conveyance is a method of liquidation

  **Note:** The borrower must liquidate, convey, or do a combination of both for all real property and chattel that secures the borrower's FSA loans.

- any equity in the property to be conveyed may be lost through conveyance as FSA will ensure that all debts and expenses associated with the account are paid before any equity distribution

- FSA may place "right of access" easements to other property, deed restrictions, and/or easements on the property if the property contains wetlands or historic structures or is located on a flood plain according to Part 22

  **Note:** These restrictions may affect the price of the property if the borrower purchases the property under the Homestead Protection Program, and may affect FSA's net recovery value.

- there could be tax consequences

  **Note:** FSA does not give tax advice. The borrower should consult a tax professional or the IRS for any guidance on this issue. FSA does not release proceeds for income taxes. The property is owned by the borrower and the borrower is responsible for any capital gains taxes.

- FSA may determine that it is able to accept the conveyance of the real estate security, but is unable to approve RD 1956-1 that was submitted with the conveyance offer.

  **Note:** In these cases, FSA will accept the conveyance and deny the debt settlement application. See subparagraph 499 F for additional guidance.

## 497 Real Property Conveyance Application Requirements

### A Application

**[7 CFR 766.353(a)] The borrower must supply the Agency with the following:**

**[7 CFR 766.353(a)] (1) An Agency application form;**

The borrower must complete and submit FSA-2570.

**[7 CFR 766.353(a)] (2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;**

**[7 CFR 766.353(a)] (3) Information on present and future income and potential earning ability;**

**[7 CFR 766.353(a)] (4) A warranty deed or other deed acceptable to the Agency;**

***--**The borrower must provide FSA-2569. The authorized agency official does not record the**--*** deed until FSA accepts the conveyance.

**[7 CFR 766.353(a)] (5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity;**

An entity must provide a resolution approved by the organization's governing body unless the entity is a joint operation of a husband and wife when both are liable. The resolution must identify the officials authorized to execute the offer and deed on behalf of the borrower. If shareholder approval is required, the resolution must confirm that the entity has obtained shareholder approval.

## 497 Real Property Conveyance Application Requirements (Continued)

### A Application (Continued)

**[7 CFR 766.353(a)] (6) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;**

The borrower must put oral leases, including all terms and conditions, in writing and assign all leases to FSA. If a borrower is leasing land on which FSA holds a security interest to a third party for income, FSA will receive all lease proceeds after the conveyance. See 4-FLP, Part 5 for handling lease proceeds.

**[7 CFR 766.353(a)] (8) Complete debt settlement application in accordance with *--subpart B of 7 CFR part 1956** (7-FLP, Part 12) **before or in conjunction with the--* voluntary conveyance offer if the value of the property to be conveyed is less than the Agency debt; and**

The borrower must complete and submit RD 1956-1 with all required supporting documentation for debt settlement, unless the value of the voluntary conveyance security fully satisfies the FSA debt.

***--**The debt settlement application will be processed according to 7-FLP, Part 12. The**--*** applications for voluntary conveyance and debt settlement will normally be approved or denied together; however, the voluntary conveyance application can be approved while denying the debt settlement application if SED believes it to be in the Government's best interest.

**[7 CFR 766.353(a)] (9) Any other documentation required by the Agency to evaluate the request.**

## 498 Additional Requirements

### A Other Use Rights

If water rights, mineral rights, development rights, or other use rights encumbered by FSA *--are not included in FSA-2569, or other guidance is needed, the authorized agency official--* refers the case to SED to obtain OGC guidance as required on the appropriate documents needed to transfer these rights to FSA. SED may issue a State supplement as required.

### B Obtaining an Appraisal

The authorized agency official will obtain an appraisal of the property to establish its current market value. The appraisal must be based on the "as is" market value according to 1-FLP, Part 6 and must not include potential deed restrictions or easements FSA may place on the property.

### C Conducting a Due Diligence Review

The authorized agency official will arrange to conduct a due diligence review to assess environmental risk according to 1-EQ. A qualified agency official will conduct the due diligence review to determine whether FSA requires a more detailed environmental review. The cost of any hazardous waste or other environmental clean-up identified by the due diligence review may be considered by FSA, but will not usually be included in Exhibit 37 as clean-up is usually not required for sale of the property.

### D Obtaining a Title Search

**[7 CFR 766.353(a)(7)] Title insurance or title record for the security, if available;**

The authorized agency official will conduct a new lien search, according to the standard procedures used in the borrower's State and the State supplement issued according to subparagraph 462 B, if adequate title information is not available in the borrower's case file.

The borrower will pay the cost of all title searches or it will be charged to the borrower's account. * * *

## 498 Additional Requirements (Continued)

### E Servicing Notifications

**[7 CFR 766.353(b)(3)] The borrower has received prior notification of the availability of loan servicing in accordance with subpart C** (Part 3) **of this part.**

### F Full Liquidation

**[7 CFR 766.353(b)(2)] The borrower conveys all real property securing the Agency loan; and**

The authorized agency official will confirm that the conveyance offer includes all real property securing FSA debts. If the borrower has real property or chattel securing an FSA loan that is not part of the conveyance offer, the authorized agency official must document that the borrower is in the process of liquidating this security by another liquidation method approved by FSA. All borrower sales must be completed before the voluntary conveyance.

The authorized agency official will include in the borrower's case file any appraisal, environmental information, and title search from subparagraphs B, C, and D, respectively.

The authorized agency official will include a statement of the borrower's unpaid FSA debts with a printout from the appropriate ADPS DL or AI screens. Voluntary conveyance documentation must include information on prior and junior liens, as well as judgments, if not included in the conveyance offer.

## 499 Processing the Borrower's Conveyance Offer

### A Forwarding the Case File

The authorized agency official will forward the completed case file to SED if required. The approval official may approve all conveyances and debt settlements according to the approval authorities set forth in 1-FLP, Part 2. The case file must contain the borrower's offer to convey, including all items listed in paragraph 497. In addition, the authorized agency official should include a recommendation to the approval official on whether to accept or reject the conveyance offer.

### B Conditions for Conveying Real Property

**[7 CFR 766.353(b)] The Agency will accept voluntary conveyance of real property by a borrower if:**

**(1) Conveyance is in the Agency's financial interest;**

The authorized agency official will complete Exhibit 37 showing the recovery value from the conveyance. The approval official will accept the conveyance offer if the borrower's application meets all FSA conditions and if acceptance is clearly in FSA's best financial interest.

### C Prior and Junior Liens

**[7 CFR 766.353(c)] (1) The Agency will pay prior liens to the extent consistent with the Agency's financial interest.**

**(2) Before conveyance, the borrower must pay or obtain releases of all junior liens, real estate taxes, judgments, and other assessments. If the borrower is unable to pay or obtain a release of the liens, the Agency may attempt to negotiate a settlement with the lienholder if it is in the Agency's financial interest.**

The approval official will also use the information from Exhibit 37 to determine whether FSA will pay prior liens along with the conveyance. FSA may pay prior liens if the loan approval official expects a substantial recovery from the conveyance or if the lienholder objects to FSA accepting the conveyance subject to a prior lien.

The authorized agency official will charge any protective advances to pay prior liens to the borrower's account according to 4-FLP, Part 6.

## 499 Processing the Borrower's Conveyance Offer (Continued)

### C Prior and Junior Liens (Continued)

If the borrower does not satisfy all junior liens, the loan approval official may contact junior lienholders to negotiate the most favorable settlement possible and determine whether it is in FSA's best interest to settle the lien.

SED must approve all junior lien settlements.

The authorized agency official will charge any payments on junior liens to the borrower's account.

### D Rejecting the Conveyance

If the approval official determines that FSA should not accept the conveyance, the authorized agency official will deny the conveyance, clearly stating the reasons for the rejection, offering appeal rights under 1-APP, and returning the original FSA-2569 and FSA-2570 to the borrower. A copy of FSA-2569 and FSA-2570 will be retained in the case file.

### E Accepting the Conveyance

If the approval official determines that FSA should accept the conveyance, FSA-2570 will be executed.

### F Accepting the Conveyance and Rejecting the Debt Settlement Application

In cases where FSA accepts the conveyance offer and denies the debt settlement application, the authorized agency official will encourage the borrower to negotiate an acceptable debt settlement offer.

The authorized agency official will advise the borrower that:

- after all debt settlement appeal rights have been concluded, and the conveyance has been completed, the borrower will be notified of any remaining account balance

- ***--**if the borrower does not pay the remaining account balance, any offset taken under 7-FLP (including IRS tax refunds, Federal salaries, Federal contractor/vendor**--***payments, Federal benefit payments such as Social Security, and State income tax refunds for States participating in centralized offset through TOP) will continue

- the debt may also be referred to Treasury's cross-servicing program where Treasury may ***--**pursue collection by garnishing the borrower's wages. See 7-FLP, Parts 8 and 9.**--*** Treasury adds a collection fee for all monies it collects.

Negotiating an acceptable debt settlement with FSA should be strongly encouraged to avoid collection actions on the remaining balance and additional collection fees by Treasury.

## 500 Closing the Real Property Conveyance

### A Recording the Deed

The authorized agency official will forward the deed and release of lien to the closing agent with instructions for closing the conveyance, recording the deed, and releasing the lien provided no new liens have been recorded since the title search.

The closing agent will provide a certification of title to FSA after recording the deed. The title must have no other liens or encumbrances except for those previously approved by FSA.

### B Junior or Unauthorized Liens

If the closing agent discovers junior or other unauthorized liens, the closing agent provides the authorized agency official with the lienholder's name, amount of lien, date recorded, and the recording information. The closing agent will return the unrecorded deed to the authorized agency official and await further instructions.

The authorized agency official will notify the borrower of the lien, inform them that they are responsible for resolving the situation, and establish a 30-calendar-day deadline for the resolution or the voluntary conveyance will be denied. The conveyance will not be closed unless the unauthorized liens are removed. In the meantime, FSA will proceed with required servicing actions with no delay.

### C Charging the Borrower's Account

**[7 CFR 766.353(d)(1)] The Agency will charge the borrower's account for all recoverable costs incurred in connection with a conveyance in accordance with § 765.203** (4-FLP, Part 6) **of this chapter.**

The authorized agency official will charge the borrower's account for all recoverable costs
***--**and expenses in connection with the conveyance according to 1-FLP, Exhibit 25. These**--***
costs may include taxes and assessments, other liens, closing agent fees, and any other authorized costs.

## 500 Closing the Real Property Conveyance (Continued)

### D Crediting the Borrower's Account

**[7 CFR 766.353(d)(2)] The Agency will credit the borrower's account for the amount of the market value of the property less any prior liens, or the debt, whichever is less. In the case of an American Indian borrower whose loans are secured by real estate located within the boundaries of a Federally recognized Indian reservation, however, the Agency will credit the borrower's account with the greater of the market value of the security or the borrower's Agency debt.**

If the market value is equal to or greater than the borrower's account balance, including prior liens and all other recoverable costs, and always in the case of an American Indian borrower that meets the criteria in this subparagraph, the conveyance satisfies the account. The authorized agency official will stamp the notes "Satisfied by Surrender of Security and Borrower Released from Liability," and return them to the borrower with a copy of FSA-2570 showing FSA's acceptance.

If the conveyance does not satisfy the account, the authorized agency official will credit the borrower's account for the market value of the loan collateral, less prior liens, and provide the borrower a copy of FSA-2570 showing FSA's acceptance of the conveyance.

After a voluntary conveyance of security is closed and no FSA security remains under its security instruments, FSA liens of record are released according to 4-FLP, Part 5.

If RD 1956-1 submitted according to subparagraph 497 A was:

- acceptable to FSA, the authorized agency official will process the approved debt settlement for any remaining loan balance

- denied and all appeal rights have been exhausted, the authorized agency official will ***--**service the debt through offset and referral to Treasury as set forth in 7-FLP.**--***

## 500 Closing the Real Property Conveyance (Continued)

### E Final Processing

After FSA acquires the property, the authorized agency official will:

- record the property and assign it an ID number in ADPS
- complete a 3E transaction in ADPS as an advice of property acquired transaction

  **Note:** The date of acquisition is the date the deed to FSA is recorded.

- complete a 5L transaction in ADPS as an acquired property maintenance transaction

  **Note:** The date of acquisition is the date the deed to FSA is recorded.

- prepare an inventory account file according to Part 19. The certificate of title obtained by FSA will be placed in this file.

## 501-515 (Reserved)

## Section 3 Voluntary Conveyance of Chattel

### 516 Before Receiving Conveyance Offers of Chattel

#### A Borrower Meeting

Before accepting the conveyance of chattels, the authorized agency official will schedule a meeting with the borrower to discuss FSA's conveyance requirements. The authorized agency official will ensure that FSA has provided a loan servicing notification package to the borrower.

The borrower will be strongly encouraged to execute FSA-2571 as opposed to beginning the voluntary conveyance process as it is simpler and quicker and does not require SED approval or a concurrent debt settlement application. Chattels may sometimes be conveyed as fixtures as described in subparagraph 481 A.

The authorized agency official will also inform the borrower that:

- voluntary conveyance is a part of liquidation

  **Note:** The borrower must liquidate, convey, or do a combination of both for all real property and chattel that secures the borrower's FSA loans.

- any equity in the property to be conveyed may be lost through conveyance

- there could be tax consequences

  **Note:** FSA does not give tax advice. The borrower should consult a tax professional or the IRS for any guidance on this issue. FSA does not release for income taxes. The property is owned by the borrower and the borrower is responsible for any capital gains taxes.

- ***--**FSA may determine that it is able to accept the conveyance of the chattel security, but is unable to approve RD 1956-1 that was submitted with the conveyance offer.

  **Note:** In these cases, FSA will accept the conveyance and deny the debt settlement application. See subparagraph 499 F for additional guidance.**--***

The authorized agency official will provide the borrower with FSA-2570, FSA-2070, RD 1956-1, and a list of the requirements to make a complete conveyance offer.

## 517 Chattel Conveyance Application Requirements

### A Application

**[7 CFR 766.354(a)] The borrower must supply the Agency with the following:**

**[7 CFR 766.354(a)] (1) An Agency application form;**

The borrower must complete FSA-2570.

**[7 CFR 766.354(a)] (2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;**

**[7 CFR 766.354(a)] (3) Information on present and future income and potential earning ability;**

**[7 CFR 766.354(a)] (4) A bill of sale including each item and titles to all vehicles and equipment, as applicable;**

The borrower must complete FSA-2070 for all chattel securing FSA debt.

The borrower must provide FSA with titles for all titled vehicle or equipment security if FSA does not have such titles on file.

**[7 CFR 766.354(a)] (5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity borrower;**

An entity borrower must provide a resolution approved by the organization's governing body. The resolution must identify the officials authorized to execute the offer and deed on behalf of the borrower. If shareholder approval is required, the resolution must confirm that the entity has obtained shareholder approval.

The authorized agency official may request additional information from the borrower if it is required to make a determination on the conveyance offer.

## 517 Chattel Conveyance Application Requirements (Continued)

### A Application (Continued)

**[7 CFR 766.354(a)] (6) Complete debt settlement application in accordance with *--subpart B of 7 CFR part 1956** (7-FLP, Part 12) **before or in conjunction with the--* voluntary conveyance offer if the value of the property to be conveyed is less than the debt.**

The borrower must complete and submit RD 1956-1 with all required supporting documentation for debt settlement, unless the value of the voluntary conveyance security will fully satisfy the FSA debt.

***--**The debt settlement application will be processed according to 7-FLP, Part 12. The**--*** applications for voluntary conveyance and debt settlement will normally be approved or denied together; however, the voluntary conveyance application can be approved while denying the debt settlement application if SED believes it to be in the Government's best interest.

## 518 Additional Requirements

### A FSA Actions After Receiving Offer

**[7 CFR 766.354(b)] The Agency will accept conveyance of chattel only if:**

**[7 CFR 766.354(b)] (1) The borrower has made every possible effort to sell the property voluntarily;**

This includes consideration of the execution of FSA-2571.

**[7 CFR 766.354(b)] (2) The borrower can convey the chattel free of other liens;**

- The authorized agency official will conduct a lien search to verify that FSA is the only lienholder on the chattels.

- The authorized agency official conducts or obtains a chattel inspection and appraisal. The inspection and appraisal are required to account for all chattel security listed in the borrower's offer and to determine the market value of the property. The authorized agency official will conduct the appraisal according to 1-FLP, Part 6 as appropriate.

- The authorized agency official will determine the likely recovery value to FSA and whether the conveyance will satisfy the borrower's account. To calculate the recovery value, the authorized agency official will subtract all estimated expenses, including acquisition, preparation, and auction costs, from the appraised market value of FSA security.

The authorized agency official will document that approval of the voluntary conveyance is in FSA's best interest.

**[7 CFR 766.354(b)] (4) The borrower conveys all chattel securing the Agency loan; and**

The authorized agency official will confirm that the conveyance offer includes all chattel property securing FSA debts. If the borrower has real property securing an FSA loan that is not part of the conveyance offer, the authorized agency official must document that the borrower is liquidating this security by another method approved by FSA. All sales must be completed before the voluntary conveyance.

**[7 CFR 766.354(b)] (5) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C** (Part 3) **of this part.**

The authorized agency official will document that the borrower received the proper primary loan servicing notices according to paragraph 66.

## 519 Processing the Borrower's Conveyance Offer

### A Preparing the Case File

The case file must contain the borrower's offer to convey, including all items in paragraph 517. In addition, the authorized agency official must include:

- a recommendation to the loan approval official about whether to accept the conveyance offer
- the authorized agency official's assessment and recommendation on the borrower's debt settlement application.

The authorized agency official will include in the case file documentation of the results of the lien search, the chattel inspection, appraisal, and likely recovery value from Exhibit 37.

A memorandum will be included indicating that the borrower and the authorized agency official have reached a preliminary agreement on how, when, and where the borrower will deliver the chattel.

### B Forwarding the Case File

The authorized agency official will forward the completed case file to SED. SED may approve all conveyances and debt settlements according to the approval authorities set forth in 1-FLP, Part 2. The case file must contain the borrower's offer to convey, including all items listed in paragraph 497. In addition, the authorized agency official should include a recommendation on acceptance of the offer.

### C Evaluating the Offer

SED will accept conveyance of chattel only if:

**[7 CFR 766.354(b)(3)] The conveyance is in the Agency's financial interest.**

Conveyances of chattel will be approved only in extreme circumstances where no other option is possible.

## 519 Processing the Borrower's Conveyance Offer (Continued)

### D Rejecting the Conveyance

If SED determines that FSA should not accept the conveyance, SED or designee will:

- notify the borrower of FSA's denial in writing stating the reasons for the rejection and return FSA-2070 to the borrower

  **Note:** As part of the written denial, the borrower will be given appeal rights according to 1-APP.

- send a copy of the rejection letter, FSA-2070, and the case file to the authorized agency official for continued account servicing.

The borrower may voluntarily liquidate security through other means.

FSA will not delay acceleration or involuntary liquidation action if SED rejects the conveyance.

### E Accepting the Conveyance

If SED approves the offer, SED will return the case file to the authorized agency official with instructions for closing the conveyance. SED will include the following conditions in the approval:

- the authorized agency official must account for all chattel items listed in the conveyance offer

- the borrower must deliver the property according to an agreement reached between the borrower and the authorized agency official.

### F Notifying the Borrower

The authorized agency official will notify the borrower of FSA's acceptance of the conveyance after all SED's conditions are met.

## 520 Closing the Chattel Conveyance

### A Charging the Borrower's Account

**[7 CFR 766.354(c)(1)] The Agency will charge the borrower's account for all recoverable costs incurred in connection with the conveyance in accordance with § 765.203** (4-FLP, Part 6) **of this chapter.**

### B Crediting the Borrower's Account

**[7 CFR 766.354(c)(2)] The Agency will credit the borrower's account in the amount of the market value of the chattel.**

If the appraised market value of the chattel is equal to or greater than the borrower's debt, the conveyance satisfies the account. The authorized agency official will stamp the notes "Satisfied by Surrender of Security and Borrower Released from Liability" and send them to the borrower.

If the appraised market value of the security is less than the borrower's debt, the authorized agency official will credit the account by the market value of the chattel.

If RD 1956-1 submitted according to subparagraph 517 A was:

- acceptable to FSA, the authorized agency official will process the approved debt settlement for any remaining loan balance

- denied and all appeal rights have been exhausted, the authorized agency official will ***--**service the debt through offset and referral to Treasury as set forth in 7-FLP.**--***

### C Final Processing

After FSA acquires the property, the authorized agency official will:

- complete a 3E transaction in ADPS as an advice of property acquired transaction

  **Note:** The date of acquisition is the date the authorized agency official takes possession of chattel security after determining all conditions are met.

- complete a 5L transaction in ADPS as an acquired property maintenance transaction

  **Note:** The date of acquisition is the date the authorized agency official takes possession of chattel security after determining all conditions are met.

- prepare an inventory account file according to paragraph 721.

## 521-530 (Reserved)

# Part 15 Loan Acceleration

## 531 General Requirements

### A Acceleration Differs Among States

The loans will be accelerated when FSA determines that a borrower cannot or will not meet their FSA loan obligations and all applicable loan servicing options have been offered and concluded. SED, in consultation with OGC, will issue a State supplement to provide detailed *--guidance on acceleration. The Acceleration Notices in this handbook (Exhibits 48, 49, 50,--* and 51) will be used unless specifically modified by OGC.

### B Recordkeeping

During the acceleration process, the authorized agency official must make entries into the running record on the acceleration process and retain any letters, forms or documentation associated with the acceleration that are required by this handbook and State supplements.

### C 2008 Farm Bill Acceleration Moratorium

As provided in 7 CFR 766.358, FSA will not accelerate the program loans of a borrower who has filed a program discrimination complaint that has been accepted by USDA's Office of Adjudication until the complaint has been either:

- resolved by USDA
- closed by a court of competent jurisdiction.

See 1-FLP, subparagraph 41 I for additional guidance on the acceleration moratorium and suspension of interest accrual and offset.

## 532 Ensuring That Servicing Rights Have Elapsed

### A Conditions for Acceleration

**[7 CFR 766.355(a)(1)] The Agency accelerates loans in accordance with this section, unless:**

**(i) State law imposes separate restrictions on accelerations.**

**(ii) The borrower is American Indian, whose real estate is located on an Indian reservation.**

Acceleration of American Indian borrowers whose real estate is located on an Indian reservation is addressed in paragraph 537.

**[7 CFR 766.355(a)(3)] All borrowers must receive prior notification in accordance with subpart C** (Part 3) **of this part, except for borrowers who fail to graduate in accordance with § 766.101(a)(8).**

If a borrower meets all of the following conditions, FSA moves to accelerate the borrower's loans.

The borrower is in monetary or nonmonetary default according to Part 3.

The borrower cannot or will not cure the default. A borrower meets this condition when the borrower is not eligible for primary loan servicing, does not accept FSA's servicing offer, or does not apply for primary loan servicing, after receiving all the appropriate notifications according to Parts 3 and 6.

The borrower has completed all appeals and mediation according to Part 6 and 1-APP and is not under court jurisdiction that bars FSA from acceleration.

## 533 Acceleration Actions

### A Preparation of the Case File

When the borrower meets the conditions for acceleration, the authorized agency official will prepare the case file for acceleration. A State supplement will be issued to describe the required procedures to accelerate FLP accounts, including "chattel only" accounts.

### B Civil Rights and Primary Loan Servicing Reviews

FSA-2580 and FSA-2581 are used to document and certify that FSA fully and appropriately considered the borrower for servicing and that there is no evidence of inconsistencies, inequitable treatment, or discrimination complaints.

***--**The authorized agency official will ensure that FSA-2580 has been completed for primary loan servicing. The next level supervisor or State FLS or FLC will review primary loan servicing actions and sign FSA-2580 as the reviewer. FSA-2580 is not required in cases referred for acceleration because of the borrower's failure to graduate or for acceleration of nonprogram loans.

DD will:

- complete FSA-2581, Part A
- submit FSA-2580 (for accounts with primary loan servicing) and FSA-2581 with case files to SCRRG for action.

SCRRG consists of SED, FLC, and the State civil rights coordinator. Once SCRRG determines that acceleration can continue and documents this decision on FSA-2581, Parts B and C, the account will be submitted for discrimination complaint status clearance according to 1-FLP, Exhibits 12 and 13. Once the discrimination complaint status clearance process has been completed indicating that acceleration can continue, the authorized agency**--***official will execute the problem case report.

### C Problem Case

FSA-2550 will be completed to document the status and circumstances of the account when there is real estate security.

### D Determining Prior Liens

If current lien information is not in the case file, the authorized agency official will obtain a title or lien search on all security property to determine whether there are any prior liens on the property.

## 533 Acceleration Actions (Continued)

### E Property Value

The authorized agency official will include either the estimated value or appraised value of the security in the case file. The authorized agency official may estimate the market value of the property, unless there are prior liens other than a current-year tax lien. If there are prior liens, the authorized agency official must obtain an appraisal to determine the "as is" market value of the property according to 1-FLP, Part 6, unless a State supplement allows the use of an estimated value.

### F Narrative and Deficiency Judgment Recommendation

The authorized agency official will include in the case file a narrative description of the borrower's financial condition and the conclusion of all appeals and mediation.

The authorized agency official will recommend to the DD whether FSA should pursue a deficiency judgment. To make a recommendation, the authorized agency official will determine whether foreclosure will likely satisfy the borrower's FSA debt. The basic formula for this calculation is:

Sale price - sale costs (if considered separate from recoverable costs and expenses) - recoverable costs and expenses to be charged - prior liens = net proceeds.

This calculation is an estimate. It may not be used as the basis for charging or crediting the borrower's account. In using this formula, the authorized agency official must be aware of what costs are charged to the borrower's account and what costs are deducted from the amount credited to the borrower's account.

If the liquidation will not satisfy the borrower's FSA account, FSA will assess the borrower's financial situation to determine whether further recovery on the account is possible through a deficiency judgment. The authorized agency official will include these findings and a recommendation in the borrower's case file.

If the borrower's account could be referred to DOJ for foreclosure and/or other collection action after foreclosure, such as a deficiency judgment or enforcing a judgment lien
***--**according to 7-FLP, Part 11, any attorney's fees and any fees charged by DOJ will be**--***
added to the debt.

### G Submitting the Problem Case File

The problem case file will be submitted to the DD as soon as the file is complete or within 90 calendar days of when the borrower meets all acceleration criteria, whichever come first.

## 534 Accelerating a Borrower's Loans

### A Approving Acceleration

DD will review the problem case file and if the account meets the acceleration criteria according to paragraphs 532 and 533, the account will be accelerated.

### B Returning the File

If DD does not concur with acceleration or the file is not complete, the file will be returned to the authorized agency official with a request for additional information or instructions for additional servicing actions.

### C Proceeding With Acceleration

**[7 CFR 766.355(a)(2)] The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.**

DD accelerates all the borrower's loans and any shared appreciation agreements, unless the borrower meets either of the following conditions:

- if the borrower is in default because of a failure to graduate, DD will send the file through the State Office to obtain OGC's concurrence before acceleration
- if the borrower is in military service, DD will confer with SED for review and instructions.

### D Mailing the Acceleration Notice

***--**DD will send Exhibit 48, 49, 50, or 51, as appropriate according to State instructions, to the borrower by certified and regular mail on the same day. Exhibit 48, 49, 50, or 51 will be**--*** sent to the last known address of the entity and each obligor who signed any promissory notes. For American Indian borrowers whose real estate security is located within Federally recognized reservation boundaries, see subparagraph 537 C for letters when accelerating a loan and notifying the borrower's Tribe.

DD will:

- ***--**send the authorized agency official a copy of Exhibit 48, 49, 50, or 51 sent to the**--*** borrower
- ensure that FSA-2562 is completed correctly
- submit FSA-2562 to the State Office to flag the account "ACL".

**Note:** The ACL flag (Exhibit 11) will be removed when the account is paid in full, debt settled, or decelerated for any reason.

## 534 Accelerating a Borrower's Loans (Continued)

### E Contacting Prior Lienholders

After FSA accelerates the loans, the authorized agency official may contact any prior lienholders. In general, contacting prior lienholders may be most appropriate, although not required, in nonjudicial foreclosure States. In judicial foreclosure States, lienholders are contacted as part of the legal process. State supplements may be issued for additional guidance on the notification of prior lienholders.

FSA may:

- give the prior lienholder the opportunity to foreclose
- join in the action if the lienholder wants to foreclose
- foreclose and handle the prior liens by either:
    - settling the prior liens before foreclosing
    - foreclosing subject to the prior liens.

The authorized agency official will consult the State Office to seek guidance and recommend the option that results in the greatest net recovery to FSA.

## 535 Payments After Acceleration

### A Time Limitations

**[7 CFR 766.355(b)] The borrower has 30 days from the date of the Agency acceleration notice to pay the Agency in full.**

### B Payment Methods

**[7 CFR 766.355(c)] The borrower may:**

**[7 CFR 766.355(c)(1)] Pay cash;**

Acceptable forms of payment and processing payments are described in 4-FLP, Part 5.

**[7 CFR 766.355(c)(2)] Transfer the security to a third party in accordance with Part 765, subpart I** (4-FLP, Part 9) **of this chapter;**

**[7 CFR 766.355(c)(3)] Sell the security property in accordance with §766.352** (Part 13)**; or**

**[7 CFR 766.355(c)(4)] Voluntarily convey the security to the Agency in accordance with §§ 766.353 and 766.354** (Part 14)**, as appropriate.**

### C Partial Payments

**[7 CFR 766.355(d)] The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.**

SED, in consultation with OGC, will issue a State supplement providing guidance on each State's policy and procedures for accepting partial payments.

### D Borrower Files for Bankruptcy

If the borrower files for bankruptcy after FSA accelerates the account, FSA will suspend foreclosure and proceed according to Part 11.

## 536 Proceeding After Acceleration Deadlines

### A Failure to Satisfy the Debt

**[7 CFR 766.355(e)] The Agency will liquidate the borrower's account in accordance with § 766.357** (Part 16) **if the borrower does not pay the account in full within the time period specified in the acceleration notice.**

### B Forwarding the Case File

DD will forward the case file with all relevant information and documentation to SED.

### C Account Information

***--**In judicial foreclosure States, SED will request FSA-2560 be prepared by NFAOC, DLD if required by the U.S. Attorney. NFAOC, DLD will respond with FSA-2561. In nonjudicial foreclosure States, the account balance and recapture information may be obtained from Field Office files and NFAOC ADPS systems.**--***

## 537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation

### A Acceleration of Loans to American Indian Borrowers

**[7 CFR 766.356] (a)(1) The Agency accelerates loans to American Indian borrowers whose real estate is located on an Indian reservation in accordance with this section, unless State law imposes separate restrictions on accelerations.**

**(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.**

**(3) All borrowers must receive prior notification in accordance with subpart C of this *--part** (Part 3)**, except for borrowers who fail to graduate in accordance with § 766.101(a)(8)** (subparagraph 66 A)**.--***

**(4) At the time of acceleration, the Agency will notify the borrower and the Tribe that has jurisdiction over the Indian reservation of:**

**(i) The possible outcomes of a foreclosure sale and the potential impacts of those outcomes on rights established under paragraphs (a)(4)(ii) and (iii) of this section;**

**(ii) The priority for purchase of the property acquired by the Agency through voluntary conveyance or foreclosure;**

**(iii) Transfer of acquired property to the Secretary of the Interior if the priority of purchase of the property established under paragraph (a)(4)(ii) of this section is not exercised.**

**(b) The Agency will notify an American Indian borrower of the right to:**

**(1) Request the Tribe, having jurisdiction over the Indian reservation in which the real property is located, be assigned the loan;**

**(i) The Tribe will have 30 days after the Agency notification of such request to accept the assignment of the loan.**

**537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)**

**A Acceleration of Loans to American Indian Borrowers (Continued)**

**(ii) The Tribe must pay the Agency the lesser of the outstanding Agency indebtedness secured by the real estate or the market value of the property.**

**(iii) The Tribe may pay the amount in a lump sum or according to the rates, terms and *--requirements established in part 770 of this chapter** (6-FLP, Part 2, Section 3)**, subject--* to the following:**

**(A) The Tribe must execute the promissory note and loan documents within 90 days of receipt from the Agency;**

**(B) Such loan may not be considered for debt writedown under 7 CFR part 770.**

**(iv) The Tribe's failure to respond to the request for assignment of the loan or to finalize the assignment transaction within the time provided, shall be treated as the Tribe's denial of the request.**

**(2) Request the loan be assigned to the Secretary of the Interior. The Secretary of the Interior's failure to respond to the request for assignment of the loan or to finalize the assignment transaction, shall be treated as denial of the request;**

**(3) Voluntarily convey the real estate property to the Agency;**

**(i) The Agency will conduct a environmental review before accepting voluntary conveyance.**

**(ii) The Agency will credit the account with the greater of the market value of the real estate or the amount of the debt.**

**(4) Sell the real estate;**

**(i) The buyer must have the financial ability to buy the property.**

**(ii) The sale of the property must be completed within 90 calendar days of the Agency's notification.**

**(iii) The loan can be transferred and assumed by an eligible buyer.**

**537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)**

**A Acceleration of Loans to American Indian Borrowers (Continued)**

**(5) Pay the Agency debt in full.**

**(6) Consult with the Tribe that has jurisdiction over the Indian reservation to determine if State or Tribal law provides rights and protections that are more beneficial than those provided under this section.**

**(c) At the time of acceleration, the Agency will notify the Tribe that has jurisdiction over the Indian reservation in which the property is located, of the:**

**(1) Sale of the American Indian borrower's property;**

**(2) Market value of the property;**

**(3) Amount the Tribe would be required to pay the Agency for assignment of the loan.**

**(d) The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.**

***--(e) The Agency will liquidate the borrower's account in accordance with § 766.357** (Part 16) **if:--***

**(1) The borrower does not pay the account in full within the time period specified in the acceleration notice;**

**(2) The borrower does not voluntarily convey the property to the Agency;**

**(3) Neither the Tribe nor the Secretary of the Interior accepts assignment of the borrower's loan.**

## 537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)

### B General Requirements

CONACT requires FSA to provide certain American Indian borrowers notification of additional opportunities or alternatives for resolution of their FSA real estate secured debt before final FSA action to liquidate this real estate through foreclosure. These actions only apply to American Indian borrowers whose real estate security is 1 of the following:

- located within a Federally Recognized Indian Reservation
- trust or restricted land located within the boundaries of a former reservation of a Federally Recognized Indian Tribe in Oklahoma
- on Indian allotments, the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally Recognized Indian Tribe.

***--**CONACT requires that this group of borrowers be notified of the right to do either of the following:

- request FSA to assign notes and security instruments either to the Secretary of Interior, if the Secretary is willing to accept the assignment, or to the Tribe with jurisdiction over the reservation in which the property is located, if the Tribe agrees to accept the assignment
- voluntarily convey the security to FSA
- sell the real estate (766.356(b)(4)).

Notification of these additional rights will take place along with the acceleration of a loan.**--***

*** * ***

## 537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)

### C Notification

Exhibit 52 shall be used to accelerate all loans of American Indian borrowers that are secured ***--**by land located within a reservation, and to notify those borrowers of their rights. DD will send Exhibit 52 by certified and regular mail on the same day.**--***

Exhibit 53 shall be used to notify the Tribe of available options.

Exhibit 54 provides additional/detailed information on borrower rights under existing law and FSA regulation and must be attached to each Exhibit 52.

### D Responsibilities

The authorized agency official responsible for servicing the American Indian borrower's account must do the following:

- ensure that all loan servicing actions and any appeals have been concluded or exhausted before sending Exhibit 52

- notify the borrower by sending Exhibit 52 and Exhibit 54

  **Notes:** DD must sign Exhibit 52.

  SED must have approved the foreclosure before Exhibits 52 and 54 are sent.

- notify the Tribe by sending Exhibit 53, of any Exhibit 52 sent to a borrower who has pledged as collateral reservation land within such Tribe's jurisdiction.

SED must not permit acceleration on or foreclosure of any direct FLP loans held by American Indian borrowers, unless authority is granted by the National Office on a case-by-case basis. This restriction is based on the unresolved "Class Action Complaint" filed in U.S. District Court for the District of Columbia alleging acts of discrimination against American Indian farmers by FSA.

## 537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)

### E Authorized Agency Official Responsibilities

Authorized agency officials shall, upon receipt of a request from an American Indian borrower, do the following.

- If the borrower requests that the Tribe be assigned the loan, the authorized agency official shall notify the Tribe of the borrower's request using Exhibit 55.

  **Notes:** The Tribe must notify FSA within 30 calendar days of its intention to accept or deny the borrower's request.

  The notification to the Tribe shall include a copy of the following:

  - current appraisal of the real estate and valuations of all chattel security
  - borrower's promissory notes to be assigned
  - security instruments
  - amount the Tribe would be required to pay FSA for assignment of the loan or loans

    **Note:** This amount shall equal the lesser of the market value of all loan security or the principal and interest outstanding on the loan.

  - a statement that the Tribe may pay for the assignment transaction over a period of time under terms and conditions similar to ITLAP.

- If the borrower requests that the Secretary of Interior be assigned the loan, the authorized agency official shall refer the request, along with a copy of each of the following, through SED, to the National Office:

  - current appraisal of remaining FSA security
  - borrower's promissory notes
  - all security instruments.

  **Notes:** The authorized agency official shall forward the request and documentation to either of the following.

  *--

| For USPS Delivery | For FedEx or UPS Delivery |
|---|---|
| USDA, FSA, DAFLP, LSPMD<br>STOP 0523<br>1400 INDEPENDENCE AVE SW<br>WASHINGTON DC 20250-0523 | USDA, FSA, DAFLP, LSPMD<br>ROOM 3627 SOUTH BUILDING<br>1400 INDEPENDENCE AVE SW<br>WASHINGTON DC 20250-0523 |

--*

  The National Office will work with the National Office of BIA to determine whether the Secretary of Interior will accept the assignment of the loan.

## 537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)

### *--E Authorized Agency Official Responsibilities (Continued)

The authorized agency official shall notify the borrower:--*

- that the request has been forwarded
- of the Tribe or Secretary of the Interior's decision as follows.

| IF the… | THEN… |
|---|---|
| decision of the Tribe or the Secretary of Interior is to accept the borrower's loan assignment request | *--the authorized agency official shall notify the borrower--* using Exhibit 56. |
| Secretary of Interior has accepted the assignment | borrower's loan will be assigned to the Secretary of Interior pursuant to National Office instructions. |
| Tribe has indicated that it will accept an assignment of the loan and will seek to pay for the transaction over a period of time | *--the authorized agency official shall send the Tribe, for the--* Tribe to execute within 90 calendar days, FSA-2026 payable to FSA in exchange for the assignment of the loan, as well as any other loan documents required by FSA to finance this debt under rates and terms similar to an ITLAP loan, including an assignment of Tribal income as security for the Tribe's loan. FSA-2026 shall be prepared with the consideration amount as determined under this paragraph and with rates and terms similar to an ITLAP loan.<br><br>**Note:** All ITLAP servicing options may be applied to these loans, except any write down servicing options. |
| Tribe has timely executed and returned the documents described in this paragraph | *--the authorized agency official shall send to the Tribe all--* original borrower promissory notes and mortgages being assigned, along with any other relevant security instruments. Agency documents provided to the Tribe shall be prepared, endorsed, processed, and delivered pursuant to guidance from the regional OGC. |
| decision of the Tribe or the Secretary of Interior is not to accept the assignment of the loan | *--the authorized agency official shall:--*<br><br>• notify the borrower using Exhibit 57<br>• proceed with foreclosure action according to Part 16.<br><br>**Note:** Failure of the Tribe to respond to a request that the Tribe accepts an assignment of the loan, or to finalize the loan assignment transaction within the time provided in this paragraph, shall be treated as a denial of the request. |

*--The authorized agency official shall keep copies of all letters or documents sent or--* received in the borrower's loan file.

## 537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)

### *--F Authorized Agency Official or NFAOC, DLD Responsibilities

The authorized agency official or NFAOC, DLD shall do the following.

- NFAOC, DLD shall process all transactions related to the assignment of an American Indian account to a Tribe or the Secretary of Interior upon receipt of a transmittal letter from the servicing office accompanied by copies of the assignment agreement and promissory notes that are assigned.

- The servicing office transmittal letter must provide to NFAOC, DLD the market value of the security assigned, number of acres under FSA security instruments, and amount of the annual installments to be paid by the Tribe under any ITLAP rate and term financing provided. If the Tribe pays the full assignment consideration price in cash (up front) as opposed to ITLAP rate and term financing, the servicing office transmittal letter will notify NFAOC, DLD accordingly, including the information from the payment transmittal record.

- NFAOC, DLD will close out the American Indian borrower's FSA loan account and--* no further FSA servicing action will be required in cases where the Secretary of Interior accepts the assignment.

- If the Tribe has accepted the assignment of the borrower's loan and has given FSA a new FSA-2026 for the purchase of the loan, payments received by FSA on a new Tribal loan taken to pay the assignment will follow the same guidelines currently used for regular ITLAP payment processing.

## 538-550 (Reserved)

# Part 16 Involuntary Liquidation

## Section 1 General Information

### 551 Introduction

#### A General Procedures

**[7 CFR 766.351(a)(1)] When a borrower cannot or will not meet a loan obligation, the Agency will consider liquidating the borrower's account in accordance with this subpart.**

FSA will move to liquidate security after acceleration.

The involuntary liquidation process differs among States, and in particular between judicial and nonjudicial foreclosure States. SED, in consultation with OGC, will issue a State supplement to provide detailed guidance on involuntary liquidation.

**[7 CFR 766.357(b)(4)] After the date of foreclosure, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights granted by state law.**

If FSA acquires property as a result of involuntary liquidation, the property becomes inventory property. FSA maintains and disposes of inventory property according to Part 21.

#### B Recordkeeping

During the involuntary liquidation process, the authorized agency official must make entries into the running record on the liquidation process and retain any letters, forms, or documentation associated with the acceleration that are required by this handbook and State supplements.

#### C Conditions for Involuntary Liquidation

**[7 CFR 766.357] (a) The Agency will liquidate the borrower's security if:**

**(1) The borrower does not satisfy the account in accordance with §§ 766.355 and 766.356** (Part 15)**, as appropriate;**

**(2) The involuntary liquidation is in the Agency's financial interest.**

## 551 Introduction (Continued)

### D Charging the Borrower's Account

**[7 CFR 766.357(c)(1)] The Agency will charge the borrower's account for all recoverable costs incurred by the Agency as a result of the repossession and sale of the property.**

If the borrower's account is referred to DOJ for foreclosure and/or other collection action after foreclosure, such as a deficiency judgment or enforcing a judgment lien according to *--7-FLP, Part 11, any attorney's fees and any fees routinely charged by DOJ will be added--* to the amount of debt reported to DOJ. Borrowers have been informed of this fee by notifications of offset and/or notifications of acceleration. SED will issue a State Supplement as required on the proper calculation of the amount to be reported to DOJ.

### E Crediting the Borrower's Account

**[7 CFR 766.357(c)(2)] The Agency will apply the proceeds from the repossession sale to the borrower's account less prior liens and all authorized liquidation costs.**

### F Outstanding Loan Balances Remaining After Repossession

**[7 CFR 766.357(c)(3)] If an unpaid balance on the Agency loan remains after the sale of the repossessed property, the Agency may debt settle the account in accordance with *--subpart B of 7 CFR Part 1956.** (7-FLP, Part 12)

For any outstanding balance remaining after foreclosure for which the borrower is still liable, if FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.

Judgment debt will be serviced according to 7-FLP, Part 11.--*

In judicial foreclosure States only, unless the borrower voluntarily liquidated with a release of liability or debt settlement, SED completes FSA-2576 and completes a 3B transaction in ADPS to record a judgment account, if applicable.

## 551 Introduction (Continued)

### G 2008 Farm Bill Foreclosure Moratorium

As provided in 7 CFR 766.358, FSA will not foreclose on the program loans of a borrower who has filed a program discrimination complaint that has been accepted by USDA's Office of Adjudication until the complaint has been either:

- resolved by USDA
- closed by a court of competent jurisdiction.

See 1-FLP, subparagraph 41:

- H for additional guidance on determining whether a discrimination complaint has been filed

- I for additional guidance on the foreclosure moratorium, and suspension of interest accrual and offset.

## 552-565 (Reserved)

## 566 Proceeding With Foreclosure After Acceleration

### A Failure to Satisfy FSA

If the borrower fails to pay the FSA debt in full before the acceleration deadline expires according to Part 15, FSA moves to involuntarily liquidate all of the borrower's FSA loan security.

### B National Historic Preservation Act

If the property may fall under the National Historic Preservation Act because of any of the criteria in 1-EQ, SED will note this in the State Office file on advice from the authorized agency official and DD to help eliminate any delays in selling the property after acquisition.

### C Initiating Foreclosure

SED may forward the case file with all relevant information and documentation to OGC for required assistance in proceeding with foreclosure. If the borrower has leased the FSA real estate security, the authorized agency official must report the existence and conditions of the lease and report the name of the lessee to OGC.

SED may keep the borrower's file in the State Office. In this case, SED is responsible for initiating and processing the foreclosure process.

### D Following State Law and Practices

SED, in consultation with OGC, will issue a State supplement providing guidance and instructions on processing a foreclosure. The authorized agency official, DD, SED, and OGC should maintain communication during the foreclosure process so all parties are aware of the status of the proceedings.

## 567 Foreclosure Sale

### A "FAP" Flag

In judicial foreclosures, the account is flagged "FAP" using FSA-2562 at the time the account is referred to OGC for foreclosure. In nonjudicial foreclosures, the account is flagged "FAP" when the sale has been scheduled.

***--**FAP flag (Exhibit 11) must be removed from the account if any of the following occur:

- foreclosure action is concluded on all available FSA security
- all FSA security is voluntary liquidated
- the account is paid in full
- any other action taken that result in foreclosure actions no longer being pursued on the account.**--***

### B Establishing a Judgment Account

In judicial foreclosure States only, SED establishes a judgment account after a judgment has been ordered by the court. To establish this account, the authorized agency official processes a 3B transaction in ADPS based on a completed FSA-2576.

### C Calculating FSA's Bid

If there is not a current appraisal in the borrower's file, FSA will obtain a current appraisal before the sale. The authorized agency official completes Exhibit 60 to calculate FSA's bid. Exhibit 60 calculates the net recovery value and FSA's debt plus prior liens. FSA usually bids whichever amount is less, but State supplements can be issued to address differing State laws.

**[7 CFR 766.357(b)(1)] The Agency will charge the borrower's account for all recoverable costs incurred in connection with the foreclosure and sale of the property in accordance with § 765.203** (4-FLP, Part 6)**.**

### D Bidding at the Foreclosure Sale

SED determines the authorized bid amount according to subparagraph C and provides other instructions to the authorized agency official on attending and bidding at the foreclosure sale. When RD is the senior lienholder, only 1 bid will be entered, and that will be for the amount authorized by SED.

As authorized by SED, the authorized agency official usually enters FSA's bid when no other party makes a bid or the last bid would result in the property being sold for less than FSA's authorized bid. However, when FSA is not the senior lienholder and OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, SED may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, SED's instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

## 567 Foreclosure Sale (Continued)

### E Reporting on the Foreclosure Sale

After the foreclosure sale, the authorized agency official writes a report on the sale for SED. The report should contain, at a minimum:

- name of the successful bidder
- amount of the successful bid
- recommendation on any further actions required of FSA after the sale.

SED will forward this report to OGC and/or the U.S. Attorney, as appropriate.

## 568 FSA Actions After Foreclosure

### A When FSA Acquires the Property

Within 10 workdays of the date FSA acquires the property, the authorized agency official will send, by certified mail, FSA-2540 to inform the borrower of homestead protection rights if a residence is on the property. The acquisition date for real estate is the date FSA records the deed. For chattels, the date of acquisition is the date the Bill of Sale or title is executed transferring ownership to FSA.

If FSA acquires the property at the foreclosure sale, the authorized agency official completes FSA-2587 and FSA-2588 and records the information in ADPS by completing a 3E transaction for acquired property and a 5L transaction for acquired property maintenance. For property subject to redemption rights, the authorized agency official waits until the redemption period expires to record the deed and complete the ADPS transaction. The authorized agency official prepares an inventory file according to paragraph 721 when FSA records the deed. State supplements may be issued as required to comply with State law.

### B Establishing an Inventory Account

***--**NFAOC, DLD will establish an inventory account for all acquired property under the**--***
assigned property identification number. The value of the property is the market value of the property on the date of the foreclosure sale.

## 568 FSA Actions After Foreclosure (Continued)

### C Existing Leases

If FSA's foreclosure effort did not extinguish existing leases and if FSA acquires property while under lease, the authorized agency official:

- obtains and places a copy of the lease in the case file
- attempts to convert existing oral leases to writing on FSA-2591
- ***--**establishes a lease account in NFAOC with a 1S transaction in ADPS**--***
- notifies the lessee in writing that the Government has acquired the property and where the lessee must send lease payments
- applies payments received by FSA that were due and payable before the date of FSA acquisition to any unsatisfied balance, and returns any surplus to the former borrower
- applies payments that are due and payable after the acquisition date to the lease account.

FSA does not extend the lease term and prefers not to sell property subject to a lease. FSA may discuss with the lessee the possibility of shortening or canceling the lease.

### D Crediting the Borrower's Account

**[7 CFR 766.357(b)(2)] If the Agency acquires the foreclosed property, the Agency will credit the borrower's account in the amount of the Agency's bid except when incremental bidding was used, in which case the amount of credit will be the maximum bid that was authorized. If the Agency does not acquire the foreclosed property, the Agency will credit the borrower's account in accordance with State law and guidance from the Regional OGC.**

Accounts with real property security located within a federally recognized Indian Reservation will be credited according to paragraph 569.

## 568 FSA Actions After Foreclosure (Continued)

### E Outstanding Loan Balances Remaining After Foreclosure

**[7 CFR 766.357(b)(5)] If an unpaid balance on the Agency loan remains after the foreclosure sale of the property, the Agency may debt settle the account in accordance *--with subpart B of 7 CFR Part 1956.** (7-FLP, Part 12)

If FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.

Judgment debt will be serviced according to 7-FLP, Part 11.**--***

## 569 Real Property Located Within a Federally Recognized Indian Reservation

### A General Requirements

The borrower's real property securing FSA debt must be located within the boundaries of a Federally recognized American Indian reservation.

The borrower must be a member of the tribe that has jurisdiction over the reservation.

### B Bidding on Real Property

At a foreclosure sale, FSA bids the greater of the property's market value or FSA's debt against the property.

### C Crediting the Borrower's Account

**[7 CFR 766.357(b)] (3) Notwithstanding paragraph (b)(2)** (subparagraph 568 D)**, for an American Indian borrower whose real property secures an Agency loan and is located within the confines of a Federally-recognized Indian reservation, the Agency will credit the borrower's account in the amount that is the greater of:**

**(i) The market value of the security; or**

**(ii) The amount of the Agency debt against the property.**

## 570-580 (Reserved)

## Section 3 Chattel

### 581 Repossession of Chattel

#### A Repossessing Chattel

FSA may take possession of chattel as part of an involuntary liquidation. FSA may acquire chattel by bidding at a sale only if bidding is clearly in FSA's interest and SED approves acquisition. SED determines the bid amount and designates an authorized agency official to attend the sale. Prior lienholders are notified of the repossession, as appropriate by FSA-2572.

FSA-2571 will be completed for liquidation of chattel security by FSA or the borrower.

#### B Borrower Agrees to Sell Property During Involuntary Liquidation

If voluntary liquidation will not be delayed, the borrower may receive FSA assistance in arranging chattel liquidation and release of liability or debt settlement using FSA-2571 and RD 1956-1:

- after the account has been accelerated
- ***--**before referral to Treasury as set forth in 7-FLP.**--***

#### C Documenting Items

The authorized agency official documents the liquidated items on FSA-2040.

## 581 Repossession of Chattel (Continued)

### D Peaceably Obtaining Possession of Security

If the borrower does not liquidate the chattel security with FSA assistance, the authorized agency official will inform the borrower of FSA's intent to repossess the property.

If the borrower consents to the repossession or does not resist FSA's efforts to collect the security, the authorized agency official will contact an auctioneer, the State Contracting Officer or other third party, as required by State policy to collect the security. The authorized agency official should coordinate logistical details with the borrower and the auctioneer including:

- where the property is located
- when the chattel should be collected
- where the chattel will be delivered.

The authorized agency official will instruct the auctioneer that if peaceful repossession cannot be obtained, the auctioneer should not attempt to collect the chattel and should report back to the authorized agency official. If the auctioneer cannot collect the security, the authorized agency official proceeds according to subparagraph E.

### E Initiating Legal Procedures

If the borrower does not consent to the repossession, the authorized agency official forwards the borrower's case file to SED. Based on the State's procedures for handling involuntary liquidation, SED processes the case file to initiate foreclosure.

- SED may forward the case file with all relevant information and documentation to OGC and/or the U.S. Attorney.

- SED may keep the borrower's file in the State Office. In this case, SED is responsible for initiating and processing the foreclosure.

### F Borrower Abandons Property

If the borrower abandons the property or if the security is in danger or risk of injury or degradation, the authorized agency official must act according to Part 18.

## 582 (Withdrawn--Amend. 22)

## 583-600 (Reserved)

# Part 17 Liquidation by a Third Party

## 601 Introduction

### A General Information

Involuntary liquidation by a third party occurs when another lienholder, either prior or junior to FSA's lien, repossesses or initiates foreclosure proceedings against the borrower's FSA security. Foreclosure by another lienholder constitutes a nonmonetary default of the borrower's security instruments with FSA. See:

- ***--**Part 3 for loan servicing actions when a borrower is in nonmonetary default**--***
- 4-FLP, Part 6 for handling other third party actions taken against a borrower.

SED, in consultation with OGC, will issue a State supplement, to provide detailed guidance related to a third party foreclosure.

### B Recordkeeping

During involuntary liquidation by a third party, the authorized agency official must make entries into the running record on the liquidation process and retain associated letters, forms or other documentation in the borrower's case file. Maintaining a complete and accurate record of the foreclosure is essential to protect the interests of FSA and the borrower.

### C Contract Forfeiture

Cases involving contract forfeiture (when FSA's lien is behind a land purchase contract) will be handled according to the State supplement.

## 602 Involuntary Liquidation by a Prior Lienholder

### A Prior Lienholder Initiates Liquidation

If there is a prior lienholder on FSA security and the prior lienholder initiates liquidation, the authorized agency official will take the following actions unless otherwise instructed by State supplement.

- In a nonjudicial foreclosure State, the borrower's case file will remain in the authorized agency official's office. The authorized agency official should provide information on the liquidation to SED and consult with SED and OGC as needed.

- In a judicial foreclosure State, the authorized agency official will send the borrower's case file to SED. SED receives all foreclosure and legal notices, and consults with OGC as needed.

### B Compiling Information on the Borrower's Account

The authorized agency official will compile information on the borrower's account and include it in the borrower's case file according to subparagraph A. For real estate security, the authorized agency official will include:

- a current appraisal obtained according to 1-FLP, Part 6

- a report on the borrower's payment of real estate taxes

- a report with information on other lienholders and judgments associated with the FSA security.

For chattel security, the authorized agency official will include:

- a current appraisal obtained according to 1-FLP, Part 6 at the appropriate time

- a report with information on other lienholders and judgments associated with the FSA security.

## 602 Involuntary Liquidation by a Prior Lienholder (Continued)

### C Contacting the Prior Lienholder

The authorized agency official may contact the prior lienholder as necessary to protect FSA's security interest. FSA may pay off the prior lien if:

- paying off the prior lien is clearly in FSA's best interest according to Exhibit 60
- SED approves the pay-off to the prior lienholder.

### D Bidding at a Liquidation Sale

The policies and procedures for bidding at a real estate foreclosure sale by a prior lienholder are similar to the bidding process described in paragraph 567.

At the sale of chattel property by a prior lienholder, FSA normally does not bid but may bid when the chattel property under the prior lien has a market value that is significantly more than the prior lien. If FSA holds a junior lien on several items, the authorized agency official should seek SED's advice on whether to enter a bid.

If FSA will not enter a bid at a foreclosure sale, SED will determine whether an authorized agency official will attend the sale and write a narrative report outlining the results of the sale and plans for future servicing of the borrower's account.

### E Sale by Prior Lienholder Without FSA's Knowledge

If FSA learns that a prior lienholder has repossessed and intends to sell or has already sold property on which FSA has a lien, the authorized agency official immediately notifies the prior lienholder that FSA:

- has a lien on the property
- requires receipt of sale proceeds that exceed the prior lienholder's debt.

The authorized agency official also obtains guidance on the sale of security by a prior lienholder from SED and, as necessary, OGC.

## 603 Involuntary Liquidation by a Junior Lienholder

### A Junior Lienholder Initiates Liquidation

The authorized agency official will write a letter informing the lienholder that FSA holds a prior lien. The letter should state that, if the lienholder holds a sale, FSA will announce at the sale that:

- FSA has a prior lien on the property, specifying each item and the lien amount, including principal and interest

- any property sold continues to be subject to FSA's lien and the purchaser will need to contact FSA to determine the conditions for the release of the lien. FSA should be paid within 30 to 60 calendar days.

The authorized agency official must maintain close communication with SED during this process. The authorized agency official must consult with SED on how to proceed after sending the initial letter.

If the junior lienholder does not recognize FSA's lien, the authorized agency official must forward the file to SED so that OGC can initiate legal action against the junior lienholder.

### B Bidding on Property

FSA does not bid on property at any sale conducted by a junior lienholder.

### C Contacting the Purchaser

If a buyer purchases FSA security property from a junior lienholder, the authorized agency official will contact the purchaser, and inform them of FSA's lien on the property and ask about the purchaser's intentions for settling the remaining FSA debt applicable to the security items.

If the authorized agency official cannot reach an acceptable resolution with the purchaser, the authorized agency official refers the case to SED for guidance and, normally, liquidation.

## 604 Redemption Rights

### A Authority to Redeem Property

When State law provides FSA with redemption rights after a liquidation sale, SED will make the final determination on whether FSA will exercise its redemption rights, based on the best financial interest of the Government.

### B Preparing the Case File

The authorized agency official will update the case file to forward to SED when the estimated recovery value of the liquidated property is substantially greater than the amount of the claim, prior liens, and sale expenses. The authorized agency official will prepare the case file to include all necessary information for SED to make a determination. The case file must include:

- a current appraisal of the property
- Exhibit 60 as justification for the redemption
- lien search or title opinion
- documentation explaining why acquiring the property is in FSA's best interest
- all other relevant value and cost factors, including the value of the property after the sale and costs that FSA is likely to encounter in acquiring and reselling the property
- a recommendation from the authorized agency official regarding redemption.

### C Timing of Decision

SED must make a decision far enough in advance to allow FSA to exercise its rights and redeem the property.

### D Selling Redemption Rights

If SED decides not to redeem the property, FSA will allow its redemption rights to expire. In limited circumstances, SED, after consulting with OGC, may sell redemption rights.

## 604 Redemption Rights (Continued)

### E Final Actions Taken on the Account

The borrower's account will be charged for all recoverable costs according to Part 16.

FSA will apply the proceeds from the repossession sale to the borrower's account less prior liens and all authorized liquidation costs according to Part 16.

For any outstanding balance remaining after foreclosure for which the borrower is still liable, if FSA has not and/or will not pursue a deficiency judgment according to subparagraphs 421 G *--and 533 F, the unsecured account balance will be serviced through offset and referral to Treasury as set forth in 7-FLP.

Judgment debt will be serviced according to 7-FLP, Part 11.--*

In judicial foreclosure States only, unless the borrower voluntarily liquidated with a release of liability or debt settlement, SED completes FSA-2576 and completes a 3B transaction in ADPS to record a judgment account, if applicable.

## 605-700 (Reserved)

# Part 18 Property Abandonment, Evictions, and Personal Property Removal

## 701 Determining Whether Property Is Abandoned

### A Attempting to Locate the Borrower

When a borrower appears to have abandoned security property, the authorized agency official will attempt to locate the borrower to determine the borrower's intentions concerning the property. If necessary, the authorized agency official will consult USPS, the borrower's other creditors, and others in an attempt to locate the borrower.

### B Determining Whether Security Property Is Abandoned

The authorized agency official will make an immediate determination according to the definition of abandoned security property and, with State Office consultation, take prompt action to protect FSA's security interests when livestock, perishable goods, or both are involved.

## 702 Loan Servicing for Borrowers Who Abandon Property

### A Notifying the Borrower of Loan Servicing Options

When FSA determines that property has been abandoned, the authorized agency official will send FSA-2514 and FSA-2515 to the borrower's last known address according to Part 3 unless the borrower has already been notified with FSA-2510 and FSA-2511 or FSA-2514. In emergency situations, the authorized agency official may take actions to secure abandoned property and care for abandoned livestock before completing steps outlined in Part 15.

## 703 Taking Abandoned Security Property Into FSA Custody

### A General Policy

**[7 CFR 767.51] The Agency will take actions necessary to secure, maintain, preserve, manage, and operate the abandoned security property, including marketing perishable security property on behalf of the borrower when such action is in the Agency's financial interest. If the security is in jeopardy, the Agency will take the above actions prior to completing servicing actions contained in 7 CFR part 766** (Primary Loan Servicing)**.**

### B Documenting FSA's Abandonment Determination

The authorized agency official will fully document the facts substantiating the determination of abandonment in the running record of the borrower's case file.

### C Checking for Liens on Security Property

FSA will conduct a lien search to identify any other liens on the security property. See ***--**3-FLP, Part 16 for further guidance on conducting lien searches.**--***

### D Notifying Lienholders of Abandonment

If the lien search reveals that another party has a security interest in the property, FSA will notify the lienholder that the borrower appears to have abandoned the property. FSA will request corroboration of the facts of abandonment as well as suggestions regarding possible courses of action for protecting mutual interests.

### E Assuming Custody of Security Property

The authorized agency official will consult SED before taking custody of abandoned property. Development of a custodial contract will be completed by the State Contracting Officer if required by SED.

FSA will take abandoned property into custody if there are no prior liens or if a prior lienholder does not take the measures necessary to protect the property. FSA will usually take abandoned property into custody by arranging for its care and protection. FSA will pursue relocation of custodial property only under extreme circumstances.

## 704 Protecting Custodial Property

### A Removing Hazards From Custodial Property

If there are fire, health, or safety hazards on the abandoned property, FSA may take action to remedy the hazardous condition.

### B Personal Nonsecurity Property on Premises

If the borrower leaves nonsecurity personal property on the abandoned real property, the authorized agency official does not remove and dispose of the personal property unless FSA acquires title to the real property. See paragraphs 706 and 707 for guidance on removal and disposal of personal property from inventory real property.

### C Protective Advances for Taxes, Necessary Repairs

FSA will make protective advances to pay real estate taxes or make necessary emergency repairs to protect loan security. FSA will charge expenses associated with the maintenance and management of custodial property to the borrower's account. Expenditures in excess of an aggregate amount of $1,000 per property and actions not outlined in this part must have prior approval of SED. Protective advances will be processed according to 1-FLP, Part 7.

## 705 Evicting Occupants of Inventory Property

### A General Policy

FSA may move to evict unauthorized occupants of inventory property according to Federal, State, and local law.

### B Obtaining Advice and Assistance From OGC

When eviction from real property is necessary, the authorized agency official will contact SED. FSA may pursue eviction through State courts or Federal courts based on OGC guidance.

When the party occupying or possessing the property is not the former borrower, FSA may pursue eviction through local, Federal, or State courts, as appropriate, based on OGC guidance.

### C Ensuring Consistency With Applicable State and Local Laws

FSA must review applicable State and local laws before evicting unauthorized occupants of inventory property. SED will issue a State supplement to provide further guidance on evictions and disposal of custodial property.

## 706 Preparing to Remove and Dispose of Personal Property From Inventory Real Property

### A Preparing to Dispose of Personal Property

**[7 CFR 767.52(a)] If, at the time of acquisition, personal property has been left on the inventory real property, the Agency will notify the former real estate owner and any known lienholders that the Agency will dispose of the personal property. Property of value may be sold at a public sale.**

### B Checking for Liens on Nonsecurity Personal Property

If the former borrower has left items of value on the inventory real property that do not customarily pass with the title to real estate and which may reasonably be expected to be under lien, the authorized agency official will check public records to identify any liens on the personal property.

### C Notifying Lienholder and/or Former Borrower of Property Disposal

If there is a lien of record, the authorized agency official will notify the lienholder and the former borrower that FSA will dispose of personal property remaining on the premises unless it is removed within 7 calendar days from the date of the letter.

If there are no liens of record, the authorized agency official will notify the former borrower that FSA will dispose of all personal property remaining on the premises unless it is removed within 7 calendar days from the date of the letter.

FSA will notify any lienholders and the former borrower with Exhibit 65 *** * *** . If the borrower's whereabouts are unknown, FSA will post a copy of the letter on the abandoned property.

### D Documenting the Borrower's Case File

The authorized agency official will document the contacts made and actions taken in the borrower's case file.

## 707 Disposal of Personal Property From Inventory Real Property

### A Photographing and Documenting Items Deemed to Have No Value Before Disposal

If nonsecurity personal property is not removed by the former borrower or a lienholder after FSA provides notification as outlined in paragraph 706, the authorized agency official will:

- compile a list of the items
- clearly describe and/or photograph each item
- estimate the value of each item
- indicate which items, if any, are covered by a lien.

The authorized agency official will submit the list to SED with a request for authorization to remove and dispose of the items. Upon advice from OGC, SED will provide authorization and instructions for removal and disposal of the personal property.

### B Selling Personal Property at Public Sale When Net Recovery Is Likely

The authorized agency official may sell personal property at a public sale if FSA can make a net recovery.

## 707 Disposal of Personal Property From Inventory Real Property (Continued)

### C Applying Proceeds From Sale of Personal Property

**[7 CFR 767.52(c)] Proceeds from the public sale of personal property will be distributed as follows:**

**(1) To lienholders in order of lien priority less a pro rata share of the sale expenses;**

**(2) To the inventory account up to the amount of expenses incurred by the Agency in connection with the sale of personal property;**

**(3) To the outstanding balance on the Agency loan; and**

**(4) To the borrower, if the borrower's whereabouts are known.**

### D Personal Property Remaining After Public Sale

If personal property is not sold, FSA may pay a mover or hauler to dispose of the items. The authorized agency official will contact the State Contracting Officer for guidance on hiring a mover or hauler.

### E Reclaiming Personal Property

**[7 CFR 767. 52(b)] The owner or lienholder may reclaim personal property at any time prior to the property's sale or disposal by paying all expenses incurred by the Agency in connection with the personal property.**

### F Removing Abandoned Motor Vehicles From Inventory Property

The authorized agency official will comply with applicable State laws concerning the removal of abandoned motor vehicles from inventory property. SED will, upon advice from OGC, issue a State supplement outlining the method FSA will follow.

## 708 Reporting Acquisition or Abandonment of Secured Property to IRS

### A Overview

Federal law requires that acquired and abandoned property, as described in subparagraph C, be reported to IRS. IRS will use this information to determine whether a tax liability has been created for the borrower through abandonment or acquisition of the property.

### B Reporting Requirements

The authorized agency official shall complete FSA-2585 within 10 calendar days of the date of acquisition or the date the property was determined to be abandoned, unless liquidation will be initiated by FSA or another lender within 3 months. In that case, no report is required *--until liquidation is completed. The original (Copy A) will be sent to NFAOC, PRD. Copy B and Exhibit 66 will be sent to the borrower when Copy A is sent to NFAOC, PRD and Copy C will be retained in the borrower's file. NFAOC, PRD will use information--* supplied to notify IRS.

Corrections of transactions occurring in the previous calendar year should be aggregated and filed as soon as possible but no later than October 1 of the filing year. For example, if an error was made in reporting a transaction that occurred in 2007 and was reported in February 2008, the correction must be submitted not later than October 1, 2008. The year entered on the form must be the calendar year of the abandonment or acquisition.

### C Transactions That Must Be Reported

The following transactions must be reported:

- real property acquired by FSA by any means
- abandoned property when liquidation action will not be initiated within 3 months
- real property that was security for a FSA loan but was purchased by a third party at a foreclosure sale initiated by FSA or another lender
- sale or transfer of real security property.

### D Redemption Rights

Any property required to be reported to IRS that is subject to redemption rights or dwelling redemption rights of the former borrower will not be reported until the end of the redemption period. This is the year that will be entered on FSA-2585.

## 708 Reporting Acquisition or Abandonment of Secured Property to IRS (Continued)

### E Multiple Lenders

FSA must report all transactions regardless of whether it initiated the liquidation action, acquired the security property or another lender reports the transaction.

### F Reporting of Abandonment

Property that has been reported to IRS as abandoned will not again be reported if the property is acquired by FSA or the loan is otherwise liquidated.

## 709-720 (Reserved)

# Part 19 Management of Inventory Real Property

## 721 Preparing the Inventory Property File

### A Documenting the Borrower's File and Creating the Inventory Property File

***--**When FSA acquires real property, the authorized agency official will determine, according to 25-AS, paragraph 88, if the direct loan borrower's file should be closed. If the file is eligible to be closed, the file will be labeled, maintained, and disposed of according to 25-AS, paragraph 89 and applicable notices. Once FSA acquires title to the property as evidenced--***** by a recorded deed, the authorized agency official creates an inventory property file.

## 722 Securing and Repairing Inventory Real Property

### A General Policy

When FSA acquires inventory real property, the authorized agency official secures the property, takes steps to prevent public trespassing, and attempts to preserve the value of the property.

### B Determining Necessary Services

When FSA acquires property, the authorized agency official inspects the property to determine whether services are necessary to secure the property, maintain the property's value, and place the property in marketable condition. FSA makes repairs according to the following conditions.

- FSA may repair essential farm service buildings and facilities to make the property marketable.

- FSA may repair inventory properties to remove health and safety hazards if such repairs are in FSA's best interest.

- FSA may make repairs to properties that are listed on or are eligible for listing on the National Register of Historic Places as necessary to protect the properties' historic integrity. FSA consults with the appropriate State Historic Preservation Officer or Tribal Historic Preservation Officer to determine whether repairs are necessary.

- On inventory real property located in a floodplain or other hazardous area, FSA may take steps as necessary to prevent:

  - loss of life
  - imminent damage to the property
  - disruption of utility service.

## 722 Securing and Repairing Inventory Real Property (Continued)

### C Developing Repair Specifications and Completing Repairs

The authorized agency official submits repair specifications to the State Contracting Officer along with justification for all repairs deemed necessary. FSA may contract with a vendor to prepare repair specifications for larger or more complex repairs.

### D Determining Necessity of Management Services

The authorized agency official, with the assistance of DD and State Office program staff as necessary, selects the methods for managing inventory property.

The appropriate management methods and requirements depend on the number of properties involved, density of their location, market conditions, and other applicable factors.

FSA management tools include, but are not limited to:

- individual management contracts to secure an individual property, cut the grass, winterize a dwelling, or provide a similar service for a specific property
- simple management contracts to provide maintenance and other services for a group of properties
- blanket-purchase arrangement contracts to obtain a variety of services for any or all FSA inventory properties.

### E Arranging Management Contracts

FSA may contract for services according to the Federal Acquisition Regulations. The authority to obtain management services is addressed in 1-FLP, paragraph 161 and 1-FLP, *--Exhibit 25. The authorized agency official contacts the State Contracting Officer to--* arrange for management contracts.

### F Charging Expenses to the Inventory Account

FSA charges expenses associated with managing inventory property to the inventory account according to 1-FLP, Part 7.

## 723 Off-Site Work to Protect Inventory Property

### A General Policy

FSA may protect inventory property from damage or destruction and protect FSA's interests by obtaining goods or services for property adjacent to or near the inventory property. Such work may include, but is not limited to, construction or reconstruction of roads, sewers, drainage work, or utility lines. FSA may use either a procurement or cooperative agreement to complete such work, as appropriate.

### B Conditions for Completing Off-Site Work

FSA can make expenditures for off-site work if:

- FSA determines that failure to procure the work would likely result in a property loss greater than the expenditure
- no other feasible means exist for accomplishing the required result.

The authorized agency official must provide written documentation to verify the need for the off-site work and must obtain approval from DAFLP.

### C Direct Procurement Action

When FSA determines a direct procurement action is necessary, FSA must obtain an opinion from the Regional Attorney verifying that:

- FSA has the authority to enter the off-site property to complete the work
- a specific legal entity has the authority to grant an easement or right-of-way to FSA to complete the work.

Any easement or right-of-way must be in a form approved, and recorded as advised, by the Regional Attorney.

### D Arranging Maintenance Agreements

When feasible, FSA makes arrangements or agreements with State or local governments or other entities to ensure continued maintenance of areas such as easements and rights-of-way. This may be accomplished through dedication or acceptance, letter agreements, or applicable statutes. For example, FSA may enter into a written agreement with a local government for the maintenance and upkeep of a road providing the only means of access to an inventory property.

## 724 Taxes on Inventory Real Property

### A Real Property Subject to Taxation

FSA pays accrued taxes assessed on inventory property by State and local political jurisdictions unless State law specifically exempts property owned by the Government from taxation.

Where jurisdictions change their law or codes to begin taxing Government-owned property, FSA only pays taxes accruing after the effective date of the change. SED may issue a State supplement with the advice of OGC to cover individual State laws.

The authorized agency official notifies the appropriate taxing authority in writing when FSA acquires title to real estate. The authorized agency official advises the taxing authority that claims for taxes during FSA ownership must be billed to FSA at the County or District Office address.

### B Making Tax Payments

FSA charges tax payments to the inventory account according to 1-FLP, Part 7.

## 725 Paying Prior Liens

### A Determining When to Pay Prior Liens

If FSA acquires real estate subject to a lien, SED determines whether FSA should pay the prior lienholder. If SED determines that FSA should pay the prior lienholder, FSA pays the lien in full.

### B Making Lien Payments

FSA charges the payment to the inventory account according to 1-FLP, Part 7.

## 726-740 (Reserved)

# Part 20 Leasing Inventory Real Property

## 741 General Policy for Leasing Inventory Real Property

### A When FSA May Lease Inventory Real Property

**[7 CFR 767.101(a)] The Agency may lease inventory real property:**

**(1) To the former owner under the Homestead Protection Program**

***--**The former owner should be notified according to subparagraph 281 B.**--***

**(2) To a beginning farmer or socially disadvantaged farmer selected to purchase the property but who was unable to purchase it because of a lack of Agency direct or guaranteed loan funds.**

**(3) When the Agency is unable to sell the property because of lengthy litigation or appeal processes.**

### B Property Condition

**[7 CFR 767.101(b)] The Agency will lease inventory real property in an "as is" condition.**

### C Advertising Requirements for Leases Because of Lengthy Litigation and Appeals

When FSA cannot sell inventory property because of lengthy litigation and appeals, FSA offers to lease it to the public. The advertisement must state that FSA still intends to sell this property when the litigation has concluded and the property will be sold subject to the lease if it is still in place on the date of closing. Advertising requirements are discussed further in paragraph 781.

### D Environmental Considerations

Lessees may not use inventory real property for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in Part 22. Lease terms will include language to this effect.

FSA will place restrictions about the use of underground storage tanks and storage of hazardous waste substances in the lease according to Part 22, Section 3.

## 742 Entering Into the Lease Agreement

### A Rent Amounts

**[7 CFR 767.101(e)] The Agency leases inventory real property for a market rent amount charged for similar properties in the area.**

To set the market rent amount, the authorized agency official must consider the income producing capability of the property during the term of the lease. The authorized agency official surveys lease amounts of farms in the immediate area with similar soils, capabilities, and income potential. The authorized agency official maintains this rental data in an operational file as well as in the running record of case files for leased inventory properties.

If FSA is leasing the property because of lengthy litigation and appeals and advertising the property to the public, SED has the authority to enter into a lease with the highest bidder if it is in FSA's best financial interest.

### B Lease Terms

**[7 CFR 767.101(c)] The Agency will lease property for:**

**(1) Homestead protection in accordance with part 766, subpart D** (Part 7) **of this chapter.**

## 742 Entering Into the Lease Agreement (Continued)

### B Lease Terms (Continued)

***--[7 CFR 767.101(c)] (2) A maximum of 18 months to a beginning farmer or socially disadvantaged farmer the Agency selected as purchaser when no Agency loan funds--* are available; or**

The following language will be inserted into the special stipulation section of the lease agreement for all leases under this heading:

> "This lease will expire 18 months from the date of the inception of the lease or sooner should Farm Ownership funds become available before expiration of the lease. As soon as funds are available, the tenant will be expected to immediately furnish updated financial information if requested by the Agency. The sale will be expected to close within 30 calendar days of the date funds become available unless extended in writing by the Agency upon mutual agreement of both parties. The purchase price will be the price agreed to in the purchase agreement dated MM-DD-YYYY. In the case of the tenant being determined ineligible for Agency financing or being unable to present a feasible plan of operation at the time the funds become available, this lease agreement will be null and void. Any growing crops will be allowed to be removed at the normal harvest time. Any lease installments remaining to be paid for that crop year will need to be paid in full before removal of any crop. The tenant is required, as part of the lease agreement, to provide a first lien position on all crops growing or to be grown on this land equal to the amount of the rent due for the term of the lease."

**[7 CFR 767.101(c)] (3) The shortest possible duration for all other cases subject to the following:**

**(i) The maximum lease term for such a lease is 12 months.**

**(ii) The lease is not subject to renewal or extension.**

FSA may not lease inventory property because of lengthy litigation and appeals for more than 12 months. These leases are not subject to renewal and extension. The authorized agency official must re-advertise property for lease to the general public because of lengthy litigations and appeals when a lease term ends.

***--**When a lease term ends for a beginning farmer or socially disadvantaged farmer, the**--*** authorized agency official must proceed according to Part 21.

## 742 Entering Into the Lease Agreement (Continued)

### C Purchase Options

**[7 CFR 767.101(g)] Only leases to a beginning farmer or socially disadvantaged famer or Homestead Protection Program participant will contain an option to purchase the property.**

FSA does not extend purchase options to a lessee who is not a beginning farmer, socially disadvantaged famer, or a Homestead Protection Program participant.

Terms of this option are included in the special stipulation section of the lease. The lease payments are not applied toward the purchase price. The purchase price is the advertised sales price as determined by an appraisal.

When a lease with an option to purchase is signed, FSA advises the lessee in writing that FSA may not be in a position to finance the purchase of the property because of lack of funding.

### D Security Deposit

**[7 CFR 767.101(f)] The Agency may require the lessee to provide a security deposit.**

The amount of any security deposit will be determined by considering only the improvements or facilities that might be subject to misuse or abuse during the term of the lease. The amount of any required security deposit will be included in any advertisement of the property for lease.

***--**Security deposits will be remitted according to 3-FI and held by NFAOC, DLD until the authorized agency official makes the determination to return or otherwise dispose of the security deposit.

NFAOC, DLD will be requested by memorandum to return the deposit to the servicing**--***
office for delivery to the lessee; or, if the deposit is to be retained by FSA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate after all appeal rights are exhausted.

## 742 Entering Into the Lease Agreement (Continued)

### E Lease Termination

The lease may be terminated by either party upon 30 calendar day's written notice to the other party at that party's address set forth in the lease. If the property is sold subject to the lease, the new owner may terminate the lease by giving 30 calendar days notice to the lessee in the same manner, but in any event, the lessee shall retain the right to harvest any existing crops.

When a lease is terminated or when the property is sold before the expiration of the lease
***--**term, the authorized agency official notifies NFAOC, DLD of the termination and the**--***
effective date of the termination.

The lessee may appeal this termination according to 1-APP. During the period of any appeal, the tenant will still be responsible for payment of any accumulating lease payments according to the terms of the lease that was in force before the termination.

### F Acceptable Forms of Lease Payment

**[7 CFR 767.101(d)] The lessee may pay:**

**(1) A lump sum;**

**(2) On an annual installment basis; or**

**(3) On a crop-share basis, if the lessee is a beginning farmer or socially disadvantaged farmer under paragraph (a) of this section.**

FSA prefers lump-sum or annual installment payment methods, but may approve a farm lease on a crop-share basis for a beginning farmer or socially disadvantaged farmer if it is the customary practice in the area.

For a crop-share lease, FSA must stipulate the lease amount and terms in the special stipulations section of the lease. In this case, the lessee markets the crops, provides FSA with documented evidence of crop income, and pays FSA the pro-rata share of the income. The authorized agency official is responsible for ensuring that FSA properly accounts for crops and for collecting the lease payments.

FSA applies the proceeds from inventory property leases to the lease account.

## 743 FSA Procedures for Leasing Inventory Real Property

### A Preparing the Lease Agreement

The authorized agency official uses FSA-2591 or another form approved by OGC to lease property.

### B Establishing a Lease Account

*--On receipt of an inventory property lease, NFAOC, DLD establishes a lease account in the--* lessee's name. In servicing the lease account, the authorized agency official may establish or remove a suspend code from a lease record by completing FSA-2587 according to the instructions.

### C Management of Leased Inventory Property

**[7 CFR 767.103] (a) The Agency will pay for repairs to leased real estate inventory property only when necessary to protect the Agency's interest.**

**(b) If the lessee purchases the real estate inventory property, the Agency will not credit lease payments to the purchase price of the property.**

Generally, FSA pays only for repairs, such as replacing broken fixtures or repairing a leaking roof. FSA does not pay operating costs associated with leased inventory property.

When necessary, FSA may use management services, in addition to a lease to fully protect FSA's interest in a property. In all cases, the authorized agency official makes a determination of what types of services are needed and obtains prior written approval from SED.

## 744 Leasing Other Types of Properties

### A Lease of Inventory Nonreal Estate Property

**[7 CFR 767.102] The Agency does not lease non-real estate property unless it is attached as a fixture to inventory real property that is being leased and it is essential to the farming operation.**

### B Lease of Custodial Property

If FSA cannot acquire title to custodial property in a timely manner, the authorized agency official may lease the property upon concurrence from the National Office.

## 745-775 (Reserved)

# Part 21 Disposal of Inventory Property

## 776 General Policies

### A Initiating the Sale of Property to Beginning Farmers or Socially Disadvantaged Farmers

*--On a case-by-case basis, SED will request and receive National Office concurrence before advertising and selling inventory property previously owned by a Pigford claimant whose claim is closed. If concurrence is granted, SED may proceed to sell the property.--*

**[7 CFR 767.151] Subject to § 767.152** (paragraph 777)**, the Agency will attempt to sell its inventory property as follows:**

**(a) The Agency will combine or divide inventory property, as appropriate, to maximize the opportunity for beginning farmers or socially disadvantaged farmers to purchase real property.**

**(b) The Agency will advertise all inventory real property that can be used for any authorized FO loan purpose for sale to beginning farmers or socially disadvantaged farmers no later than 15 days after the Agency obtains title to the property.**

When FSA acquires inventory real property and the authorized agency official confirms that the property satisfies the applicable general policies in this paragraph, the authorized agency official initiates the sale of the property. For most inventory property, the authorized agency official must begin advertising the property for sale within 15 calendar days of title acquisition.

FSA offers inventory property to beginning farmers or socially disadvantaged farmers before considering sale of the property to the general public. Therefore, FSA directs its initial sale efforts toward eligible beginning farmers or socially disadvantaged farmers. FSA must complete the process of selling inventory property to a beginning farmer or socially disadvantaged farmer within 135 calendar days from the acquisition date of the inventory property.

Real property shall be advertised for sale to the general public according to subparagraph 776 D, if the property meets 1 of the following criteria:

- is not sold in response to the advertisement to a beginning farmer, socially disadvantaged farmer, or prevailing claimant
- cannot be used for agricultural purposes
- cannot be used to carry out the objectives of financing available through the applicable loan program.

The authorized agency official begins sale procedures by advertising the farm property for sale according to paragraph 781.

## 776 General Policies (Continued)

### B Determining Beginning Farmer or Socially Disadvantaged Farmer Eligibility

When the authorized agency official receives applications to purchase the inventory property, the authorized agency official reviews each application to determine whether the applicant meets the beginning farmer or socially disadvantaged farmer eligibility requirements according to 3-FLP, Part 4.

If the authorized agency official determines that an applicant is not eligible, the applicant is notified of the determination and that the applicant may request an expedited review of this determination by SED. This request for review must be made within 15 calendar days of the determination of eligibility.

SED's review must take place within 30 calendar days of the ineligibility determination. SED's review decision is final and is not administratively appealable.

### C Selection of Purchasers Among Eligible Beginning Farmers and Socially Disadvantaged Farmers

**[7 CFR 767.151(c)] If more than one eligible beginning farmer or socially disadvantaged farmer applies, the Agency will select a purchaser by a random selection process open to the public.**

**(1) All applicants will be advised of the time and place of the selection.**

**(2) All drawn offers will be numbered.**

**(3) Offers drawn after the first will be held in suspense pending sale to the successful applicant.**

**(4) Random selection shall be final and not subject to administrative appeal.**

If more than 1 eligible beginning farmer or socially disadvantaged farmer applies to purchase the inventory property, the authorized agency official randomly selects the purchaser. The random selection must be held in public.

The authorized agency official informs all eligible applicants of the time and place of the selection. The authorized agency official must document that FSA contacted each applicant before the selection.

## 776 General Policies (Continued)

### C Selection of Purchasers Among Eligible Beginning Farmers and Socially Disadvantaged Farmers (Continued)

The authorized agency official records the names in order of selection and retains all applications pending the sale to the first selected purchaser. If the first selected purchaser cannot develop a feasible plan to purchase the property or withdraws from the sale process before the property is sold or leased, then, at the conclusion of any appeal, the authorized agency official notifies the second selected beginning farmer or socially disadvantaged farmer applicant and proceeds with sale to that applicant. This process continues until FSA leases or sells the property to an eligible beginning farmer or socially disadvantaged farmer applicant or until no applicants remain.

The authorized agency official notifies all applicants in writing of the outcome of the random selection.

### D Selling to the General Public

**[7 CFR 767.151(d)] If there are no offers from beginning farmers or socially disadvantaged farmers, the Agency will offer to sell inventory property by auction or sealed bid to the general public no later than 165 days after the Agency obtains title to the property. All bidders will be required to submit a 10 percent deposit with their bid.**

If the authorized agency official has no offers from beginning farmers or socially disadvantaged farmers within 135 calendar days of acquisition, the authorized agency official attempts to sell the property to the general public. For inventory property under lease, FSA initiates sale of the property within 60 calendar days after the lease expires or is terminated.

The authorized agency official sells real property through a sealed bid sale or, when appropriate, at a public auction.

For a sealed bid sale, FSA selects the best qualified offer meeting FSA's minimum acceptable price and closes the sale with the selected offer or according to paragraph 782.

At a public auction, FSA sells the property to the highest bidder according to paragraph 783.

FSA may re-advertise the sale of the property to the general public. The advertisement must meet the guidelines described in paragraph 781. FSA may advertise to the general public within the same advertisement directed to beginning farmers or socially disadvantaged farmers. SED may issue a State supplement to provide guidance on whether the authorized agency official must publish a separate advertisement or 1 combined advertisement.

## 776 General Policies (Continued)

### E Negotiated Sale

**[7 CFR 767.151(e)] If the Agency receives no acceptable bid through an auction or sealed bid, the Agency will attempt to sell the property through a negotiated sale at the best obtainable price.**

The authorized agency official may seek guidance from SED to determine the lowest price below the property's appraised value FSA should accept through a negotiated sale.

FSA will conduct a negotiated sale in a manner which results in the best return to FSA. Negotiated sales can be advertised locally or on the internet. The notice can be part of the advertisement for the sealed bid, or contacts can be made by telephone, letter or personal contact. Care should be taken to ensure that the appropriate pool of buyers is aware of the sale. As an example, recreational lands should be advertised where recreational buyers will see the ads. The time and place for the negotiated sale should be posted. All parties that have expressed an interest in participating also should be notified. Negotiations can take place simultaneously by telephone and in person. All interested parties should be allowed to raise offers until such time as the agency approval official determines that no additional benefit will result from asking for higher offers. If the price offered represents the best price obtainable as determined by SED or their designee, the agency approval official is authorized to accept the offer by executing FSA-2592 with the highest offeror and receipt of 10 percent earnest money in the form of a cashiers check. This check should be received within 24 hours of offer acceptance.

## 776 General Policies (Continued)

### F Listing a Property With a Real Estate Broker

**[7 CFR 767.151(f)] If the Agency is not able to sell the property through negotiated sale, the Agency may list the property with a real estate broker. The broker must be properly licensed in the State in which the property is located.**

Under the Federal Acquisition Regulations, FSA may contract with a real estate or business broker to assist in the sale of real property, as needed. If an FSA office needs to contract for these services, the authorized agency official works with the local contracting officer to procure the necessary services. SED may issue a State supplement concerning contracting with real estate brokers.

### G Subdividing or Grouping Properties

The authorized agency official may subdivide or group real property together in order to promote a sale or to realize a higher total sale price.

### H Land Acquisition to Effect Sale

SED is authorized to acquire real estate or property rights necessary to sell inventory real property. This action must be considered on a case-by-case basis only as necessary to sell inventory property. It may not be taken to increase the financial return to FSA.

### I Property Subject to Redemption Rights

FSA does not sell inventory property until it has acquired title to the property. In States with redemption rights, FSA does not acquire title until the statutory redemption period has elapsed.

When FSA acquires property subject to redemption rights, the authorized agency official manages the property as custodial property according to paragraph 704 if authorized under State statutes. The authorized agency official does not place the property into inventory until the statutory redemption period expires and FSA receives and files a deed that transfers the title.

## 776 General Policies (Continued)

### J Foreclosure and Acquired Property Web Site for FSA Use

The private FSA web site is used by the designated acquired property web site coordinator to input and manage the information for each State.

The coordinators are issued ID's and passwords by the National Office system administrator. Initial population of the web site was completed by the coordinators in March 2003, and is continuously updated as information changes. Posting, deleting, and editing of property information is only available through the State coordinator.

**Note:** Service Centers do not have access to the private site.

Coordinators must input information when a property is ready for sale, a foreclosure has been scheduled, or a change occurs. However, foreclosure specifics cannot be input until this data has been published in the official newspaper publication of the foreclosure sale. Web site information must be the most current information available.

### K Foreclosure and Acquired Property Web Site for Public Use

The public site is used by potential customers to obtain information about scheduled foreclosure sales or properties available for sale by USDA.

The Foreclosure and Acquired Property Web Site is used as a method to inform the public of scheduled foreclosure sales or properties available for sale. The use of this web site lends uniformity to the dissemination of information in all States.

Internet Explorer must be used to access this web site because some fields may not work using Netscape.

Field Office use of this web site is mandatory and is used before any other State-established web site.

States will publicize the web site with other organizations within their State such as, "American Society of Farm Managers and Rural Appraisers" and "National Board of Realtors".

The States that have their own web site may create a link from their web site to the acquired property web site. The State webmaster shall use **www.resales.usda.gov** to create this link.

## 777 Exceptions to General Policies

### *--A Property Leased to Beginning Farmers or Socially Disadvantaged Farmers

**[7 CFR 767.152] The Agency's disposition procedure under § 767.151** (paragraph 776) **is subject to the following:**

**(a) If the Agency leases inventory real property to a beginning farmer or socially disadvantaged farmer in accordance with § 767.101(a)(2)** (subparagraph 741 A)**, and the lease expires, the Agency will not advertise the property if the beginning farmer or socially disadvantaged farmer is approved to purchase the property and the Agency has direct or guaranteed loan funds available to finance the transaction.**

If the selected beginning farmer or socially disadvantaged farmer develops a feasible plan and FSA funding is not available to close the sale, then the authorized agency official will lease the property to the beginning farmer or socially disadvantaged farmer according to Part 20.

If the beginning farmer or socially disadvantaged farmer chooses not to enter into a lease,**--*** the property will be offered to the next person on the list of eligible applicants.

### B Homestead Protection Notification

**[7 CFR 767.152(b)] The Agency will not advertise a property for sale until the Homestead Protection rights have terminated in accordance with part 766, subpart D** (Part 7) **of this chapter.**

Before the authorized agency official initiates the sale of the property, the authorized agency official verifies and documents in the file that:

- FSA has properly notified the borrower of the borrower's homestead protection rights
- all preservation rights have expired according to Part 7.

### C Conservation Easements or Environmental Contamination Reviews

**[7 CFR 767.152(c)] The Agency may allow an additional 60 days if needed for conservation easements or environmental reviews.**

Before initiating the sale of inventory property, the authorized agency official acts according to Part 22 to protect environmental and cultural resources.

## 777 Exceptions to General Policies (Continued)

### D Negative Effect on Value of Farms

**[7 CFR 767.152(e)] If Agency analysis of farm real estate market conditions indicates the sale of Agency farm inventory property will have a negative effect on the value of farms in the area, the Agency may withhold inventory farm properties in the affected area from the market until further analysis indicates otherwise.**

SED conducts this analysis annually, and as often throughout the year as necessary to reflect changing real estate conditions. SED notifies, through an FLP notice, the appropriate Field Offices servicing those areas that are restricted from selling inventory property.

### E American Indian Borrower

**[7 CFR 767.152(d)] If the property was owned by an American Indian borrower and is located on an Indian reservation, the Agency will:**

**(1) No later than 90 days after acquiring the property, offer the opportunity to purchase or lease the property in accordance with:**

**(i) The priorities established by the Indian Tribe having jurisdiction over the Indian reservation;**

**(ii) In cases where priorities have not been established, the following order:**

**(A) A member of the Indian Tribe that has jurisdiction over the Indian reservation;**

**(B) An Indian entity;**

**(C) The Indian Tribe.**

**(2) Transfer the property to the Secretary of the Interior if the property is not purchased or leased under paragraph (1) of this section.**

## 778 Sale of Inventory Real Property

### A Pricing

**[7 CFR 767.153(a)] (1) The Agency will advertise property for sale at its current market value, as established by an appraisal obtained in accordance with § 761.7** (1-FLP, Part 6)**.**

**(2) Property sold by auction or sealed bid will be sold for the best obtainable price. The Agency reserves the right to reject any and all bids.**

It must be clearly documented that the property received adequate exposure and the reasons why this price represents the best price obtainable.

The authorized agency official obtains an appraisal according to 1-FLP, Part 6 if the current appraisal is more than 1 year old. SED will base the decision on the minimum acceptable price on the following criteria:

- the length of time the property has been in inventory
- previous marketing efforts
- the type of property involved
- market value
- cost to continue holding such as taxes, maintenance and depreciation.

The authorized agency official prices inventory property containing environmental risks according to Part 22.

## 778 Sale of Inventory Real Property (Continued)

### B Agency-Financed Sales

**[7 CFR 767.153(b)] The Agency may finance sales to purchasers if:**

**(1) The Agency has direct or guaranteed FO loan funds available;**

**(2) All applicable loan making requirements are met; and**

***--(3) All purchasers who are not beginning farmers or socially disadvantaged farmers--* make a 10 percent down payment.**

FSA may offer financing to program eligible applicants at program interest rates and terms, subject to the availability of funds.

If FSA finances the sale, the applicant must provide the necessary financial information to assist the authorized agency official to determine the applicant's repayment ability and creditworthiness. The authorized agency official should refer to 3-FLP, Part 3 for information concerning what constitutes a complete application and how to evaluate the application.

## 778 Sale of Inventory Real Property (Continued)

### C Taxes and Assessments

**[7 CFR 767.153(c)] (1) Property taxes and assessments will be prorated between the Agency and the purchaser based on the date the Agency conveys title to the purchaser.**

**(2) The purchaser is responsible for paying all taxes and assessments after the Agency conveys title to the purchaser.**

When FSA inventory property is subject to taxation, the authorized agency official prorates the taxes and any assessment installments for property improvements between FSA and the purchaser. The authorized agency official prorates payments based on the date FSA conveys title to the purchaser according to FSA-2593 and FSA-2592.

The authorized agency official notifies the taxing authority of the sale, the purchaser's name, and the property's description.

The purchaser is responsible for paying all accrued taxes and assessment installments after FSA conveys the title.

For a purchaser of inventory property required to escrow, FSA deposits its share of accrued taxes and assessment installments in the purchaser's escrow account. For purchasers not required to escrow, FSA pays accrued taxes and assessment installments to the local taxing authority.

If the purchaser agrees, FSA may deduct the amount of taxes and assessment installments FSA owes from the sale price.

## 778 Sale of Inventory Real Property (Continued)

### D Loss or Damage to Property

**[7 CFR 767.153(d)] If, through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or act of God before the Agency conveys the property, the Agency may reappraise the property and set the sale price accordingly.**

### E Purchase Agreements

All offers to purchase will be completed using either FSA-2593 or FSA-2592. In the case of multiple offers, only 1 accepted purchase agreement can be in place at a time on a given parcel.

All purchase agreements will contain disclosures and addendums necessary to comply with State statutes. SED's with assistance from OGC, shall issue State supplements as necessary to ensure compliance.

At a minimum all purchase agreements should include agreements pertaining to continuance of CRP contracts, easements, lead paint disclosures and any others as identified by OGC.

### F Termination of the Contract

**[7 CFR 767.153(e)] Either party may terminate the sales contract. If the contract is terminated by the Agency, the Agency returns any deposit to the bidder. If the contract is terminated by the purchaser, the deposit will be retained by the Government as full liquidated damages, except where failure to close is due to Government non-approval of credit.**

### G Warranty on Title

**[7 CFR 767.153(f)] The Agency will not provide any warranty on the title or on the condition of the property.**

## 778 Sale of Inventory Real Property (Continued)

### H Closing an Inventory Property Sale

***--**If the selected beginning farmer or socially disadvantaged farmer develops a feasible plan**--***
and FSA funding is available or becomes available during the term of the lease, then the authorized agency official proceeds with closing the sale transaction. The authorized agency official closes the transaction according to 3-FLP if direct loan funds are involved, or according to 2-FLP if guaranteed funds are involved. The following occurs in addition to the applicable closing procedures.

- The authorized agency official provides title to the buyer using FSA-2595 or other nonwarranty deed approved by OGC.

- The buyer pays attorney fees, title insurance costs, recording fees, and other customary fees, unless the fees and costs are included in a subsequent or participation loan. FSA may not make a subsequent loan for the primary purpose of paying closing costs and fees.

- The buyer and the authorized agency official execute FSA-2593 before closing the sale.

After the authorized agency official closes the transaction and FSA conveys the property, the authorized agency official completes FSA-2594.

## 779 Conveying Easements, Rights of Way, and Other Interests in Inventory Property

### A General Requirements

SED is authorized to convey easements, rights-of-way, and other interests in inventory property for roads, utilities, and other purposes according to this paragraph. Conservation easements are handled according to Part 5.

### B Appraisals

**[7 CFR 767.154(a)] The Agency will determine the value of real property and real property interests being transferred in accordance with § 761.7** (1-FLP, Part 6) **of this chapter.**

FSA determines the value of real property and real property interests through an appraisal conducted according to 1-FLP, Part 6.

### C Easements and Rights of Way on Inventory Property

**[7 CFR 767.154(b)] (1) The Agency may grant or sell an easement or right-of-way for roads, utilities, and other appurtenances if the conveyance is in the public interest and does not adversely affect the value of the real property.**

**(2) The Agency may sell an easement or right-of-way by negotiation for market value to any purchaser for cash without giving public notice if:**

**(i) The sale would not prevent the Agency from selling the property; and**

**(ii) The sale would not decrease the value of the property by an amount greater than the price received.**

**(3) In the case of condemnation proceedings by a State or political subdivision, the transfer of title will not be completed until adequate compensation and damages have been determined and paid.**

FSA handles sale proceeds according to 4-FLP, Part 5.

## 779 Conveying Easements, Rights of Way, and Other Interests in Inventory Property (Continued)

### D Disposal of Other Interests in Inventory Property

**[7 CFR 767.154(c)] (1) If applicable, the Agency will sell mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests with the surface land except as provided in paragraph (b)** (subparagraph 779 C) **of this section.**

**(2) If the Agency sells the land in separate parcels, any rights or interests that apply to each parcel are included with the sale.**

**(3) The Agency will assign lease or royalty interests not passing by deed to the purchaser at the time of sale.**

**(4) Appraisals of property will reflect the value of such rights, interests, or leases.**

The authorized agency official notifies the lessee or buyer of the assignment. FSA provides a copy of this notification to the purchaser.

### E Conveyance to Public Bodies or Utilities

FSA must receive adequate consideration for the inventory property being released or the conveyance must be for a purpose that enhances the value of the real property.

If an appraisal is required as a result of the conveyance, FSA must consider relative property values, including any appropriate adjustment to the property's market value.

## 780 Selling Chattel Property

### A General Policy

FSA sells inventory chattel property as expeditiously as possible.

### B Public Auctions

**[7 CFR 767.155(a)(1)] The Agency will use sealed bid or established public auctions for selling chattel. The Agency does not require public notice of sale in addition to the notice commonly used by the auction facility.**

FSA sells chattel at an established public auction that is widely advertised, held on a regular basis at the same facility, or both. No additional advertising is required by FSA. This is the preferred sale method for most chattels. Detailed procedures for selling property at an auction are described in paragraph 783. If the authorized agency official has reason to believe the property is not suitable for sale at a public auction or the property is not sold at auction, the authorized agency official should consult with SED for guidance on how to proceed.

### C Concurrent Sale of Real and Chattel Inventory Property

**[7 CFR 767.155(a)(2)] The Agency may sell inventory chattel property, including fixtures, concurrently with inventory real estate if, by doing so, the Agency can obtain a higher aggregate price. The Agency may accept an offer for chattel based upon the combined final sales price of both the chattel and real estate.**

FSA may sell chattel with real property if FSA will obtain a higher aggregate price. The authorized agency official distributes proceeds from a joint sale among the applicable loan accounts based on the value of the property sold. The authorized agency official documents justification for a concurrent sale through an appraisal.

### D Agency Financed Sales

**[7 CFR 767.155(b)] The Agency may finance the purchase of inventory chattel property if the Agency has direct or guaranteed OL loan funds available and all applicable loan making requirements are met.**

FSA transfers title to the security by completing FSA-2596.

After the authorized agency official closes the transaction and FSA conveys the property, the authorized agency official processes the sale according to 3-FI.

## 781 Advertising Property

### A Authority

When FSA sells property in a manner that requires FSA to advertise the property, the authorized agency official is responsible for ensuring adequate advertising to achieve a timely sale.

### B General Requirements

The authorized agency official must ensure that all advertising meets these general requirements.

- The advertisement must describe the property being sold. Real property must have a legal description unless a lengthy legal description is cost prohibitive. Then a general legal description will suffice provided purchasers can understand where the property is located. The advertisement shall then disclose that the actual legal description is available.

- The advertisement must be in a least 2 newspapers or other appropriate publications that are widely circulated in the area where the potential purchasers will reside.

- The advertisement must run at least once per week for 2 successive weeks.

- The advertisement for real property must describe any use restrictions or easements on the property.

- The advertisement must include a statement that the property is being sold “as is.”

- The advertisement must state that the Government reserves the right to cancel the sale at any time during the sale process and also reserves the right to reject any or all applications or bids.

- The advertisement may list the market value of the property or a minimum acceptable price.

- The advertisement shall indicate whether FSA financing is available to purchase the property. The advertisement will also indicate where to obtain an application or submit a bid, how to receive more information, and the deadline for submitting applications or bids.

## 781 Advertising Property (Continued)

### B General Requirements (Continued)

The authorized agency official must use other appropriate forms of advertising to maximize publicity, including posting Exhibit 70. The authorized agency official posts these advertisements in the local Field Office, adjoining Field Offices, the Farms for Sale Web Site, and other appropriate locations as necessary to ensure that the sale receives adequate exposure to the market.

### *--C Advertising and Selling to Beginning and Socially Disadvantaged Farmers

All inventory property will continue to be advertised for sale to beginning and socially disadvantaged farmers unless it meets the criteria identified in subparagraph 776 A. Advertising must meet the general advertising requirements in subparagraph B and additionally must state:

- that beginning farmers or socially disadvantaged farmers may lease the property for up to 18 months if FSA loan funds are not available at the time of the scheduled sale
- that the lease of property may be subject to environmental use restrictions
- where to obtain an application, how to receive more information, and the deadline for submitting applications
- the market value of the property.

Any prevailing claimant from the *Pigford I* Consent Decree process may exercise their one-time right to priority consideration in response to the advertisement, provided the *Pigford I* Consent Decree process is complete, and the written notice of the request is timely. The right to priority consideration must be exercised no later than April 14, 2005, or 2 years after the date the prevailing *Pigford I* claimant's claim receives a final decision in the Consent Decree claims process.

The initial paragraph in the advertisement must state the following:

> "The property is being offered for sale to those individuals whom the Farm Service Agency (FSA) considers qualified beginning and/or socially disadvantaged farmers or ranchers, and prevailing claimants in the civil action *Pigford vs. Vilsack*. Prevailing claimants who have not already used their right to their one-time priority consideration and who are qualified beginning and/or socially disadvantaged farmers or ranchers will be given first priority consideration in the purchase of this property. If more than one beginning and/or socially disadvantaged farmer or rancher or more than one of a combination of both who are prevailing *Pigford* I claimants exercising their one-time right to priority consideration submit an application, priority within this group will be determined by lottery. Qualified beginning and socially disadvantaged farmers or ranchers must be in need of FSA credit assistance either in the form of direct FSA financing or an FSA guaranteed loan. For other requirements and information on how to qualify as a beginning and/or socially disadvantaged farmer or rancher, you may contact your local FSA office."**--***

## 781 Advertising Property (Continued)

### *--C Advertising and Selling to Beginning and Socially Disadvantaged Farmers (Continued)

Prevailing claimants from the *Pigford I* Consent Decree process seeking priority consideration must submit written notice of the request to FSA. In addition, a prevailing *Pigford I* claimant must either submit an actual application for inventory property or for a loan at the time of the request for priority consideration or must have an application for inventory property or for a loan already pending with FSA.

If applications are received from beginning and/or socially disadvantaged farmers who are not prevailing *Pigford I* claimants, and prevailing *Pigford I* claimants who are not beginning and/or socially disadvantaged farmers, priority remains with the beginning and/or socially disadvantaged farmers.

If, in response to the advertisement in this paragraph, an application is received only from a prevailing *Pigford I* claimant who is **not** a beginning and/or socially disadvantaged farmer, the property shall be offered to the applicant at the appraised market value before the inventory property is put up for public bid.

In summary, priority consideration will be in the following order:

- prevailing *Pigford I* claimants who are beginning and/or socially disadvantaged farmers
- beginning farmers and/or socially disadvantaged farmers
- prevailing *Pigford I* claimants who are not beginning and/or socially disadvantaged farmers.**--***

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## 782 Sealed Bid Sales

### A General Policy

FSA may use sealed bid sales to sell real property.

### B Determining the Sales Price

SED determines the minimum acceptable sale price for real estate. SED bases this determination on:

- the length of time the property has been in inventory
- previous marketing efforts
- the type of property involved
- potential purchasers.

### C FSA Financing

FSA may offer financing on the sale of program property subject to the availability of funds. FSA credit financing must not exceed the market value of the property and will be offered only if funds are appropriated for financing.

### D Selling Multiple Properties

When FSA is selling a group of properties, FSA advertising indicates whether FSA accepts bids on individual properties, a group of properties, or both.

### E Bid Requirements

Bidders must make sealed bids on FSA-2592.

Bidders must include a deposit of 10 percent of the bid amount. The deposit must be in the form of a cashier's check, certified check, postal or bank money order, or bank draft payable to FSA. If FSA finances the property, the deposit will be credited toward the purchase price or refunded to the borrower.

### F Receiving Bids

As bids are received, the authorized agency official:

- stamps each bid with the date and time FSA received the bid
- place each bid in a secure file.

## 782 Sealed Bid Sales (Continued)

### G Advertising Requirements

FSA advertisements and notices state that FSA requires bidders to submit bids in a sealed envelope marked “Sealed bid offer” with the property identification number on the outside of the envelope.

### H Opening the Bids

FSA holds the bid opening in public. At least 2 authorized agency officials must attend the bid opening. One authorized agency official opens and tabulates each bid. Another authorized agency official records:

- name and address of the bidder
- bid amount
- amount and form of the deposit
- any conditions of the bid.

The authorized agency official, DD, or SED signs the record and retains a copy in the inventory file.

### I Selecting the Winning Bid

FSA accepts the highest complying bid that meets the minimum established price. This acceptance is accomplished by the agency approval official signing FSA-2592. If FSA financing is involved, FSA conditions its acceptance on the authorized agency official’s approval of the financing arrangement.

If no bid meets the minimum established price, then SED may do 1 of the following:

- accept the highest bid, if SED can document that this would be in the Government’s best financial interest

- hold a negotiated sale according to subparagraph 776 E

- hold a negotiated sale with all the bidders and any other interested parties

- attempt to sell the property at a public auction.

## 782 Sealed Bid Sales (Continued)

### J Handling Equal Bids

If there are equal bids, the authorized agency officials determine the successful bidder by random selection. The random selection is held in public and is not appealable.

### K Credit Bids Exceeding Market Value

If FSA receives a bid requesting credit that exceeds the market value of the property or exceeds acceptable FSA terms, the authorized agency official gives the bidder the opportunity to:

- make a cash down payment
- reduce the credit request with no accompanying change in the offer price
- reduce the terms with no accompanying change in the offer price.

### L Handling Bid Deposits

The authorized agency official returns the deposits of all unsuccessful bidders *** * *** . If there are no acceptable bids, the authorized agency official returns all deposits and informs the bidders of any anticipated negotiations for the sale of the property. The authorized agency official deposits the successful bidder's deposit according to 3-FI.

### M Disqualifying Bids

The authorized agency official disqualifies any bids that do not comply with the terms of the FSA notice. The authorized agency official may waive minor deviations and defects in an offer.

### N Failing to Close the Sale

If a successful bidder fails to close the sale under the terms of the offer, FSA retains the entire deposit. However, if the failure to close is FSA's fault or FSA rejects the credit application, the authorized agency official returns the entire deposit according to 3-FI. When the authorized agency official determines that the successful bidder will not close, SED will authorize another sealed bid sale, auction, or direct negotiations with the next highest bidder, all unsuccessful bidders, or other interested parties.

## 783 Auctions

### A General Policy

FSA sells chattel and real property “as is” and does not guarantee its condition.

SED may determine the minimum acceptable sale price. However, in most cases, determining a minimum bid is not necessary with a public auction. If SED sets a minimum bid, FSA should not publicize the minimum bid amount.

### B Auction of Chattel

FSA acts to protect its interests if it suspects collusion or efforts to undermine the open, fair, and competitive nature of a chattel auction. The authorized agency official must work closely with the auctioneer, as necessary, to ensure that property sells for the highest obtainable price.

The successful bidder for chattel must make full cash payment at the auction to complete the sale.

Sold chattel property remains subject to FSA’s lien until FSA receives the sale proceeds.

### C Auction of Real Property

Details of the terms and conditions of the sale of real property are included in the contract with the auctioneer and the sales contract.

When possible, FSA should auction a group of properties. FSA may subdivide properties to promote a sale when necessary.

## 784 Real Property Securing FSA Credit Located in a Federally Recognized Indian Reservation

### A General Requirements

*--This paragraph applies under the following conditions.--*

- The real property securing FSA credit is located within the boundaries of a Federally recognized Indian reservation.

- The borrower is a member of the tribe that has jurisdiction over the reservation.

FSA handles real property located within an Indian reservation formerly owned by nontribal entities or nontribal members as regular inventory property and **not** according to this paragraph.

### B Notifying the Tribe

Not later than 90 calendar days after acquiring the inventory property, FSA notifies the Indian tribe that has jurisdiction over the reservation by Exhibit 71 of the opportunity to *--purchase the property or enter into a lease not to exceed 5 years with the option to purchase at the end of the lease term. FSA sells or leases inventory property in an established priority--* order to:

- a member of the Indian tribe that has jurisdiction over the reservation
- an Indian corporate entity
- the Indian tribe.

The Indian tribe that has jurisdiction over the reservation may revise the priority order and may restrict the buyer eligibility and opportunity within this list.

### C Failure to Sell the Property

*--If FSA is unable to sell or lease the property according to subparagraph B, then SED will--* transfer the property to the Secretary of the Interior. SED, in consultation with OGC, may develop a process and operating guidelines for transferring property to the Secretary of the Interior. FSA protects any important resources on the property according to Part 22.

## 785-800 (Reserved)

# Part 22 Selling and Leasing Inventory Real Property With Special Characteristics

## Section 1 Inventory Property Containing Important Environmental Resources

### 801 Overview

#### A General Policy

FSA protects and conserves inventory property containing important environmental resources through conservation easements, conservation transfers, or both.

#### B Determining Whether Inventory Real Property Contains Wetlands or Highly Erodible Lands

FSA contacts NRCS to identify wetlands and highly erodible land. The authorized agency official requests a certified wetland determination from NRCS of **both** agricultural and nonagricultural land.

***--Note:** These determinations are considered non Clean Water Act determinations and are normally provided by NRCS on form NRCS-CPA-026E.**--***

#### C Determining Whether Inventory Real Property Contains Other Important Environmental Resources

See 1-EQ for guidance on identifying property containing all important environmental resources other than wetlands and highly erodible land. FSA uses the same process to identify environmental and cultural impacts and perform due diligence before making or servicing direct or guaranteed loans and to identify important environmental resources before leasing or selling inventory property.

## 802 Leasing or Selling Inventory Property With Important Environmental Resources

### A General Requirements

If FSA determines that inventory property contains important environmental resources, FSA may lease or sell the property according to the following provisions:

**[7 CFR 767.201(e)] (1) Lessees and purchasers receiving Agency credit must follow a conservation plan developed with assistance from NRCS.**

**(2) Lessees and purchasers of real property with important resources or real property interests must allow the Agency or its representative to periodically inspect the real property to determine if it is being used for conservation purposes.**

See Exhibits 74 and 75 for guidance on preparing the deed. SEC consults the National Office as needed.

## 803 Wetland Conservation Easements

### A General Policy

**[7 CFR 767.201] In addition to the requirements established in subpart G of 7 CFR part 1940, the following apply to inventory property with important resources:**

**(a) The Agency will establish permanent wetland conservation easements to protect and restore certain wetlands that exist on inventory property prior to the sale of such property, regardless of whether the sale is cash or credit.**

If possible, FSA should begin reviewing the property for potential easements before FSA takes the property into inventory to complete the process before the 135-calendar-day statutory time requirement for selling inventory property expires.

### B Property on Which Easements Must Be Established

**[7 CFR 767.201(a)(1)] The Agency establishes conservation easements on all wetlands or converted wetlands located on inventory real property that:**

**(i) Were not considered cropland on the date the property was acquired by the Agency; and**

**(ii) Were not used for farming at any time during the 5 years prior to the date of acquisition by the Agency.**

**(A) The Agency will consider property to have been used for farming if it was used for agricultural purposes including, but not limited to, cropland, pastures, hayland, orchards, vineyards, and tree farming.**

**(B) In the case of cropland, hayland, orchards, vineyards, or tree farms, the Agency must be able to demonstrate that the property was harvested for crops.**

**(C) In the case of pastures, the Agency must be able to demonstrate that the property was actively managed for grazing by documenting practices such as fencing, fertilization, and weed control.**

## 803 Wetland Conservation Easements (Continued)

### C Determining the Size and Boundaries of Easements

After FSA has determined whether the wetlands or converted wetlands were used for farming, FSA contacts FWS.

- FSA consults with FWS to determine the size and boundaries of the easement area required to protect the identified wetlands.
- FSA requests FWS to make recommendations for protecting important environmental resources such as threatened or endangered species during this review.
- FSA requests FWS to make a determination within 30 calendar days. FWS may take longer if threatened or endangered species are involved.

FSA describes easement areas according to State or local law. If State or local law does not require a survey, the easement area can be described by rectangular survey, plat map, or other recordable methods.

### D Providing Access to Other Portions of the Property

**[7 CFR 767.201(a)(2)] The wetland conservation easement will provide for access to other portions of the property as necessary for farming or other uses.**

### E Easement Management

FWS is responsible for easement management and administration unless either:

- the wetland easement area is an inholding in Federal or State property and the Federal or State entity agrees to assume management responsibilities
- a State fish and wildlife agency having counterpart responsibilities to FWS is willing to assume easement management responsibilities
- FSA assumes management responsibilities because no other agency is willing to do so.

The agency that assumes easement management is responsible for the costs associated with easement management and administration.

## 804 Mandatory Conservation Easements

### A General Policy

**[7 CFR 767.201(b)] The Agency will establish conservation easements to protect 100-year floodplains and other Federally-designated important resources. Federally-designated important resources include, but are not limited to:**

**(1) Listed or proposed endangered or threatened species;**

**(2) Listed or proposed critical habitats for endangered or threatened species;**

**(3) Designated or proposed wilderness areas;**

**(4) Designated or proposed wild or scenic rivers;**

**(5) Historic or archeological sites listed or eligible for listing on the National Register of Historic Places;**

**(6) Coastal barriers included in Coastal Barrier Resource Systems;**

**(7) Natural landmarks listed on National Registry of Natural Landmarks; and**

**(8) Sole source aquifer recharge areas as designated by EPA.**

### B Management of Mandatory Conservation Easements

FSA assumes management responsibility of the easement area if no other agency is willing to do so.

## 805 Discretionary Easements

### A General Policy

**[7 CFR 767.201(c)] The Agency may grant or sell an easement, restriction, development right, or similar legal right to real property for conservation purposes to a State government, a political subdivision of a State government, or a private non-profit organization.**

**(1) The Agency may grant or sell discretionary easements separate from the underlying fee or property rights.**

**(2) The Agency may convey property interests under this paragraph by negotiation to any eligible recipient without giving public notice if the conveyance does not change the intended use of the property.**

### B Seeking Approval for Conveyances Adversely Affecting FSA's Interests

If the conveyance will adversely affect FSA's interests, SED submits the request to the Administrator for approval unless SED has received written approval authority from the Administrator. Factors SED should address in formulating the request include:

- the intended conservation purposes and the environmental importance of the affected property
- the impact on FSA's interests
- the financial resources of the potential purchaser or grantee
- the likely impact on the environment should FSA not sell or grant the property interest
- any other relevant factors or concerns prompting SED's request.

### C Processing Sale Proceeds

FSA processes sale proceeds as miscellaneous payments to the inventory account according to 3-FI.

### D Terms and Conditions of Conveyances

Conveyance documents will include terms and conditions that clearly specify the property interests being conveyed, all appropriate restrictions, and allowable uses.

## 806 Conservation Transfers

### A Conditions Required for Conservation Transfers

**[7 CFR 767.201(d)] The Agency may transfer inventory real property to a Federal or State Agency provided the following conditions are met:**

**(1) The transfer of title must serve a conservation purpose;**

**(2) A predominance of the property must:**

**(i) Have marginal value for agricultural production;**

**(ii) Be environmentally sensitive; or**

**(iii) Have special management importance;**

**(3) The Homestead Protection rights of the previous owner have been exhausted;**

**(4) The Agency will notify the public of the proposed transfer; and**

**(5) The transfer is in the Agency's financial interest.**

Land with marginal value is land on which it is not financially feasible to produce an agricultural commodity because of marginal soil, high erosion, or other special circumstances.

Environmentally sensitive land includes 1 or more of the following:

- wetlands
- riparian zones and floodplains
- coastal barrier resource areas
- areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat for recovery
- fish and wildlife habitats of local, regional, State, or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility
- sole source aquifer recharge areas of local, regional, State, or Federal importance
- areas of high water quality or scenic value.

## 806 Conservation Transfers (Continued)

### A Conditions Required for Conservation Transfers (Continued)

Land that has special management importance meets 1 or more of the following criteria.

- The land is an inholding, lies adjacent to, or is located in proximity to Federally or State-owned lands or interest in lands.

- The land would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

- The land would provide a necessary buffer to development if such development would adversely affect the existing Federally or State-owned lands.

- The land would contribute to boundary identification and control of existing conservation lands.

### B Notification Requirements for Conservation Transfers

When a State or Federal agency requests title to inventory property, SED makes a preliminary determination concerning whether the property is eligible for transfer.

If SED determines the property is eligible for transfer, FSA must take the following actions before approving the transfer.

- FSA must provide at least 2 public notices. These notices must be published in a newspaper with a wide circulation in the area that the requested property is located. The notice must describe the proposed use of the property and request any comments concerning the positive or negative impacts of the transfer. FSA must establish a 30-calendar-day period for receipt of comments.

- If requested, FSA will hold at least 1 public meeting to discuss the request. An FSA representative requesting the transfer should be present at the meeting in order to answer questions concerning the proposed conservation use of the property. FSA must advertise the date and time of the public meeting.

- FSA must provide written notice to the Governor of the State in which the property is located. FSA must also provide written notice to at least 1 elected official of the county in which the property is located. The notifications should describe the request and solicit any comments about the proposed transfer. FSA allows 30 calendar days for the receipt of comments. This 30-calendar-day period should run concurrently with the 30-calendar-day comment period established under the public notices described in this subparagraph.

## 806 Conservation Transfers (Continued)

### C Notification When Property Does Not Meet Eligibility Requirements

If SED determines that the property requested does not meet basic eligibility requirements for a conservation transfer, SED informs the requesting agency of the decision in writing. SED also informs the requesting agency that it may request the Administrator to review the decision.

### D Determining Priorities for Transfer of Inventory Lands

FSA gives priority to land transfer for conservation purposes, without reimbursement, over other land disposal alternatives in cases where land transfer is requested for conservation purposes that would contribute directly to either:

- the furtherance of International Treaties or Plans
- the recovery of a listed threatened or endangered species
- a habitat of national importance.

FSA will select a Federal entity over a State entity. If 2 Federal agencies request the same land tract, FSA gives priority to the Federal agency that owns or controls property adjacent to the property in question. If neither agency owns or controls adjacent property, FSA gives priority to the Federal agency whose mission or expertise best matches the conservation purposes of the proposed transfer.

In selecting between State agencies, FSA gives priority to the State agency that owns or controls land adjacent to the property in question. If neither agency owns or controls adjacent property, FSA gives priority to the agency whose mission or expertise best matches the conservation purposes of the proposed transfer.

### E Transferring Parcels of Inventory Property

FSA may subdivide an individual property into parcels and transfer a parcel under the requirements of this paragraph if the remaining parcels make up viable sales units.

## 807-820 (Reserved)

## Section 2 Inventory Property Located in Special Hazard Areas

### 821 Selling or Leasing Inventory Property Located in Special Hazard Areas

#### A General Policy

FSA takes necessary precautions with inventory property located in special hazard areas to minimize FSA liability under the law and to minimize risk to human health and the environment. FSA complies with Federal, State, and local laws about the management and sale of property located in special hazard areas.

#### B Types of Special Hazard Areas

**[7 CFR 767.202(a)] The Agency considers the following to be special hazard areas:**

**(1) Mudslide hazard areas;**

**(2) Special flood areas; and**

**(3) Earthquake areas.**

#### C Determining Whether Inventory Property Is Located in a Special Hazard Area

See 1-EQ for guidance on identifying property located in special hazard areas.

#### D Notifying Prospective Purchasers and/or Lessees of Hazards and Use Restrictions

FSA informs prospective purchasers and lessees at the time of the first inquiry and in any notice of public sale that the property is located in a special hazard area and therefore contains possible use restrictions. For a property being sold, FSA prepares and delivers Exhibit 78 to the prospective purchaser at the time the purchaser signs the bid or offer.

#### E Using Real Estate Brokers and Auctioneers to Sell Inventory Property

If engaged by FSA to sell inventory property, real estate brokers or auctioneers must notify prospective purchasers in writing that the property is located in a special hazard area and specify any use restrictions resulting from the property's location. When sending a notice to the broker or auctioneer listing a property for sale, the authorized agency official attaches Exhibit 78 for the broker or auctioneer to use as a guide in meeting this requirement.

## 821 Selling or Leasing Inventory Property Located in Special Hazard Areas (Continued)

### F Establishing Use Restrictions on Inventory Property Located in Special Hazard Areas

**[7 CFR 767.202(b)] The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.**

See Exhibits 74 and 75 for guidance on preparing the deed and easement. SEC will consult the National Office as needed.

**[7 CFR 767.202(c)] The Agency will incorporate use restrictions in its leases of property in special hazard areas.**

Any additional restrictions placed in the lease will be reviewed by the Regional OGC.

## 822-835 (Reserved)

## Section 3 Inventory Real Property Containing Environmental Risks

### 836 Overview

#### A General Policy

FSA will take necessary precautions with inventory property containing environmental risks to minimize FSA liability under the law and to minimize risk to human health and the environment. FSA will comply with Federal, State, and local laws about the management and sale of property with environmental risks.

#### B Definition of Environmental Risks

FSA considers the following to be environmental risks:

- hazardous waste
- petroleum products and underground storage tank systems
- medical waste
- lead-based paints
- asbestos.

#### C Determining Whether Inventory Property Contains Environmental Risks

See 1-EQ for guidance on identifying property containing environmental risks.

## 837 Environmental Risk Management

### A General Policy

FSA will comply with all applicable Federal and State laws.

FSA will consult with the appropriate environmental regulatory authority to determine State requirements.

When FSA will advertise the property for sale, the sales price of the property is the “as improved value” as determined by an appraisal.

When the property is being sold back to the former owner-borrower, FSA will not undertake corrective action.

See paragraphs 838, 839, and 840 for guidance on remediation of specific environmental risks.

### B Notifying Prospective Purchasers and/or Lessees of Environmental Risks and Establishing Use Restrictions

FSA informs prospective purchasers at the time of first inquiry and in any notice of public sale that the property contains environmental risks and, therefore, may be subject to possible use restrictions.

See Exhibits 74 and 75 for guidance on preparing the deed and easement. SEC consults the National Office as needed.

## 838 Properties Containing Hazardous Waste

### A Clean-Up of Hazardous Waste and/or Underground Storage Tank System Contamination

For inventory real properties containing hazardous waste and underground storage tank systems, FSA will **not** conduct cleanup or take corrective actions unless:

- any known contamination or underground storage tank leakage presents an immediate threat to the health and safety of neighboring property owners or potential purchasers of the property

- ***--**FSA is selling the property to a beginning farmer or socially disadvantaged farmer and providing credit assistance through direct or guaranteed loans.

Because FSA does not know at the time of the appraisal if the property will be sold to a beginning farmer or socially disadvantaged farmer, FSA must request the appraiser to**--***
determine both the **as is** and **as improved** market value of the property.

### B Liability for Remediation Under the Resource Conservation and Recovery Act

See 1-EQ for information on liability for remediation under the Resource Conservation and Recovery Act.

## 839 Properties Containing Underground Storage Tank Systems or Petroleum Products

### A General Requirements

FSA will **not** allow the use of underground storage tank systems on leased inventory properties.

See 1-EQ for guidance on properties containing underground storage tank systems.

### B Corrective Action

For inventory real properties containing hazardous waste and underground storage tank systems, FSA will not conduct cleanup or take corrective actions unless:

- any known contamination or underground storage tank leakage presents an immediate threat to the health and safety of neighboring property owners or potential purchasers of the property

- ***--**FSA is selling the property to a beginning farmer or socially disadvantaged farmer and**--***
providing credit assistance through direct or guaranteed loans.

SEC consults with the Regional OGC and the appropriate environmental regulatory authority to determine whether State laws or regulations require corrective action.

Because FSA does not know at the time of the appraisal if the property will be sold to a ***--**beginning farmer or socially disadvantaged farmer, FSA must request the appraiser to**--*** determine both the **as is** and **as improved** market value of the property. See 1-FLP, Part 6 for further guidance on appraisals.

## 840 Properties Containing Medical Waste, Lead-Based Paint, or Asbestos

### A General Requirements

See 1-EQ for guidance on properties containing medical waste, lead-based paint, or asbestos.

## 841 Real Property That Is Unsafe

### A General Requirements

If FSA has real property in its inventory that is unsafe because of reasons not addressed in this part or in 1-EQ and which cannot feasibly be made safe, SED submits the case file, documentation of the hazard, and a recommended course of action to the National Office for review and guidance.

## 842-900 (Reserved)

# *--Part 23 Servicing Borrowers with Both FSA and RD Loans

## 901 Servicing Delinquent and Financially Distressed Accounts

### A Debt Servicing Responsibilities

FSA and RD shall be responsible for servicing their own loans. However, in cases where loans are cross-collateralized, it will be necessary for both agencies to work together to protect the Government's security interests.

**Note:** Loans are cross-collateralized when property is used to secure both the FSA and RD loans. The extent of cooperation needed between the agencies will depend on whether both loans are described on the same security instruments.

| IF the loan is… | THEN… |
|---|---|
| not cross-collateralized | FSA will service FLP loans according to FLP procedures. |
| cross-collateralized and the FSA and RD loans are described on separate security instruments | • servicing of delinquent and financially distressed accounts will be provided according to normal FLP procedures<br>• foreclosures and conveyances will be handled according to paragraph 902. |

--*

***--901 Servicing Delinquent and Financially Distressed Accounts (Continued)**

**B Loans Are Cross-Collateralized and FSA and RD Loans Are Described on Same Security Instruments**

When the loans are cross-collateralized and FSA and RD loans are described on the same security instruments applicable agency procedures and the instructions in this paragraph must be followed.

Default on any 1 loan, whether FSA or RD, constitutes default against the security instruments. Therefore, even if only 1 agency's loan is in default, the borrower is in nonmonetary default with the other agency.

The following table describes each agency's responsibility for notifying the other when their loan is in default.

| IF the… | THEN… |
|---|---|
| FSA loan is delinquent or in default for reasons other than the RD loan is in default | • FSA shall notify RD when the borrower is sent the notices required under Part 3<br><br>• RD will consider the borrower for moratorium and payment assistance. |
| RD loan is delinquent or in default for reasons other than the FSA loan is in default | • RD will service the loan according to its procedures<br><br>• if the loan is accelerated, RD will notify FSA by sending a copy of the acceleration notice<br><br>**Note:** RD will not proceed with foreclosure action until after FSA has completed its servicing process.<br><br>• after FSA is notified of the RD acceleration, FSA will send the borrower FSA-2514 and service the loan accordingly. |

**--***

## 901 Servicing Delinquent and Financially Distressed Accounts (Continued)

### B Loans Are Cross-Collateralized and FSA and RD Loans Are Described on Same Security Instruments (Continued)

The following apply in all instances:

- each agency will keep the other up-to-date on the status of the default and the servicing progress

- if it is determined necessary to bring the RD loan current or find a feasible farm plan, the RD loan may be reamortized by RD when the FSA loans are restructured

  **Note:** Reamortization of the RD loan must be closed before or simultaneously with the restructuring of the FSA loans. Any new security instruments taken will be separate for each agency's loans.

- RD will accelerate the account when notified by FSA that the borrower has been sent FSA-2521 or FSA-2525

  **Note:** Caution should be given to accepting an offer by the borrower that would deaccelerate the account as this could affect liquidation by the other agency.

- each agency shall send the other a copy of their acceleration notice

- any appeals will be held separately since they are 2 separate adverse actions. FSA will not accelerate the borrower's loans until all administrative appeals for FSA servicing actions are concluded

- RD will continue to flag the account for foreclosure action pending, when the RD account is accelerated, so that payments will not be credited to the RD account

- if payments are received on the FLP account before FLP loans are accelerated, County Offices should indicate in the System 36 banking screen "Free Form Special Data" field, that the payment should be applied since only the RD account is accelerated (see 3-FI, paragraph 68)

- FSA will flag the account as provided in paragraphs 67, 401, 421, 534, and 567

- if the borrower is offered a current market value buyout under Part 8, and the RD loan is delinquent, the RD loan must be paid off at the same time the buyout is completed.

***--Note:** The eDALR$ report must be modified to identify the RD debt to be paid. If the--* RD loan is not paid in full, the security instrument cannot be released. See 4-FLP, subparagraph 301 D on how to handle releases of joint security instruments.

***--901 Servicing Delinquent and Financially Distressed Accounts (Continued)**

**C Special Instructions for eDALR$**

RD loans will not be entered in the eDALR$ Existing Loan Screen when the RD loan has the same filing date as an FSA loan secured by the same property; the RD loan is entered as a prior lien. Therefore, enter the required information on the Prior Lien(s) – Create Screen that is accessible from the Net Recovery Property (ies) Screen according to the following table.

| Step | Action |
|---|---|
| 1 | Navigate to the Net Recovery Property (ies) Screen; under Liens, click the hyperlink to access the Prior Lien(s) – Create Screen. |
| 2 | On the Prior Lien(s)-Create Screen:<br><br>• for creditor name, ENTER "**RD**"<br><br>• enter total amount of debt that is outstanding on the RD loan<br><br>• for lien relationship code, ENTER "**R**" to indicate that the prior lien holder is RD and has the same filing date as another FSA loan<br><br>• enter date the lien was filed.<br><br>**Important:** The date the lien was filed must match at least 1 of the filing dates of an FSA loan secured by the same property. |

The FSA Loans Screen provides a list of FSA loans secured by the property and the filing dates of FSA security instruments.

The RD loan is entered as just a prior lien holder if the RD loan:

- is junior to at least 1 FSA loan
- does not have the same filing date as any of the FSA loans
- is before at least 1 FSA loan
- is secured by the same property.

There can be multiple RD loans entered on the Prior Lien(s)-Create Screen.

**Note:** Each RD loan is entered individually.**--***

## 901 Servicing Delinquent and Financially Distressed Accounts (Continued)

### C Special Instructions for eDALR$ (Continued)

From the Net Recovery Property Screen, CLICK "**Next Page**" to run the HML calculations. The HML Calculation Option will calculate the amount of RD debt as follows:

- proportionate debt amount of the RD loan, if it is secured by the same property with the same filing date as an FSA loan

- amount of the RD debt deducted from net recovery properties, if the RD loan is junior to any of the FSA loans and before other FSA loans.

***--Note:** Information on the proportionate share of the RD debt is provided in the eDALR$ Analysis Report.

| **IF the RD loan …** | **THEN…** |
|---|---|
| will be reamortized | enter the reamortized RD payment in FBP. |
| is to be paid in full at the time of buyout according to subparagraph 301 B | add the following statement to the eDALR$ report below the--* certification and authorization section:<br><br>"If you choose to buyout your FLP loans, you must also pay off your RD loan(s). The unpaid balance of the RD loan(s) as of _____ is $_____." |

### D Bankruptcy Filings Involving Joint Security Instruments

FSA and RD will handle bankruptcies separately according to their regulations. FSA handles bankruptcies under Part 11, Section 1. Any necessary legal coordination will be handled by OGC.

## *--902 Handling Voluntary Conveyances and Foreclosures Against Joint Security for Loans on Separate Security Instruments

### A Loans Described on Separate Security Instruments

The procedures in this paragraph will be followed for voluntary conveyances, foreclosures by FSA and RD, and third party foreclosures of cross-collateralized security property when FSA and RD loans are described on separate security instruments.

If the security is the same for both the FSA and Labor Housing loans, and the loans are described on separate security instruments, liquidation will be handled according to this paragraph.

### B Voluntary Conveyance

If 1 agency is proposing to accept a voluntary conveyance (deed instead of foreclosure), the initiating agency shall do the following:

- obtain a current appraisal
- obtain a title opinion indicating lien position
- send copies of the appraisal and title opinion to the other agency with a request for release.

FSA will handle voluntary conveyances under Part 14.

| IF the… | THEN… |
|---|---|
| lien is valueless | that agency will prepare and send the initiating agency a release. FSA may release valueless liens under 4-FLP, paragraph 147. |
| other agency holds a prior lien | initiating agency will pay off that agency's lien before accepting the conveyance. FSA may issue protective advances according to 4-FLP, paragraph 101. |
| other agency holds a junior lien | initiating agency will pay that agency's lien up to the market value of the security property, less prior liens, including the initiating agency's prior lien. FSA may issue protective advances according to 4-FLP, paragraph 101. |

--*

## *--902 Handling Voluntary Conveyances and Foreclosures Against Joint Security for Loans on Separate Security Instruments (Continued)

### C Foreclosure

If 1 agency is initiating foreclosure, a determination must be made to do 1 of the following:

- pay off the other agency's prior lien up to the market value, less other prior liens
- obtain a release from the other agency if its lien is valueless
- obtain the other agency's agreement to be named in the foreclosure suit, or given notice of the foreclosure.

**Note:** All efforts should be made to eliminate involving the other agency in the foreclosure.

### D Third Party Foreclosures

Third party foreclosures initiated by other than FSA and RD will be handled separately by each agency based on their regulations for handling third party actions. FSA will follow 5-FLP, Part 17 when liquidation is initiated by a third party.**--***

## *--903 Handling Voluntary Conveyances and Foreclosures Against Joint Security for Loans on the Same Security Instrument

### A Loans Described on Same Security Instruments

The procedures in this paragraph will be followed for voluntary conveyances, foreclosures by FSA and RD, and third party foreclosures of cross-collateralized security property when FSA and RD loans are described on the same security instruments.

If the security is the same for both the FSA and Labor Housing loan, and the loans are described on the same security instruments, liquidation will be handled according to this paragraph.

### B Voluntary Conveyance

If 1 agency is proposing to accept a voluntary conveyance (deed instead of foreclosure), the initiating agency shall do the following:

- obtain a current appraisal
- obtain a title opinion indicating lien position
- send copies of the appraisal and title opinion to the other agency with a request for release.

| IF the… | THEN the… |
|---|---|
| lien is valueless | other agency will prepare and send the initiating agency a letter of release as described in 4-FLP, subparagraph 301 D and the original note (if required by State law to issue releases) and mortgage or deed of trust, if in that agency's possession. |
| other agency holds a prior lien | initiating agency will pay off the other agency's lien before accepting the conveyance. FSA may issue protective advances according to 4-FLP, paragraph 101. |
| other agency holds a junior lien | initiating agency will pay the other agency's lien up to the market value of the security property, less prior liens, including the initiating agency's prior lien. FSA may issue protective advances according to 4-FLP, paragraph 101. |
| releasing agency is partially secured with the acquiring agency | acquiring agency will pay the releasing agency its share of the amount of their debt up to the market value, less prior liens. See Exhibit 79 for determining the amount of credit to each loan when the FSA and RD loans were made at the same time, secured with the same property, and described on the same mortgage or deed of trust. FSA may issue protective advances according to 4-FLP, paragraph 101. |

--*

## *--903 Handling Voluntary Conveyances and Foreclosures Against Joint Security for Loans on the Same Security Instrument (Continued)

### C Foreclosure

When foreclosure action is initiated by FSA, RD, or a third party, the following procedures will be followed:

- if 1 agency holds a separate security instrument filed before any joint security instruments, a decision must be made between the 2 agencies about which 1 will bid to protect their security interest or foreclose

- if a separate security instrument was not filed before the joint security instruments and both agencies share in lien priority, FSA will bid or initiate the foreclosure action

- the agency that determined not to bid or foreclose will assign its note or assumption agreement and security instrument to the foreclosing or bidding agency; the foreclosure complaint will identify all FSA and RD loans

- State Offices shall request advice from their Regional Attorney on preparing an assignment

  **Note:** The assignment shall:

  - contain language about the application of sale proceeds and cancellation of the assignment in the event foreclosure is canceled or the account is deaccelerated or reinstated for any reason, including bankruptcy

  - be recorded in the county records.**--***

## *--903 Handling Voluntary Conveyances and Foreclosures Against Joint Security for Loans on the Same Security Instrument (Continued)

### C Foreclosure (Continued)

- the accounting system will not be revised to account for the assignment

  **Note:** The agency that assigned its note and security instruments will wait to settle the borrower's debt until after the foreclosure is completed and all proceeds or credits are applied.

- proceeds from the sale of property or credit for acquisitions will be applied to the loans in the order of lien priority

  **Note:** See Exhibit 79 for determining the amount to be applied or credited to each loan when the FSA and RD loans were made at the same time or secured with the same property and described on the same mortgage or deed of trust.

- if the foreclosure is canceled and the accounts deaccelerated or reinstated, each agency will resume servicing of their loans.**--***

## 904 Property ID Numbers

### A Assigning Property ID Numbers

Inventory property ID numbers cannot be duplicated. FSA should use the State and county codes along with 5 additional digits. The last 5 digits must be consecutively numbered within the range of 00001-00499.

Since the property ID numbers include the State and county codes, the same last 5 digits in the number can be used by all counties within the State.

### B FIPS Code Clarification

***--**The State and county codes are the non-FIPS numbers used for all NFAOC purposes, not**--***
the FIPS State and county codes used in former ASCS coding.

## 905 ADPS 3E Transactions

### A Processing ADPS 3E Transaction for Acquisitions

The ADPS 3E transaction for acquiring property is a combined transaction that affects both a borrower's FSA and RD account. Therefore, anytime property is acquired by FSA or RD *--from a borrower that has an FSA and RD loan, NFAOC, DLD must process the ADPS--* 3E transaction. This is the case even if the property is not cross-collateralized. Under no circumstances can a property be acquired jointly.

### B Acquiring Agency Action

When property is acquired by FSA or RD from a borrower who has both an FSA and RD loan, the acquiring agency shall:

- determine agencies' proportionate share using Exhibit 79 only if the 2 agencies share the lien position

  **Note:** The lien position is shared by both FSA and RD when the FSA and RD loans were made at the same time, or the security was taken at the same time, and included on the same mortgage or deed of trust.

- complete Exhibit 80

- *--FAX a copy of Exhibit 79, if applicable, and Exhibit 80 to NFAOC, DLD at--* 314-457-4478.

  **Note:** If the security is cross-collateralized, a copy of Exhibits 79 and 80 shall also be sent to the nonacquiring agency.

**906-949 (Reserved)**

## Part 24 (Withdrawn--Amend. 34)

**950-955 (Withdrawn--Amend. 34)**

**956 (Withdrawn--Amend. 30)**

## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

This table lists all required reports in this handbook.

| Reports Control Number | Title | Reporting Period | Submission Date | Negative Reports | Reference |
|---|---|---|---|---|---|
| | Statute of Limitations | Quarterly | 5th of each month | No | 126 |

### Forms

This table lists the forms referenced in this handbook.

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| AD-1026 | Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification | | 81 |
| FSA-137 | Address Information Request | | 67, 386 |
| FSA-2001 | Request for Direct Loan Assistance | | 81, 344 |
| FSA-2002 | Three-Year Financial History | | 81 |
| FSA-2003 | Three-Year Production History | | 81 |
| FSA-2025 | Notice of Approval, Terms and Conditions and Borrower Responsibilities | | 346 |
| FSA-2026 | Promissory Note | | Text |
| FSA-2027 | Supplemental Payment Agreement | | 161 |
| FSA-2029 | Mortgage/Deed of Trust | | Text |
| FSA-2037 | Farm Business Plan Worksheet<br>Balance Sheet | | 81 |
| FSA-2038 | Farm Business Plan Worksheet<br>Projected/Actual Income and Expenses | | 81 |
| FSA-2040 | Agreement and Record of the Disposition of FSA Security/Release of Proceeds | | 464, 465, 581, 582 |
| FSA-2060 | Application for Partial Release, Subordination, or Consent | | 462, 463 |
| FSA-2070 | Bill of Sale | | 516, 517, 519 |
| FSA-2080 | Release From Personal Liability | | 84 |
| FSA-2489 | Assumption Agreement | | Text |
| FSA-2501 | Addendum to the Promissory Note or Assumption Agreement for the Disaster Set-Aside Program | | 44-46, 48 |

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

**Forms (Continued)**

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2510 | Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due | | 3, 67, 83, 85, 405, 702 |
| FSA-2511 | Borrower Response to Notice of the Availability of Loan Servicing | | 81, 405, 702 |
| FSA-2512 | Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due | | 3, 67, 85, 102 |
| FSA-2513 | Borrower Response to Notice of the Availability of Loan Servicing | | 81 |
| FSA-2514 | Notice of Availability of Loan Servicing to Borrowers Who Are in Non-Monetary Default | | 3, 67, 83, 85, 444, 702 |
| FSA-2515 | Borrower Response to Notice of the Availability of Loan Servicing for Borrowers Who Received Form FSA-2514 | | 81, 444, 702 |
| FSA-2516 | 30 Day Reminder of the Notice of Availability of Loan Servicing | | 83 |
| FSA-2517 | Offer of Primary Loan Servicing for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing | | 116 |
| FSA-2518 | Acceptance of Primary Loan Servicing for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing | | 116 |
| FSA-2519 | Offer of Primary Loan Servicing for Borrowers Who Received Form FSA-2512 and Applied for Servicing | | 116 |
| FSA-2520 | Acceptance of Primary Loan Servicing for Borrowers Who Received Form FSA-2512 and Applied for Servicing | | 116 |
| FSA-2521 | Denial of Primary Loan Servicing and Intent to Accelerate for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing | | 116, 229, 322 |
| FSA-2522 | Borrower Response to Denial of Primary Loan Servicing and Intent to Accelerate for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing | | 116, 229, 322 |

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

**Forms (Continued)**

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2523 | Denial of Primary Loan Servicing for Borrowers Who Received Form FSA-2512 and Applied for Servicing | | 116, 229, 322 |
| FSA-2524 | Borrower Response to Denial of Primary Loan Servicing for Borrowers Who Received Form FSA-2512 and Applied for Servicing | | 116, 229, 322 |
| FSA-2525 | Intent to Accelerate for Borrowers Who Received Form FSA-2510 or FSA-2514 and Did Not Apply for Servicing or Did Not Accept Servicing | | 85 |
| FSA-2526 | Borrower Response to and Intent to Accelerate for Borrowers Who Received Form FSA-2510 or FSA-2514 and Did Not Apply for Servicing or Did Not Accept Servicing | | 85 |
| FSA-2529 | Negotiated Appraisal Agreement | | 230 |
| FSA-2535 | Conservation Contract | | Text |
| FSA-2537 | Notification of Consideration for Homestead Protection | | 281 |
| FSA-2538 | Response to Notification of Consideration for Homestead Protection for Borrowers Who Received FSA-2537 | | 281 |
| FSA-2539 | Homestead Protection Program Agreement | | 283, 284 |
| FSA-2540 | Notice of the Availability of Homestead Protection – Post Acquisition | | 281, 568 |
| FSA-2543 | Shared Appreciation Agreement | | Text |
| FSA-2544 | Shared Appreciation Agreement Recapture Appraisal Notice | | 343, 344 |
| FSA-2545 | Borrower Notification of Shared Appreciation | | 344 |
| FSA-2547 | Shared Appreciation Agreement Recapture Reamortization | | 67 |
| FSA-2548 | Shared Appreciation Agreement Recapture Reamortization 2nd Notice | | 67 |
| FSA-2550 | Report of Problem Case | | 421, 533 |
| FSA-2551 | Request for Nonmonetary Default Determination | | 66, 421 |
| FSA-2560 | Request for Statement of Account | | 536 |

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

**Forms (Continued)**

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2561 | Statement of Account | | 536 |
| FSA-2562 | Borrower Account Description Flag | | 67, 248, 401, 421, 534, 567, Ex. 11 |
| FSA-2569 | Warranty Deed | | 408, 496-499 |
| FSA-2570 | Offer to Convey Security | | 284, 496, 497, 499, 500, 516, 517 |
| FSA-2571 | Agreement for Voluntary Liquidation of Chattel Security | | 464, 465, 516, 518, 581 |
| FSA-2572 | Agreement of Secured Parties to Sale of Security Property | | 581 |
| FSA-2574 | Confirmation Reorganization Plan Worksheet | | 404, 406 |
| FSA-2576 | Notice of Judgment | | 551, 567, 568, 582, 604 |
| FSA-2580 | Primary and Preservation Loan Servicing Checklist | | 67, 533 |
| FSA-2581 | Inequitable Treatment Review Data | | 533 |
| FSA-2585 | Acquisition or Abandonment of Secured Property | | 708, Ex. 66 |
| FSA-2587 | Advice of Property Acquired | | 568, 743 |
| FSA-2588 | Acquired Property Maintenance | | 568 |
| FSA-2591 | Lease of Real Property | | 281, 284, 568, 743 |
| FSA-2592 | Invitation, Bid and Acceptance Sale of Real Property by the United States | | 776, 778, 782 |
| FSA-2593 | Standard Sales Contract Sale of Real Property by the United States | | 778 |
| FSA-2594 | Advice of Inventory Property Sold | | 778 |
| FSA-2595 | Quitclaim Deed | | 778 |
| FSA-2596 | Bill of Sale “A” (Sale of Government Property) | | 780 |
| FSA-2597 | Farmer Programs Noncash Credit for Purchase of Easement Rights | | 197 |
| FSA-2716 | Notice Advising of Potential Referral to Treasury for Cross-Servicing and the Availability of Debt Settlement | | Ex. 48 |
| FSA-2717 | Notice Advising of Potential Referral to Treasury for Cross-Servicing | | Ex. 48 |
| FSA-2731 | Cancellation of Debt Without Application | | 406, 407, 409 |

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

### Forms (Continued)

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| IRS Form 1099-C | Cancellation of Debt | | 409 |
| NRCS-CPA-026<br>NRCS-CPA-026E | Highly Erodible Land and Wetland Conservation Determination | | 81, 801 |
| RD 1956-1 | Application for Settlement of Indebtedness | | Text |

### Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|---|---|---|
| 51-S | 5-FLP Special Loan Servicing Pending | 67, 401, Ex. 11 |
| ACL | Accelerated | 534, Ex. 11 |
| BAP | Bankruptcy Action Pending | 401, Ex. 11 |
| CAP | Court Action Pending | 421, Ex. 11 |
| CL | Conservation Loan | 41, 131, 145, Ex. 2, 17 |
| CONACT | Consolidated Farm and Rural Development Act | 1, 193, 537, Ex. 2 |
| DEF | Deferral | 248, Ex. 11 |
| DLD | Direct Loan Division | Text, Ex. 80 |
| eDALR$ | electronic Debt and Loan Restructuring System | Text, Ex. 17 |
| FAP | Foreclosure Action Pending | 567, Ex. 11 |
| FLMAC | Farm Land Market Advisory Committee | Ex. 17 |
| HML | high, medium, low | 901 |
| ISA | installment set-aside | 46, 48, 131 |
| ITLAP | Indian Tribal Land Acquisition Program | 2, 537 |
| LR | limited resource | 132, 146 |
| NFAOC | National Financial and Accounting Operations Center | Text, Ex. 11, 80 |
| NP | nonprogram loan | Text |
| NRBRA | Net Recovery Buyout Recapture Agreement | 321, 361, 363, 365 |
| NRV | net recovery value | 102, 321 |
| PRD | Program Reporting Division | 708 |
| RH | rural housing | Ex. 79 |

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

**Abbreviations Not Listed in 1-CM (Continued)**

| Approved Abbreviation | Term | Reference |
|---|---|---|
| SA | shared appreciation loan | 66, 67, 102, 145, 146, 191, 346 |
| SAA | shared appreciation agreement<br><br>**Note:** When reference is made to a signed agreement as a condition of receiving debt writedown. | 197, 249, 343, 344, 346, 403, Ex. 2, 4, 25, 26 |
| SAA | subject to approved adjustment<br><br>**Note:** When reference is made to the financial "flag"/designation for an account where FSA has approved a borrower's debt settlement offer as documented on RD 1956-1. | 172, 249, 343, 404, 406, Ex. 11 |
| SCRRG | State Civil Rights Review Group | 533 |
| SEC | State Environmental Coordinator | 802, 821, 837, 839 |
| SI | Security Instrument | 344, 346 |
| SOL | Statute of Limitations | 126, 127 |
| ST | softwood timber loan | 41 |
| TPJ | third party judgment | 421, Ex. 11 |
| YL | youth loan | 41, 42, 68, 132 |

**Redelegations of Authority**

None.

## Definitions of Terms Used in This Handbook

### Abandoned Security Property

**Abandoned security property is security property that a borrower is not occupying, 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 promissory note or security instruments are breached. When FSA accelerates an account, the entire loan balance is due in 30 calendar days.

### Accrued Deferred Interest

**Accrued deferred interest is unpaid interest from past due installments posted to a borrower's loan account.**

### Active Borrower

An active borrower is a borrower who has an outstanding account in the records of the Finance Office, which may include collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without borrower being released from liability or where liquidation did not satisfy the indebtedness.

### Additional Security

**Additional security is property which provides security in excess of the amount of security value equal to the loan amount.**

### Adjustment

**Adjustment is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.**

*** * ***

### Adversary Proceeding

An adversary proceeding is a lawsuit within a bankruptcy case.

**Definitions of Terms Used in This Handbook (Continued)**

**Agency**

**Agency is the** Farm Service Agency **(FSA)**, including its employees, State and area committee members, and any successor agency.

**Agency Official**

Agency official is any employee within the agency. This term is used when the action does not require inherent or delegated authority.

**Applicant**

**Applicant is the individual or entity applying for a loan or loan servicing under either the direct or guaranteed loan program.**

**Approval Official**

Approval official is the specific employee who has the authority to approve or deny the described action.

**Assistance**

**Assistance is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.**

**Assumption**

**Assumption is the act of agreeing to be legally responsible for another party's indebtedness.**

**Auction**

An auction is a public sale in which property is sold to the highest bidder in open verbal communication.

**Authorized Agency Official**

Authorized agency official is an employee who has either inherent or delegated authority to complete the described action.

**Automatic Stay**

Automatic stay refers to the prohibition of collection activities against the debtor or efforts to obtain possession of the debtor's property or security interest in the debtor's property during the course of bankruptcy.

**Definitions of Terms Used in This Handbook (Continued)**

**Bankruptcy Trustee**

A Bankruptcy Trustee is a court-appointed person who oversees execution of the confirmed bankruptcy plan. A Trustee is less frequently used in Chapter 7 and Chapter 11 bankruptcies than in Chapter 12 and 13 bankruptcies.

**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.**

**Beginning Farmer**

**Beginning farmer is an individual or entity who:**

***--(1) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, as--* applicable;**

**(2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;**

**(3) Will materially and substantially participate in the operation of the farm:**

**(i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.**

**(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;**

**(4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;**

**Definitions of Terms Used in This Handbook (Continued)**

**Beginning Farmer (Continued)**

**(5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate *--acreage of which does not exceed 30 percent of the median acreage of the farms in--* the county where the property is located. If the farm is located in more than one county, the median farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the median farm acreage of the county where the major portion of the farm is located will be used. The median county farm acreage will be determined from the most recent Census of Agriculture;**

**(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and**

**(7) In the case of an entity:**

**(i) All the members are related by blood or marriage; and**

**(ii) All the members are beginning farmers.**

**Borrower (or Debtor)**

**<u>Borrower (or debtor)</u> 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.**

**Cancellation**

**<u>Cancellation</u> is the final discharge of, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.**

**Ceases to Farm**

<u>Ceases to farm</u> refers to a borrower who is considered to have "ceased farming" if the borrower is no longer receiving income produced by the farm, if the borrower is no longer operating the farm, and/or if the borrower has leased the farm for more than 3 years or the lease has an option to purchase.

**Definitions of Terms Used in This Handbook (Continued)**

**Certified Mail**

Certified mail is a delivery service offered by USPS that allows the sender proof of mailing, as well as proof of delivery. *** * ***

***--Notes:** Certified mail service provides the following:

- electronic verification that an article was delivered or delivery attempt was made

  **Note:** If the item was delivered, the electronic verification provides the date, time, and location of delivery.

- proof of delivery record (copy of the recipient's signature) that is kept at the post office for 2 years after mailing. If needed, the signature proof can be requested after mailing by purchasing the "Return Receipt After Mailing" service.

"Return Receipt" is an additional feature that may be purchased but is **not** required.**--***

**Chapter 7**

A Chapter 7 bankruptcy involves liquidation of the debtor's assets. The proceeds from liquidation are applied to the court-allowed debt.

**Chapter 11**

A Chapter 11 bankruptcy is a business reorganization form of bankruptcy. The debtor has an exclusive right to file a reorganization plan within 120 calendar days after filing for bankruptcy. After the 120-calendar-day period, the debtor loses the exclusive right to file a reorganization plan, and others may file a plan. This chapter is generally discharged at closing. The plan does not have to be concluded within a specific timeframe.

**Chapter 12**

A Chapter 12 bankruptcy provides special debt repayment relief for family farmers and family fishermen. This chapter is targeted to family farmers with 50 percent of gross income from farming. The farmer's debt must not exceed $3.237 million and 80 percent of the farmer's debts must originate from farming. The debtor must file a plan within 90 calendar days after the First Meeting of Creditors. The court determines the point of discharge (usually at the end of the third or fifth year). The reorganization plans must be paid out in 5 years.

**Chapter 13**

A Chapter 13 bankruptcy involves reorganization for wage-earners. The debtor must have regular income. A portion of that income will be set aside for distribution to creditors by the Trustee. The plan is generally filed at time of petition and must be paid out in 5 years. The court determines the point of discharge, which is usually at the end of the third or fifth year.

**Definitions of Terms Used in This Handbook (Continued)**

**Chattel Security**

**Chattel 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, chattel mortgages, and other security instruments.**

**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.**

Civil action may include obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure.

**Closed**

Closed usually refers to when the bankruptcy plan has been paid in full, the security has been fully accounted for or remanded back to the creditor and proceeds distributed according to the bankruptcy. However, the bankruptcy is not closed until the bankruptcy judge closes the case with an order. Normally, collection activities or attempts to sell or gain possession of security cannot resume until the bankruptcy is closed.

**Closing Agent**

**Closing agent is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term "title company" does not include "title insurance company."**

**Coastal Barrier**

**Coastal barrier is an area of land identified as part of the national Coastal Barrier Resources System under the Coastal Barrier Resources Act of 1980.**

**Collateral**

Collateral (or security) is property pledged as security for a loan to ensure repayment of an obligation.

**Compromise**

**Compromise is the settlement of an Agency debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.**

**Definitions of Terms Used in This Handbook (Continued)**

**CONACT or CONACT Property**

CONACT or CONACT property is property that secures a loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 USC 1921 et seq.). It also includes property that secures other FLP loans.

**Confirmed Plan of Reorganization**

A confirmed plan of reorganization involves a bankruptcy court approved plan, which outlines the debtor's security interest, repayment schedules and terms of performance.

**Conservation Contract**

**Conservation Contract is a contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for reduction of a portion of an outstanding Agency debt.**

**Conservation Contract Review Team**

**Conservation Contract review team is comprised by the appropriate offices of FSA, the Natural Resources Conservation Service, U.S. Fish and Wildlife Service, State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service, State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a proposed conservation contract.**

**Consolidation**

**Consolidation is the process of combining the outstanding principal and interest balance of two or more loans of the same type made for operating purposes.**

**Conveyance**

Conveyance is the transfer of ownership in property to a third party.

**Credit Sale**

Credit sale is a sale of FLP inventory property for which FSA provides financing to the purchaser.

**Definitions of Terms Used in This Handbook (Continued)**

**Criminal Action**

**Criminal action is the prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violation of criminal statutes.** Such violations may include, but are not limited to unauthorized sale of security; purchase of security with intent to defraud and without payment of the purchase price to the Agency; falsification of assets or liabilities in loan applications; application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose; using funds for an unauthorized purpose and then making false statements regarding their use; by scheme, trick, or other device, covering up or concealing misuse of funds or unauthorized disposition of security or other illegal actions; or any other false statements or representations relating to Agency benefits.

*** * ***

**Current Market Value Buyout**

**Current market value buyout is the termination of a borrower's loan obligations to the Agency in exchange for payment of the current appraised value of the borrower's security property and nonessential assets, less any prior liens.**

**Custodial Property**

Custodial property is property and improvements owned by a borrower that serve as security for an Agency loan that the borrower has abandoned, and that the Agency takes into its control to protect the Government's interest.

**Debt Forgiveness**

**Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency.**

**(1) Debt forgiveness may be through:**

**(i) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;**

**(ii) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or**

**(iii)Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.**

**Definitions of Terms Used in This Handbook (Continued)**

**Debt Forgiveness (Continued)**

**(2) Debt forgiveness does not include:**

**(i) Debt reduction through a conservation contract;**

**(ii) Any write down provided as part of the resolution of a discrimination complaint against the Agency;**

**(iii)Prior debt forgiveness that has been repaid in its entirety;**

***--(iv) Consolidation, rescheduling, reamortization, or deferral of a loan; or**

**(v) Forgiveness of YL debt, due to circumstances beyond the borrower's control.**

**The Agency will use the criteria in 7 CFR 766.104(a) (1) to determine if the circumstances were beyond the borrower's control.--***

**Debt Settlement**

**Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.**

**Debt Service Margin**

**Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.**

**Debt Writedown**

**Debt writedown is the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.**

**Debtor**

Debtor is a borrower of funds under any Agency programs. This term includes a co-signor, guarantor, and person or entity that initially obtained or assumed a loan.

**Debtor-in-Possession**

A debtor-in-possession is a Chapter 11 or Chapter 12 debtor who remains in control of the business and in possession of the security during the course of the bankruptcy.

**Definitions of Terms Used in This Handbook (Continued)**

**Deed**

A deed is a signed instrument legally transferring real estate to another.

**Default**

**Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.**

**Deferral**

**Deferral is a postponement of the payment of interest or principal or both.** For direct loans, both principal and interest may be deferred in whole or in part according to Part 4, Section 3.

**Deficiency Judgment**

A deficiency judgment is a personal judgment against a debtor for the amount remaining due to FSA after foreclosure or liquidation.

**Delinquent Borrower**

**Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.**

**Disaster Set-Aside**

**Disaster set-aside is the deferral of payment of an annual loan installment to the Agency to the end of the loan term in accordance with part 766, subpart B, of this chapter.**

**Discharge**

A discharge is a court order, which relieves the debtor's obligation to pay the creditor any amounts unless already accounted for in a bankruptcy plan.

**Dismissal**

A dismissal is a determination by the court that the bankruptcy petition is not necessary or the debtor fails to perform according to the established plan. It is the creditor's or Trustee's responsibility to bring nonperformance of a plan to the court's attention. When a bankruptcy is dismissed, the creditors' original security positions, payment schedules, and amounts owed are re-established, as if bankruptcy was never filed.

**Definitions of Terms Used in This Handbook (Continued)**

**Due Diligence**

Due diligence is the process of reasonably evaluating real estate for the presence of contamination from hazardous waste, petroleum products, or other environmental risks, and determining what effect, if any, the contamination has on the regulatory status or security value of the property and any remedial actions needed.

**Easement**

An easement is an interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

**Entity**

**An entity is a corporation, partnership, joint operation, cooperative, limited liability company, or trust.**

**Environmental Professional**

An Environmental Professional is a non-FSA professional who possesses the technical and scientific credentials necessary to conduct due diligence evaluations, and from the information gathered through such evaluations, develop conclusions regarding potential environmental contamination. In addition, an environmental professional will be able to provide technical oversight, direction, and management of response actions pursuant to CERCLA and RCRA.

**Environmental Risks**

Environmental risks include hazardous waste, petroleum products and underground storage tanks, medical waste, lead-based paint, and asbestos.

**Equity**

Equity is the money value of a property or of an interest in a property in excess of claims or liens against that property.

**Essential Buildings**

Essential buildings are the borrower's dwelling and any other buildings necessary for the farm operation to assure the repayment of the loan.

**Definitions of Terms Used in This Handbook (Continued)**

**Essential Family Living and Farm Operating Expenses**

**<u>Essential family living expenses</u>:**

**(1) Are those that are basic, crucial or indispensable.**

**(2) Are determined by the Agency based on the following considerations:**

**(i) The specific borrower's operation;**

**(ii) What is typical for that type of operation in the area; and**

**(iii) What is an efficient method of production considering the borrower's resources.**

**(3) Include, but are not limited to, essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurances; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.**

**False Information**

**<u>False information</u> is information provided by an applicant, borrower or other source to the Agency that the applicant or borrower knows to be incorrect.**

**Family Living Expenses**

**<u>Family living expenses</u> 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.**

**Definitions of Terms Used in This Handbook (Continued)**

**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.**

**Farm Income**

**Farm income is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.**

**Feasible Plan**

**Feasible plan is when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.**

**Financially Distressed**

**Financially distressed borrower is a borrower unable to develop a feasible plan for the current or next production cycle.**

**First Year Plan**

A first year plan is the borrower's operating plan for the first year of the deferral term.

**Definitions of Terms Used in This Handbook (Continued)**

**Fixture**

**Fixture is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.**

**Floodplains**

**Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).**

**Foreclosed**

**Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.**

**Foreclosure Sale**

**Foreclosure sale is the act of selling security either under the power of sale in the security instrument or through judicial proceedings.**

**Former Borrower**

A former borrower is a borrower who no longer has loans with FSA but may still be obligated to FSA because of a security obligation, such as a Net Recovery Recapture Agreement, or have continuing rights, such as homestead protection rights.

**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, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.**

**Definitions of Terms Used in This Handbook (Continued)**

**Graduation**

***--<u>Graduation</u> 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**

**<u>Guaranteed loan</u> 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.**

**Hazardous Waste**

<u>Hazardous waste</u> is solid waste or the combination of solid and other waste that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or serious illness when improperly treated, stored, transported, disposed of, or otherwise managed. Refer to 40 CFR § 261.3 for the regulatory definition of a hazardous waste and 40 CFR § 261.4 for waste material excluded from the definition of hazardous waste.

**Homestead Protection**

**<u>Homestead protection</u> is the previous owner's right to lease with an option to purchase the principal residence and up to 10 acres of adjoining land which secured an FLP direct loan.**

**Important Resources**

<u>Important resources</u> include wetlands, highly erodible lands, floodplains, historic sites, archaeological sites, paleontological sites, endangered, threatened, or critical habitats, wild and scenic rivers, coastal barriers resource systems, natural landmarks, sole source aquifer recharge areas, and important farmland and rangeland.

**Definitions of Terms Used in This Handbook (Continued)**

**Inaccurate Information**

**Inaccurate information is incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.**

**Indian Reservation**

**Indian reservation is all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.**

**Ineligible Borrower**

An ineligible borrower is a borrower who is not eligible for direct program loans, but may be able to assume loans on a nonprogram basis.

**Note:** Not all ineligible borrowers may be NP borrowers.

**Ineligible Terms**

Ineligible terms are credit terms offered for the convenience of the Government to facilitate sales. Ineligible terms are more stringent than terms offered under the Agency's loan programs. These terms are applicable when the purchaser does not meet program eligibility requirements. Loans made on ineligible terms are classified as nonprogram assistance and are serviced accordingly.

**Inventory Property**

**Inventory property is real estate or chattel property and related rights that formerly secured an FLP loan and to which the Federal Government has acquired title.**

**Joint Financing Arrangement**

**Joint financing arrangement is an arrangement in which two or more lenders make separate loans simultaneously to supply the funds required by one applicant.**

**Definitions of Terms Used in This Handbook (Continued)**

**Judgment Account**

A judgment account is an account established by a lender after a foreclosure judgment is obtained through a legal process. The account is established to accrue interest and other fees or costs according to the judgment order.

**Junior Lien**

A junior lien is a lien that has been filed behind, or is otherwise subordinate to, another lien on the same item of security.

**Lien**

**Lien is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.**

**Limited Resource 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:**

**(1) FO or OL loan assistance under part 764 of this title; or**

**(2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.**

**Liquidated**

Liquidated is the completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed action to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

**Definitions of Terms Used in This Handbook (Continued)**

**Liquidation**

**<u>Liquidation</u> is the act of selling security for recovery of amounts owed to the Agency or lender.**

Liquidation begins 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 the Agency; filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings.

**Liquidation Expenses**

**<u>Liquidation expenses</u> are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.**

**Loan Agreement**

**<u>Loan Agreement</u> 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**

**<u>Loan servicing programs</u> include primary loan servicing programs, conservation contract, current market value buyout, and homestead protection.**

**Market Value**

**<u>Market value</u> is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.**

**Definitions of Terms Used in This Handbook (Continued)**

**Modification**

A modification is a proposed change in the structure of the bankruptcy plan. The Court generally handles any requests for modifications.

**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."**

**Negligent Servicing**

**Negligent servicing is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.**

**Negotiated Sale**

**Negotiated sale is a sale in which there is a bargaining of price or terms, or both.**

**Net Recovery Buyout Recapture Agreement**

A net recovery buyout recapture agreement is an agreement that requires a borrower who bought out a loan at the net recovery value of the security to pay the Agency any appreciation if the borrower sells or otherwise disposes of the security during the 10 years following the buyout.

**Definitions of Terms Used in This Handbook (Continued)**

**Net Recovery Value**

**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 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-Essential Assets**

**Non-essential assets are assets in which the borrower has an ownership interest, that:**

**(1) Do not contribute to either of the following:**

**(i) Income to pay essential family living expenses, or**

**(ii) The farming operation; and**

**(2) Are not exempt from judgment creditors or in a bankruptcy action.**

**Nonmonetary Default**

A borrower is in nonmonetary default when it is determined that the borrower has not acted in good faith, commits an act of fraud, waste or conversion, or fails to meet loan agreement requirements for reasons other than being delinquent.

***--Note:** Failure to complete required borrower training is **not** nonmonetary default. See 3-FLP, subparagraph 474 C.**--***

**Non-Program (Assistance) 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.**

**Definitions of Terms Used in This Handbook (Continued)**

**Nonrecoverable Costs**

Nonrecoverable costs are contractual or noncontractual program loan cost expenses that are incurred by the Agency to maintain property or protect the Agency's interest, but are not chargeable to a borrower or property account. These costs are not added to the outstanding debt owed by the borrower.

**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.**

**Note**

A note is written evidence of indebtedness, such as a promissory note, or assumption agreement.

**Notification of Meeting of Creditors**

A Notification of Meeting of Creditors is usually the first notice to a creditor that a bankruptcy has been filed. It allows opportunity for creditors to establish their claims against the debtor and preserve their interest in security, as applicable. It provides the date by which the claim must be filed.

**Office of the General Counsel (OGC)**

Office of the General Counsel (OGC) is the OGC of the U.S. Department of Agriculture. Unless otherwise indicated, OGC refers to the Regional Attorney or Attorney-in-Charge in an OGC Field Office.

**Participation**

Participation is a loan arrangement where a primary or lead lender is typically the lender of record but the loan funds may be provided by 1 or more other lenders due to loan size or other factors. Typically, participating lenders share in the interest income or profit on the loan based on the relative amount of the loan funds provided after deducting the servicing fees of the primary or lead lender.

***--Past Due**

**Past due is when a payment is not made by the due date.--***

## Definitions of Terms Used in This Handbook (Continued)

### Petition in Bankruptcy

A petition in bankruptcy is a document filed in Bankruptcy Court that formally begins the bankruptcy process. The filing of the petition in bankruptcy invokes the automatic stay.

### Plan of Reorganization

A plan of reorganization is a plan submitted by the debtor that outlines how the debtor intends to preserve security interests and plans to repay creditors and terms of performance. This process may be repeated until agreement of the parties is reached.

### Post-Acquisition Homestead Protection

Post-acquisition homestead protection is when a borrower applies for homestead protection after FSA obtains title to the real estate security for the borrower's loan.

### Post-Deferral Plan

A Post-Deferral Plan is a plan projecting the borrower's operations for the year following the deferral period.

### Potential Liquidation Value

**Potential liquidation value is the amount of a lender's protective bid at a foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.**

### Pre-Acquisition Homestead Protection

Pre-acquisition homestead protection is when a delinquent borrower applies for homestead protection and it appears that a feasible plan to address the delinquency cannot be developed through primary loan servicing. The Authorized Agency Official begins processing the borrower's request but does not approve homestead protection until FSA obtains title to the property.

### Present Value

**Present value is the present worth of a future stream of payments discounted to the current date.**

**Definitions of Terms Used in This Handbook (Continued)**

**Preservation Loan Servicing**

Preservation loan servicing is homestead protection. See homestead protection.

**Primary Loan Servicing Programs**

**Primary loan servicing programs include:**

**(1) Loan consolidation and rescheduling, or reamortization;**
**(2) Interest rate reduction, including use of the limited resource rate program;**
**(3) Deferral;**
**(4) Write-down of the principal or accumulated interest; or**
**(5) Any combination of the above.**

**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.

**Program Loans**

***--Program loans include CL, FO, OL, and EM. In addition, for loan servicing purposes--* the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.**

**Program Property**

Program property is inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program.

**Proof of Claim**

A Proof of Claim is a legal document filed with the bankruptcy court that indicates a security interest on the proof of claimant. The court uses Proof of Claims to establish priority of claims, necessity for adjustment of debt and repayment of plans. A proof of claim is filed through OGC and provides information regarding FSA debt related security and instruments.

**Definitions of Terms Used in This Handbook (Continued)**

**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.

**Reaffirm Debt**

To reaffirm debt requires the debtor's voluntary re-obligation of debt in its original form.

**Reamortization**

**Reamortization is the rewriting of rates or terms, or both, of a loan made for real estate purposes.**

**Recapture**

Recapture is the amount that the Agency or a lender is entitled to recover from a direct or guaranteed loan borrower in consideration for the Agency or the lender writing down a portion of their direct or guaranteed loan debt when that loan was secured by real estate and that real estate increases in value. Recapture also includes the act of collecting shared appreciation.

**Reconsideration**

Reconsideration is a meeting with the Authorized Agency Official that is offered to a borrower who has received an adverse decision. The borrower may present new information at this meeting.

**Recoverable Cost**

**A Recoverable cost is a loan cost expense chargeable to either a borrower or property account.**

**Definitions of Terms Used in This Handbook (Continued)**

**Redemption Right**

**Redemption right is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at an involuntary sale plus accrued interest and costs.**

**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, or grandparent.**

**Repossessed Property**

**Repossessed property is security property in the Agency's custody.**

**Rescheduling**

**Rescheduling is the rewriting of the rates or terms, or both, of a loan made for operating purposes.**

**Restructuring**

**Restructuring is the process of changing the terms of a debt through rescheduling, reamortization, deferral, writedown, or a combination thereof.**

**Right-of-Way**

A right-of-way is a legal right of passage over another person or entity's land.

**Sealed Bid Sale**

A sealed bid sale is a public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

**Security**

**Security is property or a 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 Instruments**

**Security Instruments includes any document giving the Agency a security interest on real or personal property.**

**Definitions of Terms Used in This Handbook (Continued)**

**Shared Appreciation Agreement**

**A 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 writedown on a direct or guaranteed loan secured by real estate to repay the Agency or the lender some or all of the writedown received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.**

**Socially Disadvantaged Applicant or Farmer**

**A socially disadvantaged applicant or farmer is an individual or entity who is a member of a socially disadvantaged group. For an entity, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.**

**Socially Disadvantaged Group**

**A socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.**

**Special Hazard Area**

Special Hazard Area is a mudslide hazard area, a special flood area, or an earthquake area.

**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**

**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.**

**Definitions of Terms Used in This Handbook (Continued)**

### Termination Date

A termination date is the date specified in a disaster declaration, determination, or notification that establishes the final date after which Emergency Loan applications can no longer be accepted. For both physical and production losses, the termination date is 8 months from the date of the disaster declaration, determination, or notification.

### 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.**

### Tools of the Trade

Tools of the trade are assets that are exempt from collection efforts because they are essential to the operation of a business.

### Treasury Offset Program (TOP)

***--**TOP is the centralized offset of payments to collect delinquent, nontax debts owed to Federal agencies and States (including past-due child support), according to:

- 7 CFR Part 3, Subpart D
- 31 CFR Part 285, Subpart A
- 31 CFR 901.3(b).**--***

### Typical Plan

A typical plan is a projected income and expense statement listing all anticipated cash flows for a typical 12-month production cycle, including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.

**Definitions of Terms Used in This Handbook (Continued)**

**Unauthorized Assistance**

**Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.**

**Unauthorized Loan**

An unauthorized loan is any loan, a portion of a loan, interest rate, or interest subsidy that the borrower was not eligible to receive, that was not made according to all Agency procedures and requirements or which the Agency obligated from the wrong appropriation or fund.

**Unauthorized Loan Servicing Action**

An unauthorized loan servicing action is any loan servicing action not made according to all Agency procedures and requirements or that the borrower was not eligible to receive.

**Voluntary Conveyance**

Voluntary conveyance is a method of voluntary liquidation by which the borrower transfers title of security property to the lender.

**Wetlands**

**Wetlands are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985. * * *** Wetlands generally may be those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs and similar areas, such as sloughs, potholes, wet meadows, mudflats and natural ponds.

**State Supplements**

The following table lists required State supplements.

| Subparagraph | Required State Supplement |
|---|---|
| 3 C | Guidance on Notary Acknowledgement |
| 3 D | Guidance on Signature Requirements |
| 3 F | Using State-Specific and State-Created Forms |
| 104 A | Obtaining PLS Appraisals |
| 196 B | Filing of Conservation Contracts |
| 229 B | State-Certified Mediation Requirements |
| 247 B | Closing Reamortized Loans |
| 302 A | Homestead Protection According to State Laws |
| 343 B | Real Estate Appraisals for Determination of SAA Recapture |
| 345 C | Satisfying Shared Appreciation Agreements (SAA) According to State Laws |
| 346 E | Maintaining Lien Position When Amortizing SAA Recapture |
| 401 E | State Policies and Procedures for Bankruptcy |
| 402 F | Reaffirmation of Debt |
| ***--**421 C**--*** | State Policies and Procedures for Civil and Criminal Actions |
| 443 C | Managing the Liquidation Process |
| 462 B | Title Searches |
| 464 B | Lien Searches |
| 498 A | Convergence of Rights With Real Property |
| 531 A | Loan Acceleration |
| 533 A | Case File Preparation for Acceleration |
| 533 E | Determination or Property Value Prior to Acceleration |
| 534 E | Notification of Prior Lienholders After Acceleration |
| 535 C | Partial Payments After Acceleration |
| 551 A | General Involuntary Liquidation |
| 566 D | Real Property Foreclosures |
| 567 C | Bidding at Foreclosure Sales |
| 568 A | Acquisition of Inventory Property |
| 568 E | Addressing Outstanding Loan Balances After Real Estate Foreclosure |
| 551 D | Calculating Amount To Be Reported to DOJ |
| 601 A | Third-Party Foreclosures |
| 601 C | Contract Forfeiture |
| 602 A | Prior Lienholder Liquidation |
| 604 E | Redemption Rights |

**State Supplements (Continued)**

| Subparagraph | Required State Supplement |
|---|---|
| 705 C | Custodial Property |
| 707 F | Removal of Abandoned Vehicles From Inventory Property |
| 724 A | Taxes on Inventory Real Property |
| 776 D | Advertisement of Inventory Property for Sale |
| 776 F | Contracting With Real Estate Brokers to Sell Inventory Property |
| 778 E | Sale of Inventory Property |
| Exhibit 17,<br>*--subparagraph 5 F--* | • Estimated Cost and Average Holding Period<br>• Factors to Use When Adjusting Market Value.<br><br>**Note:** State supplement is issued after cost-analysis has been completed, but no later than November 30 each year. |

## Notification of the Availability of the Disaster Set-Aside Program

**Note:** Exhibit 10 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 10**".

*--

**5-FLP, Exhibit 10**
This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**NOTIFICATION OF THE AVAILABILITY OF THE DISASTER SET-ASIDE PROGRAM**

Dear

I am writing to you because you have loans with the Farm Service Agency (FSA). Recently the county where you farm or a contiguous county to where you farm was declared a disaster. I want you to know that if this disaster caused you to suffer losses that will make it difficult to pay your expenses or make scheduled payments to creditors including FSA, there may be some assistance available to you.

Under the Disaster Set-Aside (DSA) program, you may be eligible to delay any or all of your FSA farm loan payments due this year or next (but not both). This payment will be moved to the end of your loan to be paid on or before the final due date. Loans with less than 2 years remaining are not eligible. DSA will only be approved if all farm loan payments will be up-to-date after the payments are set aside.

You can apply for DSA anytime you note, from local publications, that your county has an active disaster designation. To apply for DSA, you need to provide this office with a letter, signed by all parties liable for the debt, requesting DSA and your actual production, income and expense records for the last three years. FSA might request additional information later if it is needed to make an eligibility decision. Complete applications must be submitted to FSA before your account becomes 90 days past due and prior to the end of the disaster designation.

We also have primary loan servicing (PLS) which is a comprehensive servicing package available to ALL borrowers regardless if they are in a disaster declared area or not. This comprehensive servicing package includes rescheduling at lower rates, up to a five year deferment, increased length of repayment, and in some cases possible write down of debt. This type of servicing may provide for lower payments with or without a deferral because the interest rates can be lowered and the length of the loans extended. If you are interested in this more comprehensive servicing option, contact this office to obtain an application.

Note: FSA will take a lien on all your assets (with few exceptions) if your account has become past due at the time DSA or PLS is closed.

Current Disaster Designations

| Date Declared | Code | Disaster Description | Final Date to Apply |
|---|---|---|---|

For more information, please contact this office.

Sincerely

--*

**Account Description Flag and Code Reference**

## A General Information

This exhibit provides guidance on using account description flags and paragraph references for each flag.

## B Agency Official Responsibilities

Agency officials shall review the RC 540 Report monthly to determine whether a servicing action is needed and if accounts are appropriately flagged or coded. Particular attention should be given to flagged accounts since the payment status cannot always be reported correctly for reasons such as payments being held in suspense or transactions not being processed.

## C Establishing and Removing Flags

To establish an account flag, FSA-2562 will be completed and a 5G transaction will be processed in DLS through the Manage Flags function under Customer Management. To remove an account flag, FSA-2562 will be completed and a 5H transaction will be processed in DLS.

## D Flag Priority and Reference Table

A maximum of 4 flags can be recorded in the accounting system for each borrower subject to certain limitations. However, only 3 flags will be reported on the RC 540 Report. Flags will be reported based on priority as indicated in this table.

| Display Priority | Flag | Description | Reference |
|---|---|---|---|
| 1 | OAC1 | Office of Adjudication and Compliance Accepted | 1-FLP, Paragraph 41 |
| 2 | CAP | Court Action Pending | Paragraph 421 |
| 3 | TPJ | ***--**Third Party Judgment (NFAOC Only)**--*** | Paragraph 421 |
| 4 | BAP | Bankruptcy Action Pending | Paragraph 401 |
| 5 | 51-S | Primary Loan Servicing | Paragraph 67 |
| 6 | DSA | Debt Set-Aside | Historical Code |
| 7 | DEF | Deferral (FSA-2562 process in DLS) | Paragraph 248 |
| 8 | FAP | Foreclosure Action Pending | Paragraph 567 |
| 9 | SAA | ***--**Subject to Approved Adjustment (NFAOC**--*** Only) | Paragraph 404 |
| 10 | OAC7 | Office of Adjudication and Compliance Resolved | 1-FLP, Paragraph 41 |
| 11 | ACL | Accelerated | Paragraph 534 |

## *--Third Party Pledge of Security Notification Letter

**Third Party Pledge of Security Notification Letter**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

[Third Party Who Pledged Security name and address]

Dear [Name]:

[Borrower's Name]

This is to inform you that [borrower's name] [has/have] defaulted on the Farm Service Agency (FSA) loan on which you provided a security interest in your real estate or chattel property.

The borrower was sent a loan servicing package on [date] describing FSA's loan servicing programs. The borrower has 60 calendar days from the date the package is received to apply for these programs. If the borrower does not apply, or is determined ineligible, FSA will begin acceleration and liquidation proceedings. We suggest that you keep in contact with the borrower on the status of the default.

The reason for default is:

[State the reason for the default and amount needed to clear the default if applicable.]

--*

## *--Third Party Pledge of Security Notification Letter (Continued)

**Third Party Pledge of Security Notification Letter (Continued)**

If the account is accelerated, the entire FSA debt becomes due and payable within 30 calendar days from the date of acceleration. If the debt is not paid in full within the 30-calendar-day timeframe, FSA may take the following steps to collect the debt, some of which may affect you.

(1) Repossess and sell all equipment, livestock, livestock products, and other personal property used to secure the FSA loan.

(2) Foreclose and sell the real estate mortgaged to FSA.

(3) Stop all releases and collect all proceeds from the sale of crops, livestock, livestock products, or other security property.

(4) Take by administrative offset any money owed by Federal agencies to the borrower, and other individuals liable for the debt.

(5) File lawsuits against those liable for the debt to collect money owed to FSA.

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

Sincerely,

Farm Loan Manager

--*

## *--Youth Loan Notification Letter

**Youth Loan Notification Letter**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

```
[Borrower's Name]
[Borrower's address]
```

Dear [Name]:

This is to inform you that you have defaulted on the Farm Service Agency (FSA) Youth Loan that you received. Youth Loan funds are not provided to operate a farm and may only be used to pay the expenses associated with an approved project. They cannot receive all the restructuring options described in the attached package. Youth Loans can be rescheduled or deferred, but cannot be placed on Limited Resource interest rates or receive write down or buy out.

The reason for default is:

[State the reason for the default and amount needed to clear the default if applicable.]

If the account is accelerated, the entire FSA debt becomes due and payable within 30 calendar days from the date of acceleration. If the debt is not paid in full within the 30-calendar-day timeframe, FSA may take the following steps to collect the debt, some of which may affect you.

(1) Repossess and sell all equipment, livestock, livestock products, and other personal property used to secure the FSA loan.

(2) Foreclose and sell the real estate mortgaged to FSA.

(3) Stop all releases and collect all proceeds from the sale of crops, livestock, livestock products, or other security property.

(4) Take by administrative offset any money owed by Federal agencies to you and other individuals liable for the debt.

(5) File lawsuits against those liable for the debt to collect money owed to FSA.

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

Sincerely,

Farm Loan Manager

--*

***--Instructions for Using eDALR$**

## 1 Overview

### A Introduction

This exhibit provides basic information on eDALR$. It is an introduction to using eDALR$ and the basic processes and calculations that lead to the eDALR$ print-out. However, this exhibit does not provide every formula, data flow description, or process eDALR$ uses. This exhibit is not a substitute for the more detailed training materials on the system. For detailed information, contact the State eDALR$ Coordinator.

### B Purpose of eDALR$

Delinquent and financially distressed borrowers unable to make FSA program loan payments as scheduled may apply for primary loan servicing. The authorized agency official uses eDALR$ to assist in evaluating the effects of primary loan servicing. eDALR$ performs a series of mathematical calculations based on information regarding the borrower's cash flow and loan status obtained from the borrower's case file. The authorized agency official uses this information in attempting to restructure the borrower's debt and maximize repayment ability, while avoiding or minimizing loss to the U.S. Government. eDALR$ provides a printed report of the computations and outcome of the calculations.

### C eDALR$ Capabilities

FSA uses eDALR$ when a borrower applies for primary loan servicing. eDALR$ determines what servicing options, if any, are available to the borrower and develops a servicing offer, including any new interest rates, loan terms, and payment schedules.

eDALR$ provides many benefits and advantages to FSA and the borrower, compared to manual calculations.

- The results are available immediately as eDALR$ makes all the necessary calculations--***** quickly.
- The results are consistent for all borrowers.
- The borrower is assured of being considered for all available servicing options.
- The number of calculation errors is reduced.

***--Instructions for Using eDALR$ (Continued)**

## 1 Overview (Continued)

### D Developing a Feasible Plan

A feasible plan represents the ability of the borrower to pay all farm operating expenses, family living expenses, FSA program loan payments, FSA Non-Program and homestead protection payments, and non-FSA debt loan payments with a debt service margin (DSM) of zero or greater. The DSM is the amount of money a borrower has remaining after paying all debts, farm operating expenses, and family living expenses.

The eDALR$ calculations are a looped process. eDALR$ considers each combination of loan servicing options until a feasible plan is developed, or eDALR$ determines that a feasible plan is not possible with full use of primary loan servicing options, and Conservation Contract (CC) Debt Cancellation.

During the first phase of the calculations, eDALR$ attempts to restructure the borrower's debt utilizing all necessary combinations of loan servicing options, excluding writedown, while providing a 10 percent DSM. If a feasible plan cannot be developed, eDALR$ reduces the DSM to 9 percent and reconsiders these combinations of loan servicing options. eDALR$ continues to reduce the DSM by 1 percent until a feasible plan is developed or the DSM falls to zero. At a zero percent DSM, after considering all combinations, eDALR$ considers if writedown or a combination of writedown and other servicing actions results in a feasible plan.

If a feasible plan is not obtained at a zero DSM and the borrower is eligible for buyout, then eDALR$ will offer a buyout at market value less prior liens. If the borrower is not eligible for a buyout, eDALR$ will offer the borrower the opportunity for debt settlement.**--***

**Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide

### A Entering Data

Two categories of information are entered into eDALR$. First, the authorized agency official enters some information into eDALR$ on a periodic basis. This information is critical to ensure that eDALR$ applies the correct interest rate to the borrower's account and that the net recovery value calculation is accurate. Each Field Office must have a system for promptly entering this information into eDALR$ as the Field Office receives notification of data changes from the State or National Office. Second, the authorized agency official must enter borrower-specific data each time eDALR$ runs a report. The key sources for this information are the borrower's current or updated FBP, ADPS DL screens that contain borrower loan information, and the borrower's case file.

The eDALR$ reports are accurate and useful only if the information entered into eDALR$ is accurate and complete. A significant percentage of errors or complications with using eDALR$ result from poor data collection or entry errors. The authorized agency official is responsible for the accuracy of inputted data and should be diligent in ensuring that the ***--**borrower's FBP is complete and appropriate. See 1-FLP, Part 8, Section 3 for a detailed**--***discussion on developing FBP.

### B Periodic Data

FSA periodically publishes updated data that the Field Office enters into eDALR$. The State Office also issues State supplements with updated data based on Statewide or local conditions. When published, the authorized agency official enters net recovery constants. Current periodic data for administrative liquidation costs, chattel costs, real estate costs, and property management costs is found in paragraph 5 of this exhibit.

**Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### C Borrower Data

The following table explains the main categories of borrower-specific information the authorized agency official enters into eDALR$. The table lists specific items from the borrower case file and supporting automated FSA systems for entry into eDALR$.

| Category | eDALR$ Screen | Explanation |
|---|---|---|
| 1. Borrower Case Number | Enter or Select Borrower | Either an Entity or Individual Borrower Case Number. |
| 2. Borrower Name | Enter or Select Borrower | Either an Entity or Individual Borrower Name. |
| 3. Date Servicing Actions Requested | Basic Borrower Information | Date of completed application requesting primary loan servicing. |
| 4. Proposed Restructure Date | Basic Borrower Information | Date on which servicing actions should be effective. |
| 5. Has the Borrower Had Previous Debt Forgiveness? | Basic Borrower Information | Determine whether the borrower has received prior debt forgiveness, not including debt reduction from CC's or easements. |
| 6. Period of Deferral | Basic Borrower Information | eDALR$ allows a maximum deferral period of 5 years. Enter a shorter period based on the plans developed in FBP. |
| 7. Adjusted Balance Available | Basic Borrower Information | System calculated from the data entered. |
| 8. Farm Operating Expense, Farm Operating Interest Expense, Owner Withdrawals Expense, Balance Available, Non Agency Debt Repayment and Taxes Expenses | Basic Borrower Information | ***--**From FBP eDALR$ Input Report, enter**--*** the corresponding information:<br><br>• Farm Operating Expense<br>• Farm Operating Interest Expense<br>• Owner Withdrawals Expense<br>• Balance Available<br>• Non-Agency Debt Repayment and Taxes. |

***--Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### C Borrower Data (Continued)

| Category | eDALR$ Screen--* | Explanation |
|---|---|---|
| 9. FSA Loan for Annual Operating Expense (AOE) | Basic Borrower Information | Enter the amount of any FSA loan for annual operating expenses for first year and after the deferral year. This is the amount of annual operating expense loan principal that FSA will advance in the applicable planning year. Also enter the estimated average number of months the annual operating loan will be outstanding. |
| 10. New FSA Loans | New Loans | Enter the amount of any new loan, loan type, loan term, and year that the cash flow will be affected for the first year or after the deferral year. |
| 11. Existing Loan Data | Existing Loans | Enter loan information obtained from the borrower's case file and the ADPS DL screens. The date of status screens must be after the date of the last payment or other transaction on the loan. The effective date of the status screens should be the proposed restructure date. The loan information includes consideration for:<br>• servicing actions<br>• loan type, program or Non-Program<br>• unpaid principal and interest<br>• the sum of the amount past due plus 1 annual installment<br>• maximum term<br>• original and existing interest rate<br>• security priority<br>• information regarding any portion of the loan for annual operating expenses not to be rescheduled<br>• proposed payment in full on the restructure date<br>• recoverable cost item information. |

***--Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### C Borrower Data (Continued)

| Category | eDALR$ Screen | Explanation |
|---|---|---|
| 12. Net Recovery Value Data | Net Recovery Property | Two types of data are required to calculate the net recovery value of property. First, the net recovery constants are periodically entered into eDALR$. They specify costs that are determined State-wide or on a local basis and are specified in a State supplement as described in subparagraph B. Second, borrower-specific information primarily related to both essential and nonessential assets are necessary to calculate the net recovery value.<br><br>The borrower-specific information the user must enter into eDALR$ includes:<br><br>• market value of the security<br><br>• prior liens<br><br>• filing date of FSA and prior lienholder's security instruments<br><br>• property taxes while in inventory<br><br>• repairs necessary for resale<br><br>• advertising cost<br><br>• interest costs while in inventory<br><br>• management costs per acre.<br><br>eDALR$ computes the net recovery value for all FSA farm program loan security and nonessential assets. If FSA's lien position or the amount of prior liens varies from asset to asset, eDALR$ computes separate net recovery values for each asset that has a different lien structure. The sum of all individual net recovery values equals the total net recovery value. |

**--***

***--Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### C Borrower Data (Continued)

| Category | eDALR$ Screen | Explanation |
|---|---|---|
| 12. Net Recovery Value Data (Continued) | Net Recovery Property | Additionally, eDALR$ calculates the FSA loan priority related to FSA's security interests in the assets. The calculated loan priority will minimize the amount of the unsecured debt owed to FSA. Loan priority is used to select the appropriate FSA loans to be considered during the writedown servicing process.<br><br>eDALR$ uses the net recovery value only if the borrower will receive a writedown according to Part 4. The authorized agency official does not need to enter net recovery value data unless the borrower will receive a writedown. |
| 13. Security Priority | Loan Security | Enter information on the loan priority for each FSA loan secured by an asset. The market value of the security, equity, the remaining debt, and property types associated with each FSA loan can be viewed. The eDALR$ calculations to determine the security priority for each loan will be illustrated. The 3 priorities are as follows.<br><br>• Low - These loans are unsecured. If FSA liquidated loan security, the proceeds would not be sufficient to result in any payment on the loan.<br><br>• Medium - These loans are under secured. If FSA liquidated security, the proceeds would be sufficient to result in a partial payment on the loan.<br><br>• High - These loans are fully secured. If FSA liquidated security, the proceeds would be sufficient to pay the loan in full.<br><br>The user may manually enter the security priority, if necessary. |

**--***

**Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### C Borrower Data (Continued)

| Category | eDALR$ Screen | Explanation |
|---|---|---|
| 14. Conservation Contract Data | Basic Borrower Information | If the borrower requested a CC, enter the CC acreage. eDALR$ calculates the total acreage of the farm, unpaid program debt secured by the farm, and the current market value of the farm. |

### D Staff Responsibilities

The authorized agency official has primary responsibility to ensure that the proper information is entered into eDALR$ and to review the outputs. The borrower is responsible *--for developing a feasible operating plan acceptable to FSA. The authorized agency official--* is not responsible for developing but may assist the borrower to develop feasible first year and post-deferral plans.

For troubleshooting or questions about eDALR$, the authorized agency official should first use the eDALR$ help system built into the program before contacting the eDALR$ Coordinator in the State Office. The State Office contacts the National Office with any questions or problems, if necessary.

### E eDALR$ Calculations

After the authorized agency official inputs all the necessary information into the system, eDALR$ performs a series of calculations. These calculations search for a feasible plan while considering the net recovery value of FSA security or nonessential assets, FSA's policy concerning the priority order of servicing, conditions for each action, and all applicable financial limitations or requirements. eDALR$ considers the programs, actions, and calculations listed in subparagraph F. eDALR$ does not necessarily make all these calculations for each servicing action, but considers only those necessary to develop a feasible plan.

***--Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### F Order of eDALR$ Calculations

eDALR$ performs calculations in the following order.

**Order of eDALR$ Calculations**

1. Basic eligibility criteria for Debt Restructure or Buyout.

2. Servicing requirements for new loan limits/payments.

3. eDALR$ considers conservation contracts, if requested.

4. eDALR$ calculates net recovery value.

5. eDALR$ verifies that net recovery value of nonessential assets is less than total delinquency for FSA program loans.

6. eDALR$ tries to reschedule or reamortize delinquent loans and nondelinquent loans that the authorized agency official designated for servicing at the maximum term allowed in the following order:

   - delinquent program loans
   - limited resource program loans
   - unequal payment program loans.

7. eDALR$ considers consolidation for all eligible program loans.

8. eDALR$ considers program loan deferral.

9. eDALR$ considers a delinquent Non-Program loan only for rescheduling or reamortization with approval of the Administrator unless it is a Debt Set Aside (Shared Appreciation Recapture Debt).

10. eDALR$ considers writedown of FSA program debt.

11. eDALR$ considers combinations of the above servicing programs, except consolidation, with writedown.

12. eDALR$ considers the market value buyout amount when a feasible plan cannot be developed.

13. eDALR$ determines the amount of cash improvement needed to develop a feasible plan, if a feasible plan cannot be develop based on existing budget data.

**--***

***--Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### G eDALR$ and Debt Service Margin

During the first phase of the calculations, eDALR$ attempts to restructure the borrower's debt using all necessary combinations of loan servicing options, excluding writedown (steps 9 and 10), and providing a 10 percent debt service margin. If a feasible plan cannot be developed after considering the appropriate combinations of loan servicing, eDALR$ reduces the debt service margin by 1 percent until a feasible plan is developed or the debt service margin falls to zero. At a zero percent debt service margin, after considering all combinations of loan servicing, eDALR$ considers writedown or a combination of writedown and other servicing action to develop a feasible plan.

### H eDALR$ Outputs

eDALR$ prints a report that shows the results of its calculations and eligibility determination and provides a feasible plan with the supporting new loan information. If eDALR$ determines that a feasible plan cannot be developed or the borrower is not eligible for servicing (for example, failed to act in good faith) eDALR$ offers buyout or recommends offering debt settlement.

The authorized agency official may request either a summary report or a detailed report from eDALR$. A summary report does not include any of the calculation tables, whereas the detailed report does include all the calculation tables and input data.

The conditions for certain outcome summaries associated with the eDALR$ calculations--***** are described in the following table. The table describes the conditions of the borrower's account, the outcome code and outcome that occur as a result of the conditions, and what FSA will offer to the borrower.

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan found for first year; or<br><br>Feasible plan found for post-deferral year, if applicable. | **1** | Feasible plan found. | FSA offers the borrower primary loan servicing to realize the feasible plan. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)**

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan found for first year; or<br><br>Feasible plan found for post-deferral year, if applicable; and<br><br>Borrower has failed to act in good faith. | **1a** | Feasible plan found; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower debt settlement.<br><br>FSA does **not** offer the borrower primary loan servicing. |
| Feasible plan found with writedown – First Report | **1b** | Feasible plan found and no previous debt forgiveness and no new term loans. | FSA offers the borrower primary loan servicing to realize the feasible plan. |
| Feasible plan found without writedown – Second Report | **1c** | Feasible plan found without writedown and no previous debt forgiveness. | FSA offers the borrower primary loan servicing to realize the feasible plan |
| Feasible plan found for first year is only possible with a writedown; or<br><br>Feasible plan found for post-deferral year, if applicable; and<br><br>There is a new term loan requested. | **1d** | Feasible plan is found only with writedown but there is a new term loan so the borrower is not eligible for writedown. | FSA offers the borrower a meeting with an authorized agency official on eligibility criteria. |
| Feasible plan could not be found in first year; and<br><br>Feasible plan found for first year with cash improvement amount added to first year balance available; and<br><br>Feasible plan found for post-deferral year, if applicable; and<br><br>The borrower has acted in good faith; and<br><br>Debt service margin is at zero percent. | **1e** | Feasible plan found only after rerun of eDALR$ report with cash improvement amount added to balance available. | FSA offers the borrower primary loan servicing if the borrower can achieve the necessary cash improvement to develop a feasible plan.<br><br>If the borrower cannot achieve the necessary cash flow to develop a feasible plan, FSA offers the borrower buyout, if eligible, or debt settlement if the borrower is not eligible for buyout. |

**--***

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)--***

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Net recovery test fails. The present value of payments plus the CC amount is less than the net recovery value of total property; and<br><br>At least 1 program loan is delinquent; and<br><br>Writedown is not possible. | **2** | Buyout at market value when net recovery test fails. | FSA offers the borrower buyout at market value. |
| Net recovery test fails. The present value of payments plus the CC amount is less than the net recovery value of total property; and<br><br>Borrower has failed to act in good faith. | **2a** | Buyout at market value when net recovery test fails; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower debt settlement.<br><br>FSA does **not** offer the borrower buyout at market value. |
| Feasible plan could not be found in first year; and<br><br>At least 1 program loan is delinquent; and<br><br>Market value less prior liens is less than the total existing FSA debt, borrower has not received previous debt forgiveness, and a writeoff will occur; or<br><br>Market value less prior liens is greater than the total existing FSA debt. The borrower may have received debt forgiveness previously since FSA is not offering writeoff to the borrower. | **4** | Buyout at market value. Present value of payments plus CC amount is greater than net recovery value; and<br><br>No feasible plan found. | FSA offers the borrower buyout at market value, less prior liens. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)--***

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan could not be found in first year; and<br><br>At least 1 program loan is delinquent; and<br><br>Borrower has failed to act in good faith; and<br><br>Market value less prior liens is less than the total existing FSA debt, borrower has not received previous debt forgiveness, and writeoff will occur; or<br><br>If the market value less prior liens is greater than the total existing FSA debt. The borrower may have received debt forgiveness previously since FSA is not offering writeoff to the borrower. | **4a** | Buyout at market value. Present value of payments plus CC amount is greater than net recovery value; and<br><br>No feasible plan found; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower debt settlement.<br><br>FSA does **not** offer the borrower buyout at market value less prior liens. |
| All existing FSA loans have a servicing action code “N”. | **5** | Loan servicing not available as all existing FSA loans coded for no servicing action. | FSA offers the borrower a meeting with an authorized agency official on eligibility criteria. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)**

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Balance available is sufficient to pay the total of the first year payment amount. | **6** | Borrower can pay the account current. | The user can choose either of the following options.<br><br>• eDALR$ can consider the "balance available greater than the first year payments" as the solution. FSA offers the borrower a meeting with an authorized agency official on eligibility criteria; or<br><br>• eDALR$ can continue with calculations and disregard the "balance available greater than the first year payments" and the appropriate outcome will occur. FSA's offer to the borrower is based on this new outcome. |
| Feasible plan could not be found in the first year; and<br><br>Writedown amount exceeds $300,000 limitation or 100 percent writedown considered; and<br><br>At least 1 program loan is delinquent; and<br><br>Market value less prior liens is less than the total existing FSA debt, borrower has not received previous debt forgiveness, and writeoff will occur; or | **7** | Buyout at market value. Writedown exceeds $300,000 limitation or 100 percent writedown considered. | FSA offers the borrower buyout at market value less prior liens. |

**--***

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)--***

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Market value less prior liens is greater than the total existing FSA debt. The borrower may have received debt forgiveness previously since FSA is not offering writeoff to the borrower. | **7 (Continued)** | | |
| Feasible plan could not be found in first year; and<br><br>Borrower has failed to act in good faith; and<br><br>Writedown amount exceeds $300,000 limitation or 100 percent writedown considered; and<br><br>At least 1 program loan is delinquent; and<br><br>Market value less prior liens is less than the total existing FSA debt, borrower has not received previous debt forgiveness, and writeoff will occur; or<br><br>Market value less prior liens is greater than the total existing FSA debt. The borrower may have received debt forgiveness previously since FSA is not offering writeoff to the borrower. | **7a** | Buyout at market value. Writedown exceeds $300,000 limitation or 100 percent writedown considered; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower debt settlement. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)--***

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan could not be found in first year; and<br><br>Present value of payments plus CC is greater than net recovery value; and<br><br>At least 1 program loan is delinquent; and<br><br>Market value less prior liens is less than the total existing FSA debt, the borrower received debt forgiveness previously but another writeoff is necessary; or<br><br>Writeoff of debt is greater than $300,000 ceiling amount but borrower has not received previous debt forgiveness. | **8** | Buyout at market value not available because of previous debt forgiveness. | FSA offers the borrower debt settlement. |
| Feasible plan could not be found in first year; and<br><br>Borrower has failed to act in good faith; and<br><br>Present value of payments plus CC is greater than net recovery value; and<br><br>At least 1 program loan is delinquent; and | **8a** | Buyout at market value not available because of previous debt forgiveness; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower debt settlement. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)--***

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Market value less prior liens is less than the total existing FSA debt, the borrower received debt forgiveness previously but another writeoff is necessary; or<br><br>Writeoff of debt is greater than $300,000 ceiling amount but borrower has not received previous debt forgiveness. | **8a (Continued)** | | |
| Feasible plan found for first year with CC debt cancellation only; and<br><br>Borrower may have received previous debt forgiveness; and<br><br>There may be a new term loan; and<br><br>No other primary loan servicing options will occur in conjunction with a CC; and<br><br>There can be delinquent program loans that are not restructured, except for writedown because of CC, as long as all delinquent program loans are written down. | **9** | Feasible plan found using CC debt cancellation only. | FSA offers the borrower a CC.<br><br>FSA will not restructure loans that are affected by the CC debt cancellation. The existing payment schedule will remain unchanged. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)--***

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan found for first year with CC debt cancellation only; and<br><br>Borrower has failed to act in good faith; and<br><br>Borrower may have received previous debt forgiveness; and<br><br>There may be a new term loan; and<br><br>No other primary loan servicing options will occur in conjunction with CC; and<br><br>There can be delinquent program loans that are not restructured, except for writedown because of CC, as long as all delinquent program loans are written down. | **9a** | Feasible plan found using CC debt cancellation only; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower a meeting with an authorized agency official on eligibility criteria.<br><br>FSA will not restructure loans that are affected by the CC debt cancellation. The existing payment schedule will remain unchanged. |
| Feasible plan found for first year with other primary loan servicing options and CC debt cancellation; and<br><br>Feasible plan found for post-deferral year, if applicable. | **10** | Feasible plan found in conjunction with CC debt cancellation and other primary loan servicing options. | FSA offers the borrower a combination of CC debt cancellation and primary loan servicing. |

***--Instructions for Using eDALR$ (Continued)**

**2 eDALR$ User Guide (Continued)**

**H eDALR$ Outputs (Continued)**

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan found for first year with other primary loan servicing options and CC debt cancellation; and<br><br>Feasible plan found for post-deferral year, if applicable; and<br><br>Borrower has failed to act in good faith. | **10a** | Feasible plan found in conjunction with CC debt cancellation and other primary loan servicing options; and<br><br>Borrower has failed to act in good faith. | FSA offers the borrower debt settlement. |
| Net recovery value of nonessential assets, real estate, and chattel is greater than the sum of delinquent amount of FSA loan payments; and<br><br>CC debt cancellation may occur only when eDALR$ restructures delinquent loans without restructuring any other existing FSA loans or writes down all existing delinquent FSA loans. | **11** | Borrower can pay current based on net recovery value of nonessential assets. | FSA offers the borrower a meeting with an authorized agency official on eligibility criteria. |
| Feasible plan could be found but a recoverable cost item (RCI) loan with type 5 purpose for the RCI loan is not paid-in-full before the proposed loan servicing date. | **12** | Type 5 recoverable cost item (RCI) loan, unauthorized advance on program loan, not paid-in-full before the proposed loan servicing date. | FSA offers the borrower debt settlement. |
| Feasible plan found for first year with a CC; and<br><br>User requests “balance available greater than first year payments” as the priority. | **13** | Balance available is greater than first year payments, CC requested. | FSA offers to restructure the borrower’s loan with CC debt cancellation only. No further restructuring options are considered. |

**--***

**Instructions for Using eDALR$ (Continued)**

## 2 eDALR$ User Guide (Continued)

### H eDALR$ Outputs (Continued)

| Conditions | Outcome Code | Outcome Description | Offer to Borrower |
|---|---|---|---|
| Feasible plan is not possible without writedown; and<br><br>No existing program loans are delinquent; and<br><br>FSA calculates the cash improvement as if there will not be a writedown. | **14** | Feasible plan found only with writedown. Borrower is not eligible for writedown as no loans are delinquent. | FSA offers the borrower a meeting with an authorized agency official on eligibility criteria. |

### I Mailing the eDALR$ Report

The authorized agency official is responsible for reviewing the eDALR$ printout. If eDALR$ produces a feasible plan, but the authorized agency official determines that a change in specific data, such as loan terms, would result in a more appropriate plan, the authorized agency official may make these adjustments. When the authorized agency official obtains an acceptable printout, the authorized agency official mails a copy of a **detailed** report with the *****--appropriate forms to the borrower and puts the original in the borrower's case file.--*****

***--Instructions for Using eDALR$ (Continued)**

## 3 eDALR$ Calculations

### A Net Recovery Value (NRV)

eDALR$ calculates the net recovery value (NRV) for FSA security and nonessential assets.

eDALR$ computes the NRV for all FLP loan security, other nonessential assets owned by the borrower, and assets not in the borrower's possession. If FSA's lien position or the amount of prior liens varies from item to item, eDALR$ computes separate NRV's for each item that has a different lien structure.

During the net recovery value calculations, eDALR$ verifies that the net recovery value of nonessential assets is not greater than the delinquent payment of FSA program loans. If the net recovery value of nonessential assets is greater than the delinquent payment, then the borrower is not eligible for primary loan servicing options.

### B New Loan and Annual Operating Expense Payments

eDALR$ computes new loan and annual operating expense payments at regular interest rates. eDALR$ calculates debt repayment for new FSA term loans and FSA loans for annual operating expenses as follows.

- eDALR$ calculates repayment for new term loans based on the regular loan program interest rate and the term of the loan.

- eDALR$ calculates repayment of loans for annual operating expenses based on the regular interest rate and the projected number of months the loan will be outstanding. eDALR$ calculates interest accrual for the annual operating loan by multiplying the amount of principal to be repaid during the period of the plan by the monthly decimal equivalent for the regular program interest rate. eDALR$ then multiplies this amount by the average number of months that the loan will be outstanding. The amount of debt repayment due on annual operating expenses is the total of interest accrual plus the principal amount of the loan.

eDALR$ initially calculates payments for new FSA loans and FSA loans for annual operating expenses at the regular program interest rate. If a feasible plan cannot be developed, eDALR$ reduces the rate to a limited resource interest rate, if applicable.**--***

***--Instructions for Using eDALR$ (Continued)**

## 3 eDALR$ Calculations (Continued)

### C Loan Payments That Will Pay Loans in Full

eDALR$ will not apply any loan payments that will adjust the amount of the debt or pay loans in full on the proposed restructure date. Therefore, the authorized agency official must indicate in eDALR$ that the particular FSA loan will be paid-in-full if the loan will be satisfied before or on the proposed loan servicing date. eDALR$ can consider only a full payoff of a loan.

If the authorized agency official expects or receives a payment for less than the full amount of the loan, the authorized agency official must apply the payment to the loan before completing the eDALR$ calculations or apply the amount on the closing date to adjust the loan data inputs.

If after the application of payments to pay loans in full, the borrower is no longer financially distressed or none of the borrower's remaining loans are delinquent or require servicing action, no further servicing action in eDALR$ is required.

### D CC Debt Cancellation

eDALR$ considers a CC, if requested, to the maximum extent permitted under the regulations according to Part 5. A CC is not provided unless a feasible plan is developed after considering CC and other loan servicing options. eDALR$ selects CC eligible program loans in the order of lowest security priority first. For loans with equal security priority, eDALR$ bases the secondary selection on the loan with the largest amortization factor.

eDALR$ restructures any delinquent or distressed loan that receives a debt writedown**--*** associated with CC debt cancellation and calculates a new payment amount and term.

If the borrower is current, any loans that receive a debt writedown associated with CC debt cancellation are not restructured with a new payment and term. The current payment amount and schedule remains unchanged and a noncash credit is applied to the particular loan. If the borrower requests restructuring with a new payment and term, FSA handles the borrower as a distressed borrower.

***--Instructions for Using eDALR$ (Continued)**

## 3 eDALR$ Calculations (Continued)

### E Rescheduling or Reamortizing All Delinquent Program Loans

eDALR$ reschedules or reamortizes all delinquent program loans at the maximum term with an interest rate at the lower of the original note rate, current loan program rate, or the current regular rate of interest in effect on the date of a completed primary loan servicing application. eDALR$ reschedules or reamortizes limited resource rate loans at the lower of the original note rate, current loan program rate, or the current regular rate of interest in effect on the date of a completed primary loan servicing application.

eDALR$ restructures delinquent loans only during this process. eDALR$ selects loans in the order of lowest security priority first. For loans with equal security priorities, eDALR$ bases the secondary selection on the loan with the lowest amortization factor. For loans with an equal amortization factor, eDALR$ bases the selection on the loan with the lowest present value. If the lowest present value is equal, eDALR$ bases the final selection on the loan with the smallest amount of debt.

### F Rescheduling or Reamortizing Limited Resource Eligible Loans

eDALR$ reschedules or reamortizes limited resource eligible program loans at the maximum term and with an interest rate at the lower of the original note rate, the current limited resource program interest rate, or the current limited resource rate in effect on the date of a completed primary loan servicing application. eDALR$ reschedules or reamortizes limited resource eligible loans 1 at a time until a feasible plan is developed with the appropriate debt service margin or eDALR$ has processed all limited resource eligible loans.

eDALR$ recalculates debt repayment for new FSA term loans and for annual operating expenses at limited resource rates, if applicable. eDALR$ selects loans in the order of lowest security priority first. For loans with equal security priorities, eDALR$ bases the secondary selection on the loan with the lowest amortization factor. For loans with equal amortization factors, eDALR$ bases the selection on the loan with the lowest present value. If the lowest present value is equal, eDALR$ bases the final selection on the loan with the smallest amount of debt.

eDALR$ considers new FSA term loans and loans for annual operating expenses at a limited resource rate before eDALR$ considers existing FSA program loans.--*****

***--Instructions for Using eDALR$ (Continued)**

**3 eDALR$ Calculations (Continued)**

**G Rescheduling or Reamortizing Program Loans With Unequal Payment Schedules**

eDALR$ reschedules or reamortizes loans with unequal payment schedules or loans that were not previously restructured in subparagraph F, as rescheduling or reamortization would have increased debt repayment in the first year. However, if the loan is delinquent, the loan would have been rescheduled or reamortized under subparagraph E regardless of the impact on the first year debt repayment. eDALR$ restructures loans at the lower of the original note rate, the current loan program rate, or if applicable, the limited resource rate.

A loan eDALR$ selects for rescheduling or reamortization in this process cannot have been restructured during any of the earlier calculations and cannot be an ST loan.

eDALR$ selects loans in the order of lowest security priority first. For loans with equal security priorities, eDALR$ bases the secondary selection on the loan with the lowest amortization factor. For loans with equal amortization factors, eDALR$ bases the selection on the loan with the lowest present value. If the lowest present value is equal, eDALR$ bases the final selection on the loan with the smallest amount of debt.

**H Consolidating Eligible Program Loans**

If a feasible plan has been obtained before the deferral servicing option and if there are FSA program loans eligible for consolidation, then eDALR$ offers consolidation. Eligible program loans with the same program loan type are consolidated into 1 program loan. The interest rate selected for the consolidated program loans is the lesser of the current interest rate for the program loan type or the lowest of the original interest rate on any of the program loans being consolidated. If 1 of the program loans is eligible for limited resource rate, the consolidated program loan is eligible for a limited resource rate.

**I Deferral**

eDALR$ determines the cash available to repay FSA debt for the first year and the year after the deferral period by subtracting non-FSA payments, farm operating expenses excluding interest, and family living expenses from the adjusted balance available.

- If the first year cash available is negative, eDALR$ proceeds with the actions described in subparagraph M.

- If the first year cash available is positive and less than the cash available for the year after the deferral period, eDALR$ considers loan deferral.**--***

***--Instructions for Using eDALR$ (Continued)**

## 3 eDALR$ Calculations (Continued)

### I Deferral (Continued)

eDALR$ selects loans for deferral to minimize the debt repayment in the year after the deferral period. If the full deferral of a loan will result in a first year cash flow that exceeds the appropriate debt service margin, a partial deferral of the loan is used to eliminate the excess cash flow. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

eDALR$ attempts to develop a feasible plan for the first year by deferring payments on FSA loans until the end of the deferral period (1 to 5 years). A deferral decreases the payment during the period of the deferral and increases the payment for the remaining term. Deferrals are beneficial only if the debt repayment margin increases in the year after the deferral period. This improvement must be no later than 6 years after the current planning year, since the maximum deferral period is 5 years.

To determine the appropriate deferral period, the authorized agency official and borrower review the farm operation for the upcoming 5-year period. Program loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

Program loans are deferred at the lower of the original note rate, current program interest rate, current regular program rate in effect on the date of a completed primary loan servicing application, or if applicable, the limited resource rate.

To select program loans for deferral, eDALR$ calculates the payment after the deferral period for each loan as if the loan had been fully deferred. eDALR$ defers the loan with the smallest ratio first and so forth.

### J Servicing Program Loans for Rescheduling or Reamortization

eDALR$ reschedules or reamortizes nondelinquent program loans at the maximum term and with an interest rate at the lower of the original note rate, the current loan program rate, or the current regular program rate in effect on the date of a completed primary loan servicing application. eDALR$ reschedules or reamortizes limited resource rate loans at the lower of the original note rate, the current regular rate, and/or the current limited resource rate. eDALR$ reschedules or reamortizes nondelinquent program loans 1 loan at a time until a feasible plan is developed with the appropriate debt service margin or until eDALR$**--***
processes all nondelinquent program loans.

***--Instructions for Using eDALR$ (Continued)**

**3 eDALR$ Calculations (Continued)**

**J Servicing Program Loans for Rescheduling or Reamortization (Continued)**

eDALR$ selects program loans in the order of lowest security priority first. For loans with equal security priorities, eDALR$ bases the secondary selection on the loan with the lowest amortization factor. For loans with equal amortization factors, eDALR$ bases the selection on the loan with the lowest present value. If the lowest present value is equal, eDALR$ bases the final selection on the loan with the smallest amount of debt.

**K Servicing Delinquent Non-Program Loans for Rescheduling or Reamortization**

eDALR$ reschedules or reamortizes all delinquent Non-Program loans at the maximum term with an interest rate at the lower of the original note rate or current *** * *** Non-Program rate.

eDALR$ restructures only delinquent Non-Program loans during this process. eDALR$ selects loans that are identified as Non-Program or homestead protection loans and then selects the loan with the lowest amortization factor.

**L Writedown**

When the debt service margin reaches zero percent and a feasible plan has not been developed, eDALR$ considers writeoff of FSA program debt for a borrower who has not received the lifetime limit for writedown and writeoff. If eligible for debt forgiveness, eDALR$ offers buyout at current market value, otherwise debt settlement is offered.

- If the cash available for the first year is greater than the cash available for the year after the deferral period, eDALR$ considers writedown, in combination with other primary loan service programs. When considering a borrower for a writedown, eDALR$ attempts to maximize the borrower's repayment ability and minimize losses to the Government.

  The amount of writedown cannot exceed the $300,000 limitation according to Part 4. In addition, the present value of the program loan payments plus the amount of the CC cannot be less than the total NRV of the FSA security and nonessential assets.

  eDALR$ prioritizes the program loans for writedown and attempts to develop a feasible plan (pass one). If a feasible plan is not found, eDALR$ re-orders the program loans--***** based on different criteria and again attempts to develop a feasible plan with writedown (pass two).

***--Instructions for Using eDALR$ (Continued)**

**3 eDALR$ Calculations (Continued)**

**L Write-down (Continued)**

For the first attempt to writedown (pass one), eDALR$ bases program loan selection to maximize the amount of writedown. eDALR$ selects the program loan with the lowest security priority first. For program loans with an equal security priority, eDALR$ bases the secondary selection on the program loan with the largest amortization factor.

If a feasible plan is not developed, eDALR$ re-orders the program loans based on new criteria and again attempts writedown (pass two). eDALR$ bases its program loan selection on lowest security priority. For program loans with equal security priority, eDALR$ bases the secondary selection on the program loan with the smallest present value factor. For program loans with equal present value factors, eDALR$ bases the selection on the program loan with the highest amortization factor. For program loans with an equal amortization factor, eDALR$ selects the program loan with the largest debt first.

- If the cash available after the deferral period is greater than the cash available in the first year, eDALR$ considers a combination of deferral and writedown.

  eDALR$ selects program loans for deferral to achieve a cash flow in the first year. If deferral of a program loan results in a first year cash flow that exceeds the applicable debt service margin, eDALR$ partially defers the loan to reduce the excess cash flow. If there is a negative cash flow after the expiration of the deferral period, eDALR$ writes down 1 loan to attempt to develop a feasible plan in the year after the deferral period. This process is repeated until a feasible plan is developed for both the first year and the year after the deferral period, or until eDALR$ has processed all program loans. The amount of the writedown cannot exceed the $300,000 limitation and the present value of the restructured loans plus the value of the CC cannot be less than the total net recovery value of the FSA security and nonessential assets.

  To select program loans for deferral, eDALR$ calculates the payment for each loan as if it has been fully deferred.

  eDALR$ defers the program loan with the smallest ratio first and so on until the**--***
  borrower has a first year cash flow with the appropriate debt service margin or all loans have been deferred.

  The deferred portion of the loan is considered a separate loan in this process and must be prioritized for consideration with the remaining loans.

***--Instructions for Using eDALR$ (Continued)**

## 3 eDALR$ Calculations (Continued)

### M Market Value Buyout

eDALR$ considers current market value buyout when a feasible plan cannot be developed after considering the borrower for all combinations of servicing options and the borrower has not received the lifetime limitation for writedown and writeoff. The amount of FSA debt to be written off must be less than or equal to the $300,000 limitation, otherwise the borrower is not eligible for primary loan servicing or current market value buyout. In this case, the borrower is offered debt settlement.

### N Cash Improvement

eDALR$ determines the amount of cash improvement needed in the first year balance available to develop a feasible plan with a zero percent debt service margin when a feasible plan otherwise cannot be developed.

### O Results of Calculations

At this point, eDALR$ has finished its calculations. A feasible plan has been developed or all possible combinations of servicing actions have been considered. eDALR$ provides a report of the results of the calculations performed.

If eDALR$ does not find a solution that will provide a feasible plan, FSA proceeds with--* the other actions authorized in this handbook, including mediation, debt settlement, offering the borrower a current market value buyout, and considering the borrower for homestead protection.

***--Instructions for Using eDALR$ (Continued)**

## 4 eDALR$ Formulas

### A Interest Accrual on Existing Loans

If the interest accrual date for an existing loan precedes the proposed restructure date, eDALR$ determines the amount of additional interest that accrues between these dates. This amount is added to the unpaid interest that was outstanding as of the accrual date. The calculations used are as follows.

- Interest accrual after the loan status date = [(principal * interest rate)/365] * (effective date-accrual date)

- Total accrued interest = interest accrual after the loan status date + interest accrual as of the loan status date

### B Debt Service Margin (DSM)

eDALR$ attempts to develop a feasible plan that provides the borrower with a 10 percent margin above the amount needed for family living expenses, farm operating expenses, and debt service obligations. If a feasible plan cannot be found with a 10 percent DSM, eDALR$ reduces the margin in increments of 1 percent until a feasible plan is found or the DSM falls below zero. eDALR$ considers all loan servicing options, except writedown, before reducing the debt service margin. eDALR$ only considers writedown when the DSM equals zero.**--***

The DSM applies in both the first year and the post deferral year calculations if deferral is being considered. The DSM is used to calculate the cash available to restructure FSA debt as follows:

- Adjusted balance available = balance available plus total farm operating expense plus family living expenses plus non-Agency debt payments and taxes minus farm operating interest expense

- Adjusted non-Agency debt payment = non-Agency debt payments and taxes plus family living expense plus total farm operating expense minus farm operating interest expense

- Debt service margin amount = balance available minus non-Agency debt payments and taxes minus restructured FSA debt payments minus nonrestructured FSA debt payments

***--Instructions for Using eDALR$ (Continued)**

**4 eDALR$ Formulas (Continued)**

**B Debt Service Margin (DSM) (Continued)**

- Cash available to restructure FSA debt = [((adjusted balance available) /(applicable debt service margin (e.g., 1.10))) minus (adjusted non-Agency debt payment)]

- Debt service margin percentage = debt service margin amount/adjusted balance available

DSM used in these calculations is set initially at 1.10. If a feasible plan is not found after consideration of all available loan servicing options, the margin is reduced incrementally by .01. After the reduction is completed, eDALR$ reconsiders the borrower for all loan servicing requested. eDALR$ continues to reduce the DSM until a feasible plan is developed, or until it determines that a feasible plan is not possible with a DSM of 1.00.

**C Loan Payment Calculations**

eDALR$ calculates loan payments using amortization factors rounded to the nearest 5**--*** places. All payments are rounded up to the next dollar. The equations used to calculate loan payments are as follows.

- Payments on new FSA loans

  Payment = principal amount * amortization factor

- Payments on FSA loans for annual operating expenses

  - Determine the average number of months that the loan for annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

    For example, the loan for annual operating expenses is estimated to be $15,000 and the projected advance and repayment schedule is:

| Principal balance outstanding | Number of months outstanding |
|---|---|
| $15,000 | 3 |
| $8,000 | 2 |
| $6,000 | 4 |

***--Instructions for Using eDALR$ (Continued)**

**4 eDALR$ Formulas (Continued)--***

**C Loan Payment Calculations (Continued)**

Average months = [(3 x 15,000) + (2 x 8,000) + (4 x 6000)]/15,000

Average months = [45,000 + 16,000 + 24,000]/15,000

Average months = 85,000/15,000

Average months = 5.7

- Determine interest accrual on annual operating expense loan.

  Interest accrual = [(principal amount * interest rate)/12] * number of months outstanding

- Determine total payment.

  Total payment = principal amount + interest accrual

**D Payments for Rescheduled or Reamortized Loans**

Determine interest accrual if loan status date precedes the proposed restructure date.

Determine unpaid loan balance.

Unpaid loan balance = principal amount + unpaid interest (as of the loan status date) + interest accrual

Determine payment amount.

Payment = unpaid balance * amortization factor

***--Instructions for Using eDALR$ (Continued)**

**4 eDALR$ Formulas (Continued)**

**E Payments for Deferred Loans**

Determine payments for deferred loans as follows.

- Determine term of loan entered in eDALR$.**--***
- Determine remaining term after deferral period.

  Remaining term = term - deferral period

- Determine payment during deferral period.

  Payment = nondeferred principal * amortization factor

  **Note:** Amortization factor is based on the full term of the loan.

- Determine payment after deferral.
  - Determine interest accrual on deferred principal.

    Interest accrual = deferred principal * interest rate * deferral period

  - Determine payment on interest accrual.

    Payment = interest accrual / remaining term

  - Determine payment on deferred principal.

    Payment = deferred principal * amortization factor

    **Note:** Amortization factor is based on the remaining term after the expiration of the deferral period.

  - Determine total payment after deferral.

    Payment = payment of nondeferred principal + payment on interest accrual + payment on deferred principal

***--Instructions for Using eDALR$ (Continued)**

**4 eDALR$ Formulas (Continued)--***

**F Loan Amortization Factors**

Loan amortization factors are calculated using the following equations:

- Nondeferred loan

  $A = [(i(l + i)^{n})/((l + i)^{n-l})]$

  A = Amortization factor
  i = Interest rate
  n = Term

- Deferred loan

  $A = [((i(l + i)^{n-t})/((l + i)^{n-t-l})) + ((i * t)/(n-t))]$

  A = Amortization factor
  i = Interest rate
  n = Term
  t = Deferral period

- Deferred interest

  $A = l/(n-t)$

  A = Amortization factor
  n = Term
  t = Deferral period

**G CC Calculations**

Calculate the amount of debt to be canceled for a delinquent borrower as follows.

- Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans. Contract acres divided by total farm acres = ____%

- Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by FSA) by the percentage calculated in step 1. Total FLP debt * percent calculated in step 1 = ____

***--Instructions for Using eDALR$ (Continued)**

**4 eDALR$ Formulas (Continued)--***

**G CC Calculations (Continued)**

- Determine the current value of the land in the contract by multiplying the present market value (PMV) of the farm that secures the borrower's FLP loans by the percent calculated in step 1. PMV of total farm * percent calculated in step 1 = ____

- Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step 2. Result from step 2 - result from step 3 = ____

- Select the greater of the amounts calculated in step 3 and step 4.

- Select the lesser of the amounts calculated in steps 2 and 5. This amount will be the maximum amount of debt that can be canceled for a 50-year contract term.

- For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. Result from step 6 * 60% = ____

- For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 6. Result from step 6 * 20% = ____

Calculate the amount of debt to be canceled for a current borrower as follows.

- Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans. Contract acres divided by total farm acres = ____%

- Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by FSA) by the percentage calculated in step 1. Total FLP debt * percent calculated in step 1 = ____

- Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid) by 33 percent. Total FLP debt * 33% = ____

- Select the lesser of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

- For a 30-year contact term, the borrower will receive 60 percent of the amount calculated in step 4. Amount calculated in step 4 * 60% = ____

- For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. Amount calculated in step 4 * 20% = ____

***--Instructions for Using eDALR$ (Continued)**

**4 eDALR$ Formulas (Continued)--***

**H Present Value Calculations**

Calculating Net Present Value without a deferral

Determine the appropriate value for the following items:

i = Discount rate, expressed as a percentage
n = Loan term, number of remaining annual payments
p = Loan payment, total dollar payment after restructuring

Formula: $[[(1+i)^n - 1/(i(1+i)^n)]p]$

Step 1: 1 + i = _____(a)
Step 2: $a^n$ = _____(b)
Step 3: b - 1 = _____(c)
Step 4: b*i = _____(d)
Step 5: c / d = _____(e)
Step 6: e*p = _____Net Present Value

Calculating Net Present Value with a deferral

Determine the appropriate value for the following items:

i = Discount rate, expressed as a percentage
n = Loan term, number of remaining annual payments
p = Loan payment, dollar payment after restructuring
t = Deferral period, in years

Formula: $[[[(1+i)^{n-t} - 1/i(1+i)^{n-t}]/(1+i)^t]p]$

Step 1: 1 + i = _____(a)
Step 2: $a^{n-t}$ = _____(b)
Step 3: b - 1 = _____(c)
Step 4: b*i = _____(d)
Step 5: c/d= _____(e)
Step 6: $a^t$ = _____(f)
Step 7: e/f = _____(g)
Step 8: g*p = _____Net Present Value

***--Instructions for Using eDALR$ (Continued)**

## 4 eDALR$ Formulas (Continued)--*

### I Partial Deferral Calculations

Whenever full deferral of a loan results in excess cash flow (above the applicable debt service margin) in the first year, a partial deferral of that loan will decrease future payments on that loan and eliminate the excess cash flow in the first year. A partial loan is created by apportioning the loan balance into 2 distinct parts, nondeferred and deferred.

Partial deferrals are calculated as follows.

- Determine the amount of deferral necessary to achieve cash flow in the first year.

  d = l-(r/R)

  d = The fraction of the loan that must be deferred
  r = The amount of excess cash flow in the first year with full deferral
  R = The debt repayment on the loan in the first year without deferral.

- Determine the deferred and nondeferred portion of the loan.

  - P1 = (1-d) * P

    P1 = (r/R) * P
    P1 = Nondeferred portion
    d = Fraction of the loan that must be deferred
    P = Principal balance

  - P2 = P-P1

    P2 = Deferred portion
    P = Principal balance
    P1 = Nondeferred portion

***--Instructions for Using eDALR$ (Continued)**

## 4 eDALR$ Formulas (Continued)

### J Debt Writedown and Buyout Limitation

eDALR$ attempts to develop a feasible plan with a 10 percent debt service margin. All program loan servicing, excluding writedown, is considered before reducing the debt service margin. eDALR$ will consider writedown only if all of the following conditions are met.

- The borrowers have not received the lifetime limitation for writedown or writeoff with buyout.
- At least 1 program loan is delinquent.
- The debt service margin is at zero percent.

If a feasible plan is found with writedown, eDALR$ determines the amount of writedown necessary for the borrower to have a positive cash flow.

- If the amount of the writedown is less than or equal to $300,000, a feasible plan has been found.
- If the amount of writedown is greater than $300,000 and the debt service margin equals 1.00, or a feasible plan cannot be developed, eDALR$ determines the amount of--***** writeoff, with buyout at the current market value.
- If the amount of writeoff, with buyout at the current market value, is less than or equal to $300,000, the borrower is offered buyout.
- If the amount of writeoff, with buyout at the current market value, is greater than $300,000, the borrower is not eligible for loan servicing or buyout and the borrower is offered debt settlement.

## 5 Periodic Data

### A Administrative Liquidation Costs

The administrative liquidation costs for each loan type are provided in the following table.

| Loan Type | Calculation | Cost |
|---|---|---|
| OL | ***--**(3063 ÷ 60 = 51.05) X $24.31 = | $1,241 |
| FO/SW/CL | (3063 ÷ 60 = 51.05) X $24.31 = | $1,241 |
| EM/EE | (3063 ÷ 60 = 51.05) X $24.31 = | $1,241 |
| RH (Used for RHF loans only.) | (3063 ÷ 60 = 51.05) X $24.31 = | $1,241**--*** |

**Note:** Costs were calculated using the most recently available Delphi study for the average number of hours spent on a liquidation activity by FSA employees, and used the ***--**2014 GS-11/1 hourly pay rate. The Delphi study is a nationwide survey and**--*** forecasting tool that records averages of times and actions on FSA accounts.

### B Legal Liquidation Costs

Legal liquidation costs will be determined for real estate and chattel foreclosures, as well as chattel-only foreclosures. These costs estimate liquidation costs for Government attorney time for foreclosure cases in both judicial and nonjudicial foreclosure States and will vary by State. Legal liquidation cost estimates should be determined based on the costs that have been incurred during past liquidations in that State. U.S. Attorney Office costs should only be included in States where judicial foreclosures are required.

### C Determining Chattel Costs

Chattel costs are determined based on the following:

- "Months Held in Inventory" - FSA rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless the Administrator approves chattel acquisitions and determines that chattels do have a holding period.

  **Note:** If significant acquisitions occur and a chattel holding period becomes necessary, States will contact the National Office for guidance and provide detailed information about the acquisition and planned disposal of the chattel property.

- "Sales Commission Rate" - Authorized agency official will conduct a survey of auctioneers to determine the average commission rate for chattel sales in the area.

- "Other Sales Costs" - These are miscellaneous costs typically incurred when selling acquired chattels. County Offices should request State Office guidance in unusual cases.

- "Rate of Change in Value" - This is a yearly percentage decrease or increase in the value of the property. The normal rate of change in value for chattels will be zero as FSA rarely acquires chattel property.

**Instructions for Using eDALR$ (Continued)**

## 5 Periodic Data (Continued)

### D Real Estate Costs

The analysis for liquidation and disposition costs should, as a minimum, address the following items and considerations.

- "Months Held in Inventory" - The average holding period will be 5.5 months (165 days). National Office guidance and an Administrator's exception will be required if a longer holding period is considered.

- "Sales Commission Rate" - A study will be conducted to determine the typical method for disposition of FSA inventory farms in the state. The findings will be used to determine whether FSA normally disposes of inventory farms without the assistance of brokers or auctioneers. If a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will always be included at the rate specified on the listing agreements or contracts in effect for the County Office.

- "Cost Per Advertisement" - Authorized agency official will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with paragraph 781.

- "Rate of Change in Value" - Yearly percentage decrease or increase in value is the rate of change in value. To provide a fair assessment of projected trends in farm land values, SED will utilize FLMAC.

*--**Note:** See subparagraph E for FLMAC composition and purpose.--*

- "Management Charges" - In situations where state or district-wide contracts for management of inventory farms are in effect, the SED will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no area-wide contract rates for some or all counties, State Office guidance should be given on how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

## 5 Periodic Data (Continued)

### E FLMAC

FLMAC will consist of the following members or representatives:

- FSA, SED
- NRCS, State Conservationist
- Extension Specialist from a land grant university, if available, or the National Institute for Food and Agriculture employee with knowledge of the farm real estate market.

Data obtained from EIP-51R and FSA-326 may be useful to FLMAC in determining the annual percentage of decrease or increase in land values.

FLMAC will meet at least annually, and will consider the following information:

- The actual change in farm land values in the state during the previous year, as indicated in the most recent "Agricultural Land Values and Market Situation Outlook Report" issued by the USDA Economic Research Service.
- Current conditions in the state and national agricultural economics.
- Availability and cost of credit to purchase farm land.
- The amount of repossessed farm land held by FSA, the Farm Credit System, and other private sector lenders.
- Any special conditions which would affect farm land values in the state.
- Any studies or research conducted by the state agricultural university or similar scholarly source.

If the state has agricultural regions with discernable differences, FLMAC should, if possible, determine anticipated value changes on a regional basis. FLMAC's meetings and decisions, including the basis for those decisions, will be documented, retained in the State Office as part of the State supplement file and provided to interested parties upon request. Prior to providing the FLMAC determinations to FSA field offices, SED will contact SED's in surrounding states to determine if FLMAC's findings are fairly consistent with those of surrounding states. If there are significant differences, SED may reconvene FLMAC to reconsider its findings.

**Instructions for Using eDALR$ (Continued)**

## 5 Periodic Data (Continued)

### F State Supplement

SED's will issue a state supplement to:

- address the estimated costs and average holding period to be used in making calculations of net recovery value
- provide the factors to use in adjusting market value.

**Note:** The State supplement shall be issued after completing the cost analysis, but no ***--**later than 60 calendar days after the updates to administrative liquidation costs have been issued.**--***

**Instructions for Using eDALR$ (Continued)**

## 5 Periodic Data (Continued)

### G Determining Property Management Costs

Property Management Cost is the administrative cost of managing a property while the property is being held in FSA inventory. The cost will be deducted in cases involving real property. The following worksheet is used to calculate the property management costs. Delphi data standards are used and average actions per month per the national average from the Delphi Study for required actions per property are also put into the formula. Complete the worksheet by using the average holding period of inventory property determined according to subparagraph C. An example has been completed based on national average data with an average holding period of 5.5 months.

**Determining Property Management Costs**

| Step | Action |
|---|---|
| 1 | ( .215 X 5.5 = 1.1825 )<br>Average Actions Per Property/Month; Average Holding Period |
| 2 | ( 180 ÷ 60 = 3 )<br>Delphi Data for Real Estate Loans |
| *--3 | ( 1.1825 X 3 X 24.31 = 86.24 )--*<br>Amount from Step 1; Amount from Step 2; 2014 GS 11/1 Hourly Pay |
| 4 | ( 648 ÷ 60 = 10.8 )<br>Delphi Data for Inventory Actions |
| *--5 | ( 10.8 X 24.31 = 262.55 )<br>Amount from Step 4; 2014 GS 11/1 Hourly Pay |
| 6 | ( 86.24 + 262.55 = 349.00 )--*<br>Amount from Step 3; Amount From Step 5; Administrative Costs for Inventory Property (Rounded to nearest $) |

**Shared Appreciation Agreement Reminder**

(Use Agency Letterhead format with local return address.)

SHARED APPRECIATION AGREEMENT REMINDER

Dear (Borrower's Name)

Our records indicate that on , the Farm Service Agency wrote down of your debt. In processing this writedown, you signed a 5-year Shared Appreciation Agreement (SAA) in relation to the real estate you pledged as security for the FSA debt. We have enclosed a copy of your SAA for your reference.

This letter is intended to remind you of your potential obligation to repay all, or a portion, of the debt that FSA wrote down. In accordance with the SAA, you agreed to pay appreciation, if any, in the value of the property up to the amount of the debt written down. This amount will be due if the property you pledged as security has appreciated in value when any one of the following events occurs:

1 - 5 years have passed since you signed the SAA
2 - title to the real estate is conveyed
3 - your FSA loans are repaid
4 - you cease farming
5 - your account is accelerated because of default

If you believe your property has increased in value since your writedown, you will need to consider this potential liability as you make your future plans. The amount of repayment is 75 percent of any appreciation if one of the events numbers 2 through 5 above occurs during the first 4 years of the SAA, and 50 percent of any appreciation if one of the events occurs during the fifth year of the SAA. The amount of repayment cannot exceed the amount of debt written down.

If you would like more information on how the SAA may affect you and what options are available, please contact this office to discuss it further.

Sincerely,

**Calculation of Shared Appreciation Recapture**

Complete steps 1 through 4 for each SAA. Steps 5 through 7 will also be completed when more than one SAA exists and appreciation, as calculated in step 4 for each agreement, shows appreciation due from more than 1 agreement. Funds collected by FSA should be paid first to the shared appreciation account and the balance to the FSA loans in the order of lien priority.

**Step 1**. Determine the time period the shared appreciation has been active, the amount of debt written down, and the maximum appreciation still collectible.

| | | |
|---|---|---|
| **(A)** | $ **(B)** | $ **(C)** |
| Period of SAA (mm/dd/yy to mm/dd/yy) | Amount of Debt Written down | Maximum Appreciation still collectible prior to this calculation - [(B) minus previous appreciation calculated for this agreement.] |

**Step 2**. Determine value appreciation.

| | | | | |
|---|---|---|---|---|
| $ **(D)** | - | $ **(E)** | = | $ **(F)** |
| CMV of real estate parcel at time of sale minus capital improvements calculated as per 5-FLP, Paragraph 343. For other cases, at time of expiration/termination. | | CMV at time of writedown for a partial sale, or CMV of all remaining parcels at time of writedown. If a previous SAA has expired, and has the same security, enter CMV of parcels at end of previous SAA period. | | Value Appreciation at time of sale of parcel for partial sale, or at expiration/termination for all other cases. |

**If (F) is positive, proceed to step 3. If (F) is negative, no appreciation is due on this agreement.**

**Step 3**. Determine Shared Appreciation based on percent. (Less than 4 yrs. = 75%, 4 years or more = 50%)

| | | | | |
|---|---|---|---|---|
| $ **(F)** | X | **(G)** | = | $ **(H)** |
| Value Appreciation calculated from step 2. | | Percent of FSA share in appreciation. | | Shared Appreciation |

**Step 4.** Determine the amount of shared appreciation due FSA. This is the lesser of the amount calculated in step 3 or the amount of debt written down minus any shared appreciation previously due.

| | | | | |
|---|---|---|---|---|
| Lesser of: $ **(H)** | or | $ **(C)** | = $ | **(I)** |
| Amount calculated in step 3 | | Appreciation Collectible from step 1 | | Amount of Shared Appreciation Due FSA |

**Calculation of Shared Appreciation Recapture (Continued)**

Complete steps 5 through 7 when more than one SAA exists and appreciation is due from more than 1 agreement at the same time. Complete only after completing steps 1 through 4 as applicable for each agreement.

**Step 5.** Determine the greater of the amounts calculated in step 4 for each agreement to determine the total shared appreciation due FSA.

| Greater of: $ | **(I)** | or $ | **(I)** | = $ | **(J)** |
|---|---|---|---|---|---|
| | Amount calculated in step 4 for Agreement 1 | | Amount calculated in step 4 for Agreement 2 | | Total Shared Appreciation due FSA |

**Step 6**. Complete this step if the agreements do not have the same percent of appreciation (50 or 75 percent) and the agreement with the 50 percent appreciation is greater than the agreement with the 75 percent appreciation.

This step determines the 25 percent difference to collect from the agreement from which 75 percent appreciation is due.

| $ | **(F)** | X | **.25** | = $ | **(K)** | + $ | **(J)** | = $ | **(L)** |
|---|---|---|---|---|---|---|---|---|---|
| | Total appreciation in value calculated in step 2 (Agreement which 75% is due). | | Difference in percentages due on each agreement | | Shared Appreciation due on 75% agreement | | Shared Appreciation due on 50% agreement | | Total Shared Appreciation due FSA |

**Step 7**. Determine the amount of shared appreciation due on each agreement (distribution of shared appreciation between the two agreements).

| $ | **(J) or (L)** | - $ | **(I)** | = $ | **(M)** |
|---|---|---|---|---|---|
| | Total Shared Appreciation due as determined in step 5 or 6 as applicable. | | Shared Appreciation due on Agreement #1 as calculated in step 4 | | Net Amount due on Shared Appreciation Agreement #2 |

**Calculation of Shared Appreciation Recapture (Continued)**

**Example 1:** Calculation of shared appreciation at the end of the 5-year period. Shared Appreciation Agreement Period February 1, 2001, to February 1, 2006. Writedown amount was $100,000.00.

| | | |
|---|---|---|
| A. Market value at the end of the 5-year period | = | $75,000 |
| B. Market value at the time of writedown | = | $50,000 |
| C. Value Appreciation (A - B) | = | $25,000 |
| D. 50% of positive appreciation | | X .50 |
| E. Shared Appreciation due FSA | = | $12,500 |

**Example 2:** Calculation of shared appreciation due when a portion of the property is sold, such as timber or land, in the 1st 4 years of the agreement. Shared Appreciation period February 1, 1996, to February 1, 1999. Writedown amount was $25,000.00.

| | | |
|---|---|---|
| A. Market value of the property being sold at the time of sale | = | $100,000 |
| B. Market value of property being sold as of the effective date of the share appreciation agreement | = | 90,000 |
| C. Value Appreciation (A - B) | = | $ 10,000 |
| D. 75% of positive appreciation | | X .75 |
| E. Shared Appreciation due FSA | = | $ 7,500 |
| F. Maximum appreciation FSA can collect during the remaining period of the agreement. ($25,000 Writedown - $7,500 appreciation) | = | $ 17,500 |

**Example 3:** Calculation of shared appreciation when there are 2 shared appreciation agreements on the same security and each one expires separately.

| | |
|---|---|
| Date of #1 Shared Appreciation Agreement: | February 1, 2001 |
| Expiration Date: | February 1, 2006 |
| Market Value of real property at time of agreement: | $100,000 |
| Market Value of real property at end of 5 years: | $120,000 |
| Amount of Writedown: | $100,000 |
| Date of #2 Shared Appreciation Agreement: | February 1, 2003 |
| Expiration Date: | February 1, 2008 |
| Market Value of real property at time of agreement: | $110,000 |
| Market Value of real property at end of 5 years: | $125,000 |
| Amount of Writedown: | $ 50,000 |

**Calculation of Shared Appreciation Recapture (Continued)**

**Example 3: (Continued)**

(A) Shared Appreciation Agreement for #1

| | | |
|---|---|---|
| (1) Market value at the end of the 1st 5-year agreement | = | $120,000 |
| (2) Market value at the time of writedown | = | -100,000 |
| (3) Value Appreciation (1) - (2) | = | 20,000 |
| (4) 50% of positive appreciation | | X .50 |
| (5) Shared Appreciation due FSA on #1 | = | $ 10,000 |

(B) Shared Appreciation Agreement for #2

| | | |
|---|---|---|
| (1) Market value at the end of the 2nd 5-year agreement | = | $125,000 |
| (2) Market value at the time of writedown or at the end of the first 5-year agreement whichever is greater | = | - 120,000 |
| (3) Value Appreciation (1) - (2) | = | 5,000 |
| (4) 50% of positive appreciation | | X .50 |
| (5) Shared Appreciation due FSA on #2 | = | $ 2,500 |

**Example 4:** Calculation of shared appreciation when there are 2 shared appreciation agreements with the same security and the borrower sells all security property 4½ years after the 1st agreement was effective. The 2nd agreement has a greater appreciation due.

**Note:** If the agreements did not have the same security, each shared appreciation agreement will stand alone.

| | |
|---|---|
| Market Value of Real Property Sold: | $150,000 |
| Date of Sale: | August 1, 2005 |
| Date of #1 Shared Appreciation: | February 1, 2001 |
| Market Value of Real Property at Time of Agreement: | $120,000 |
| Amount of Writedown: | $ 20,000 |
| Date of #2 Shared Appreciation: | February 1, 2003 |
| Market Value of Real Property at Time of Agreement: | $125,000 |
| Amount of Writedown: | $ 20,000 |

(A) Shared Appreciation for #1

| | | |
|---|---|---|
| (1) Market value of the property being sold | = | $150,000 |
| (2) Market value of property at time of agreement | = | - 120,000 |
| (3) Amount of Appreciation (1) - (2) | = | $ 30,000 |
| (4) Appreciation Period (2/1/01 - 8/1/05 = 4 years and 6 months) | | X .50 |
| (5) Shared Appreciation due FSA on Agreement #1 | = | $ 15,000 |

**Calculation of Shared Appreciation Recapture (Continued)**

**Example 4: (Continued)**

(B) Shared Appreciation for #2

| | | |
|---|---|---|
| (1) Market value of the property being sold | = | $150,000 |
| (2) Market value of property at time of agreement | = | - 125,000 |
| (3) Amount of Appreciation (1) - (2) | = | $ 25,000 |
| (4) Appreciation Period (2/1/03 - 8/1/05 = 1 year and 6 months) | | X .75 |
| (5) Shared Appreciation due FSA on Agreement #2 | = | $ 18,750 |

In this example, step 6 is not required as Agreement #2 with the 75 percent value had a greater appreciation due than Agreement #1.

(C) Shared Appreciation due FSA (Greater of A5 or B5) = $ 18,750 (B5)
Agreement #1 (A5) $15,000 vs. Agreement #2 (B5) $18,750)

| | | |
|---|---|---|
| (D) Shared Appreciation due FSA on Agreement #1 | = | $ -15,000 |
| (G) Net Amount due FSA on Agreement #2 (C - D) | = | $ 3,750 |

**Note:** If B5 - A5 had been a negative number, the shared appreciation due on agreement #2 will equal $0.

**Example 5:** Calculation of shared appreciation when there are 2 shared appreciation agreements with the same security and the borrower sells all security property 4½ years after the 1st agreement was effective. In this example, agreement #1 has a greater appreciation value.

| | |
|---|---|
| Market Value of Real Property Sold: | $150,000 |
| Date of Sale: | August 1, 2005 |
| Date of #1 Shared Appreciation: | February 1, 2001 |
| Market Value of Real Property at Time of Agreement: | $ 90,000 |
| Amount of Writedown: | $ 50,000 |
| Date of #2 Shared Appreciation: | February 1, 2003 |
| Market Value of Real Property at Time of Agreement: | $125,000 |
| Amount of Writedown: | $ 40,000 |

(A) Shared Appreciation for #1

| | | |
|---|---|---|
| (1) Market value of the property being sold | = | $150,000 |
| (2) Market value of property at time of agreement | = | - 90,000 |
| (3) Amount of Appreciation (1) - (2) | = | $ 60,000 |
| (4) Appreciation Period (2/1/01 - 8/1/05 = 4 years and 6 months) | | X .50 |
| (5) Shared Appreciation due FSA on Agreement #1 | = | $ 30,000 |

**Calculation of Shared Appreciation Recapture (Continued)**

**Example 5: (Continued)**

(B) Shared Appreciation for #2

| | | |
|---|---|---|
| (1) Market value of the property being sold | = | $150,000 |
| (2) Market value of property at time of agreement | = | - 125,000 |
| (3) Amount of Appreciation (1) - (2) | = | $ 25,000 |
| (4) Appreciation Period (2/1/03 - 8/1/05 = 1 year and 6 months) | | X .75 |
| (5) Shared Appreciation due FSA on Agreement #2 | = | $ 18,750 |

In this case, Agreement #1 has a greater appreciation, therefore step 6 must be completed to determine the additional 25 percent to collect towards Agreement #2.

(C) Total Shared Appreciation Due:

| | | |
|---|---|---|
| (1) Value of Appreciation from Agreement #2 (B3) | = | $ 25,000 |
| (2) 25% Difference in percentages due | | X.25 |
| (3) Amount of Shared Appreciation due on Agreement #2 | = | 6,250 |
| (4) Shared Appreciation due on Agreement #1 (A5) | = | $+30,000 |
| (5) Total Shared Appreciation due FSA | = | $ 36,250 |

## Initial Letter to Borrowers Who Received Unauthorized Assistance

*--

**5-FLP, Exhibit 30**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**INITIAL LETTER TO BORROWERS WHO RECEIVED UNAUTHORIZED ASSISTANCE**

*(For audit cases, show)*
Audit Report Number. _____
Audit Finding Number _____

(Borrower's Name and Address)

Dear

(1) The Farm Service Agency (FSA) has determined that you have received unauthorized financial assistance in the form of a (loan or interest subsidy). To correct this error, you need to repay FSA $ _____.

(2) FSA has determined that the loan servicing you received, was unauthorized. Your account is in default. The total amount of your loan balance of $ _____ will become due and payable unless the error is corrected.

[Choose (1) or (2) above as applicable]

[Insert a paragraph, specifically describing the unauthorized assistance, including the reason(s) as provided in 5-FLP, Part 10.]

We have scheduled an appointment at [time] on [date]for you to come into the office to discuss FSA's claim. If you believe that the assistance was authorized, you may provide documentation for FSA consideration. Possible servicing actions also will be discussed.

If you are unable to keep this appointment, please contact this office to change the appointment. It is urgent that you respond to this request. Failure to do so within 30 days will result in FSA initiating appropriate collection action.

Sincerely,

--*

## Letter to Borrowers Who Received Unauthorized Assistance – Final Determination

*--

**5-FLP, Exhibit 31**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

LETTER TO BORROWERS WHO RECEIVED UNAUTHORIZED ASSISTANCE –
FINAL DETERMINATION

(For audit cases, show)
Audit Report Number. _____
Audit Finding Number _____

(Borrower's Name and Address)

Dear

After careful consideration of all information available, the Farm Service Agency (FSA) has determined that you have received unauthorized financial assistance as outlined below.

[Insert a paragraph which:

(a) Describes the unauthorized assistance; and

(b) States the amount which must be repaid (This should be the same amount stated in Exhibit 30 unless subsequent information provided by the recipient changed this amount).

Ninety days from your receipt of this letter, your account will be in non-monetary default and you will be notified of FSA's intent to accelerate and foreclose on your real estate and chattels unless you take one of the following steps. You have 30 days to notify FSA of you decision.

1. You may repay the amount stated above.

2. You may refinance or repay your entire FSA loan.

3. You may convey to FSA all of the property securing your loans, if the conveyance meets the FSA requirements.

4. You may request your loan be converted to non-program status which will probably shorten the term and raise the interest rate. A feasible plan would be required.

5. You may [insert any additional corrective action possible discussed at the meeting which complies with 5-FLP, Part 10]

Sincerely,

--*

**Letter to Borrowers Who Received Unauthorized Assistance – Final Determination (Continued)**

*--

*The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.*

*The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)*

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

*Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish). Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).*

--*

**Notice to Borrower's Attorney Regarding Loan Servicing Options**

**Note:** Exhibit 34 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 34**".
***--**



This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**Notice to Borrower's Attorney Regarding Loan Servicing Options**

_____

_____

RETURN ADDRESS

Borrower's Attorney's Address

Dear

This letter provides important information which the Farm Service Agency (FSA) requests you to provide to your client _____ who has filed a bankruptcy petition, or is currently under the jurisdiction of the bankruptcy court. Your client was also sent a copy of this letter. Subject to the applicable provisions of the Bankruptcy Code and FSA regulations, FSA may take action to enforce its security instrument given by _____ as security for an FSA loan. However, your client may be able to cure one or all of the problems indicated below so that it will not be necessary for FSA to enforce its security instrument.

[ ] Loan payments are $ _____ past due.

[ ] Your client has disposed of some of the property used to secure the FSA loans. Your client did not get written approval for this action. This property is:

_____

_____

[ ] Your client has breached the agreements contained in the security instrument executed by your client in favor of FSA by taking the following actions: _____

_____

_____

[ ] Your client has failed to make the required payments under a confirmed bankruptcy plan.

[ ] Your client has

_____

_____.

Before FSA can act to enforce its security instruments, its regulations require FSA to provide borrowers with notice of servicing options. The enclosed forms explain the loan servicing options that FSA has available. **THIS NOTICE WILL BE YOUR CLIENT'S ONLY OPPORTUNITY TO APPLY FOR THESE SERVICING OPTIONS. YOUR CLIENT WILL NOT BE RENOTIFIED OF ANY ADDITIONAL SERVICING OPTIONS WHILE UNDER THE PROTECTION OF THE BANKRUPTCY COURT.** Depending upon the prior servicing and previous loan history, your client may not be eligible for servicing consideration or may be eligible for only certain servicing options. The following servicing options are available:

_____

_____

**--***

**Notice to Borrower's Attorney Regarding Loan Servicing Options (Continued)**

*--



This letter advises you that FSA can only consider eligibility for the remaining servicing options listed above, if any, and only within FSA's statutory and regulatory eligibility requirements. If there are servicing options available and your client wishes to apply for either primary or preservation loan servicing, you or your client must complete and return the enclosed application forms and any request for updated information, within _* days of receipt of this notice. By this response, you will be acknowledging that when FSA processes your client's request for loan servicing it is not interfering with any rights or protections your client may have under the Bankruptcy Code and its automatic stay provisions. FSA's processing of the application may include considering your client for primary and preservation loan servicing options, notifying your client of FSA's decision on the application in accordance with 7 CFR part 766, and holding any mediation, meetings or appeals requested by your client. If your client fails to complete and return the required information within the _* -day period, FSA will proceed to enforce its security instrument as allowed under the Bankruptcy Code and FSA regulations.

To ascertain whether your client is eligible for any remaining options, it may be necessary for FSA to work closely with your client. If your client requests this contact we hope that we can assist him or her. However, if favorable action is not possible, FSA will notify you, and provide your client with the opportunity to appeal the decision. FSA WILL NOT ACCELERATE THE ACCOUNT OR INITIATE FORECLOSURE UNTIL FSA COMPLIES WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE.

If your client's account is referred to the Department of Justice for foreclosure and/or other collection action after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to the debt as well as a Department of Justice fee of 3 percent.

--*

**Notice to Borrower's Attorney Regarding Loan Servicing Options (Continued)**

*--



If your client is discharged in a Chapter 7 bankruptcy, your client must reaffirm the entire FSA debt in accordance with the provisions of the Bankruptcy Code in order to receive FSA primary loan servicing. Reaffirmation requires the approval of the Bankruptcy Court. No reaffirmation is necessary for your client to be eligible for preservation loan servicing.

If your client is operating under a confirmed bankruptcy plan, and desires to apply for loan servicing and qualifies for servicing under FSA's regulations, you must also comply with provisions of the Bankruptcy Code practiced in your jurisdiction concerning modification of the plan. If your client's plan has not yet been confirmed by the Bankruptcy Court, you may choose to file a proposed plan which may or may not contain restructuring features similar to those available under FSA regulations. The Government, of course, is free to object to the proposed plan in accordance with the provisions of the Bankruptcy Code. If a plan is confirmed before servicing and any appeal is completed under FSA regulations, FSA will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan, if appropriate, in accordance with advice from FSA's legal counsel.

FSA's loan servicing regulation is found at 7 CFR part 766. FSA cannot promise you or your client that a request for loan servicing will be approved. However, FSA can promise that a request for any loan servicing options which remain will be fully and fairly considered.

Sincerely,

Attachments

cc: [Borrower's name]

* Show number of days remaining as explained in 5-FLP, paragraph 401.

--*

**Worksheet for Accepting a Voluntary Conveyance of Farm Loan Programs Security Property Into Inventory**

_____
(present owner/borrower)

See data published according to Exhibit 17, subparagraph 2 B for guidance in estimating the incomes and expenses to use in this exhibit. The holding period to be used is 165 days (5.5 months) ***--**or less if it can be justified by the actual State average holding period.

1. MARKET VALUE OF PROPERTY $ _____

   Date of Appraisal _____**--***

   ESTIMATED HOLDING PERIOD IN YEARS: _____

2. INCOME

   a. Annual Rent _____ x Holding Period _____ = _____

   b. Annual Royalties ____ x Holding Period _____ = _____

   c. Other Annual Income _____ x Holding Period _____ = _____

   d. Annual % Land Appreciation ___ x Holding Period _____ = _____

   e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____

   f. Other (describe) _____x Holding Period _____ = _____

   TOTAL ADDITIONS = $_____

3. EXPENSES

   a. Total Prior Lienholder Indebtedness (P and I) = _____

   b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, junior liens, etc.) List:

   _____ _____

   _____ _____ = _____

**Worksheet for Accepting a Voluntary Conveyance of Farm Loan Programs Security Property Into Inventory (Continued)**

c. Annual Taxes and Assessment _____ x Holding Period _____ = _____

d. Annual Building Depreciation _____ x Holding Period _____ = _____

e. Annual Management Costs _____ x Holding Period _____ = _____

f. Total Essential Repairs to Secure and Resell = _____

g. Annual % Decrease In Land Value _____ x Holding Period _____ = _____
(if applicable)

h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____

i. Total Interest Cost:

MKT Value $ _____ x Regular OL Rate_____ x Holding Period = _____

j. Value loss because of restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____

k. Hazardous Waste Clean-up Costs = _____

TOTAL DEDUCTIONS (ITEMS A THROUGH K) = _____

4. RECOVERY VALUE END OF HOLDING PERIOD

1. _____ + 2. _____ - 3. _____ = _____

| Market Value | Total Additions | Total Deductions | Recovery Value |
|---|---|---|---|

_____ Agency Official

_____ Date

Concurrence by: _____ State Executive Director

_____ Date

## *--10-Day Notice of Non-Program Loan Delinquency

**Note:** Exhibit 38 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 38**".

**5-FLP, Exhibit 38**

This Exhibit may only be revised by SED.

(*Use Agency Letterhead format with local return address.*)

**10-DAY NOTICE OF NON-PROGRAM LOAN DELINQUENCY**

Dear (*Borrower's Name*):

This is a notification that you are over 10 days delinquent on your payment to the Farm Service Agency (FSA):

| Loan | Due Date | Amount Past Due |
|---|---|---|

The security for these loans is:

_____.

As these loans are non-program, payment must be made within 20 calendar days of the date of this letter or FSA will begin servicing actions on your account. It is important that you take these actions as soon as possible because FSA cannot delay further servicing actions which could require acceleration or offset of Government payments.

For more information, please contact this office.

_____
Title
Office Address
Telephone number

--*

## *--30-Calendar-Day Reminder of Non-Program Loan Delinquency

**Note:** Exhibit 39 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 39**".

**5-FLP, Exhibit 39**

This Exhibit may only be revised by SED.

(*Use Agency Letterhead format with local return address.*)

**30-DAY REMINDER OF NON-PROGRAM LOAN DELINQUENCY**

Dear (*Borrower's Name*):

This is a notification that you are over 30 days delinquent on your payment to the Farm Service Agency (FSA):

Loan Due Date Amount Past Due

The security for these loans is:
_____.

As these loans are non-program, payment must be made within 60 calendar days of the due date of your loan or FSA will begin the process of accelerating your account and liquidating the security for the loan(s). FSA will accelerate your account and begin offsetting Government payments you receive if the loans become 90 days past due.

If you are unable to make the required payment, you may submit a plan to the FSA to sell the security and pay the proceeds on your debt. It is important that you take these actions as soon as possible because FSA cannot delay acceleration or offset of Government payments.

This is your second notice that your loans are past due and is **the last reminder you will receive**. If you need any further information or need a copy of the original notice, please do not hesitate to call your local office at the number below.

For more information, please contact this office.

_____
Title
Office Address
Telephone number

--*

**Notice of Acceleration of Your Debt (Non-Program) to the Farm Service Agency (FSA) and Demand for Payment of That Debt**

**Note:** Exhibit 40 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 40**".

***--**

**5-FLP, Exhibit 40**

This Exhibit may only be revised by SED with concurrence of OGC.

CERTIFIED MAIL
(*Name and Address*)

(*Use Agency Letterhead format with local return address.*)

Date

**SUBJECT: NOTICE OF ACCELERATION OF YOUR DEBT (NON-PROGRAM) TO THE FARM SERVICE AGENCY (FSA) AND DEMAND FOR PAYMENT OF THAT DEBT**

Dear (*Borrower's Name*):

PLEASE TAKE NOTE that the entire indebtedness due on the promissory note(s) and/or assumption agreement(s) which evidence the loan(s) received by you from the United States of America, acting through the Farm Service Agency (FSA), United States Department of Agriculture is now declared immediately due and payable. They are described as follows:

| Date of Instrument | Amount |
|---|---|

The promissory notes and assumption agreements are secured by Real Estate Mortgages, Deeds of Trust, Security Agreements, Financing Statements, etc. described as follows:

| Date of Instrument | Place of Recordation (Filing) | Recorded In: Book No. Page No. |
|---|---|---|

This acceleration of your indebtedness is made in accordance with the authority granted in the above-described instruments.

**--***

**Notice of Acceleration of Your Debt (Non-Program) to the Farm Service Agency (FSA) and Demand for Payment of That Debt (Continued)**

*--



The reason(s) for this acceleration of your indebtedness is (are) as follows:

The indebtedness due is $ unpaid principal, and $ unpaid interest, as of 20__, plus additional interest accruing at the rate of $ per day thereafter, plus any advances made by the U.S.A., for the protection of its security and interest accruing on any such advances. Unless full payment of your indebtedness is received within 30 days from the date of this letter, the U.S.A., will take action to foreclose the above-described security instruments and to pursue any other available remedies.

Payment should be made by cashier's check, certified check, or postal money order payable to the Farm Service Agency and delivered to FSA at (*street address or P.O. Box). (city). (ZIP Code*). If you submit to the U.S.A., any payment insufficient to pay the entire indebtedness or insufficient to comply with any arrangements agreed to between FSA and yourself, that payment WILL NOT CANCEL the effect of this notice. If insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the U.S.A., may have for breach of any promissory note or covenant in the security instrument(s) will result and FSA may proceed as though no such payment had been made.

[THE ABOVE-DESCRIBED SECURITY INSTRUMENTS PROVIDE THAT THE U.S.A. MAY FORECLOSE WITHOUT COURT ACTION BY SELLING THE PROPERTY AT PUBLIC SALE AFTER . THE GOVERNMENT INTENDS TO SELL THE PROPERTY IN THIS MANNER. NO FURTHER NOTICE IS REQUIRED TO BE GIVEN YOU CONCERNING THIS FORECLOSURE.] (*This paragraph will be omitted in States with judicial foreclosure or where it conflicts with State laws.*)

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

If you think FSA is in error in accelerating your account and proceeding with foreclosure, you may submit evidence within 15 calendar days to the undersigned documenting why your account is not in default. Your request will be forwarded to the next level of authority within FSA for consideration. This review will be based solely upon the record including your case file. Applicable statutes and regulations and the documentation you submit to support your position will be considered by the next level of authority.

You may apply for debt settlement and retain the property if you pay the current market value along with an additional amount you are able to pay.

You have the option of selling your property. This will provide you with an opportunity to recover any equity you may have in the property. NOTE: FSA regulations allow you to sell your property at its current market value regardless of the debt. The buyer may be able to obtain FSA financing on program or non-program terms.

--*

**Notice of Acceleration of Your Debt (Non-Program) to the Farm Service Agency (FSA) and Demand for Payment of That Debt (Continued)**

*--



Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (hhtp://www.fms.treas.gov/otcnet/index.html), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

United States of America by

(*District Director or State Approval Official*)
Farm Service Agency, United States Department of Agriculture

--*

**Notice of Acceleration of Your Farm Service Agency (FSA) Account (Non-Program)**

**Note:** Exhibit 41 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 41**".

***--**

**5-FLP, Exhibit 41**

This Exhibit may only be revised by SED with concurrence of OGC.

CERTIFIED MAIL
(*Name and Address*)

(*Use Agency Letterhead format with local return address.*)

Date:

(*Name and Address*)

**SUBJECT: NOTICE OF ACCELERATION OF YOUR FARM SERVICE AGENCY (FSA) ACCOUNT (NON-PROGRAM)**

Dear (*Borrower's Name*):

PLEASE TAKE NOTE that the Farm Service Agency (FSA) intends to enforce its Real Estate Mortgages, Deeds of Trust, Security Agreements, Financing Statements, etc. given or assumed by you as security for the following-described promissory notes and assumption agreements and declares the indebtedness immediately due and payable:

| Date of Instrument | Amount |
|---|---|

The security instruments referred to above are described as follows:

| Date of Instrument | Place of Recordation (Filing) | Recorded In: Book No. Page No. |
|---|---|---|

The decision to foreclose is made in accordance with the authority granted in the above-described security instruments for the following reasons:

The balance of the account is $ unpaid principal, and $ unpaid interest, as of , 20___, plus additional interest accruing at the rate of $ per day thereafter, plus any advances to be made by the United States for the protection of its security, and the interest accruing on any such advances. Pursuant to the terms of the loan instruments FSA is now exercising its option to declare this debt immediately due and payable, although FSA has no intention of seeking to recover any part of this debt from assets you have other than the property which is security for the debt.

**--***

**Notice of Acceleration of Your Farm Service Agency (FSA) Account (Non-Program) (Continued)**

*--

**5-FLP, Exhibit 41**

The security instruments executed by you in favor of FSA are not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debt, although a discharge under the Bankruptcy Code does render any debt discharged unenforceable as your personal obligation. In other words, if FSA proceeds with foreclosure or liquidation, all property which is security would be sold. If the proceeds from that sale are not sufficient to payoff the debt, FSA cannot seek a personal judgment against you for any deficiency. This letter is not intended as an act to collect or recover any debt from you for which your personal obligation has been discharged pursuant to 11 U.S.C. §524 but rather it is intended to collect or recover any such debt from the property which is security for the loans made to you.

Unless full payment of the secured debt is received within 30 days from the date of this letter, the U.S.A., will take action to foreclose/liquidate under the authority granted in the above-described instruments. Payment should be made by cashier's check, certified check, or postal money order payable to the Farm Service Agency and delivered to FSA at (*street address or P.O. Box) (city), (ZIP Code*). If there is submitted to the U.S.A., any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between FSA and yourself, that payment WILL NOT CANCEL the effect of this notice. If insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the U.S.A., may have for breach of any promissory note or covenant in the security instruments will result and FSA may proceed as though no such payments had been made.

[THE ABOVE-DESCRIBED SECURITY INSTRUMENTS PROVIDE THAT THE U.S.A., MAY FORECLOSE WITHOUT COURT ACTION BY SELLING THE PROPERTY AT PUBLIC SALE AFTER . THE GOVERNMENT INTENDS TO SELL THE PROPERTY IN THIS MANNER. NO FURTHER NOTICE IS REQUIRED TO BE GIVEN YOU CONCERNING THIS FORECLOSURE.] (*This paragraph will be omitted in States with judicial foreclosure or where it conflicts with State law.*)

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

If you think FSA is in error in accelerating the account and proceeding with foreclosure, you may submit evidence within 15 calendar days to the undersigned documenting why the account is not in default. Your request be forwarded to the next level of authority within FSA for consideration. This review will be based solely upon the record including your case file. Applicable statutes and regulations and the documentation you submit to support your position will be considered by the next level of authority.

You have the option of selling your property. This will provide you with an opportunity to recover any equity you may have in the property.

NOTE: FSA regulations allow you to sell your property at its current market value regardless of the debt. The buyer may be able to obtain FSA financing on program or non-program terms.

--*

**Notice of Acceleration of Your Farm Service Agency (FSA) Account (Non-Program) (Continued)**

*--



Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index.html), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

United States of America by

(*District Director or State Approval Official*)
Farm Service Agency, United States Department of Agriculture

--*

## *--Notice of Acceleration of Farm Loan Programs Accounts That Are Unsecured

**Note:** Exhibit 48 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 48**".

**5-FLP, Exhibit 48**

This Exhibit may only be revised by SED with concurrence of OGC.

(Use Agency Letterhead format with local return address.)

**NOTICE OF ACCELERATION OF FARM LOAN PROGRAMS ACCOUNTS THAT ARE UNSECURED**

CERTIFIED MAIL

[Date]

(Borrower)
(Co-Borrower)
(Address)
City, State Zip code

Subject: **NOTICE OF ACCELERATION OF YOUR DEBT TO THE FARM SERVICE AGENCY AND DEMAND FOR PAYMENT OF THAT DEBT**

Dear :

PLEASE NOTE that the entire indebtedness due on the promissory notes and/or assumption agreements which evidence the loans received by you from the United States of America, acting through the Farm Service Agency, United States Department of Agriculture is now declared immediately due and payable. They are described as follows:

| Debt Instrument | Date of Instrument | Original Amount |
|---|---|---|

The promissory notes or assumption agreements are unsecured.

This acceleration of your indebtedness is made in accordance with the authority granted in the above-described instruments.

The reasons for the acceleration of your indebtedness are as follows:

The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of _____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances and any shared appreciation.

--*

***--Notice of Acceleration of Farm Loan Programs Accounts That Are Unsecured (Continued)**



If your account is referred to the Department of Justice for other collection activity, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

See attached FSA-2716 and FSA-2727 for your options.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FSA DEBTS.

*UNITED STATES OF AMERICA*

*BY:* _____
District Director
Farm Service Agency
United States Department of Agriculture

Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index.html), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

**--***

**Notice of Acceleration of Farm Loan Programs Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy**

***--Note:** Exhibit 49 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 49**".

**5-FLP, Exhibit 49**

This Exhibit may only be revised by SED with concurrence of OGC.

(Use Agency Letterhead format with local return address.)

**NOTICE OF ACCELERATION OF FARM LOAN PROGRAMS ACCOUNTS SECURED BY REAL ESTATE AND/OR CHATTELS IN CASES NOT INVOLVING BANKRUPTCY**

CERTIFIED MAIL

[Date]

(Borrower)
(Co-Borrower)
(Address)
City, State Zip code

Subject: **NOTICE OF ACCELERATION OF YOUR DEBT TO THE FARM SERVICE AGENCY AND DEMAND FOR PAYMENT OF THAT DEBT**

Dear :

PLEASE NOTE that the entire indebtedness due on the promissory notes and/or assumption agreements which evidence the loans received by you from the United States of America, acting through the Farm Service Agency, United States Department of Agriculture is now declared immediately due and payable. They are described as follows:

| Debt Instrument | Date of Instrument | Original Amount |
|---|---|---|

The promissory notes or assumption agreements are secured by real estate mortgages, deeds of trust, security agreement, and financing statements, etc., described and perfected as follows:

| Security Instrument | Date | Recording Office | Recording Information |
|---|---|---|---|

**--***

**Notice of Acceleration of Farm Loan Programs Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy (Continued)**

*--



This acceleration of your indebtedness is made in accordance with the authority granted in the above-described instruments.

The reasons for the acceleration of your indebtedness are as follows:

The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of _____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances and any shared appreciation. Unless full payment of your indebtedness is received made by one of the methods described below within 30 days from the date of this letter, the United States will foreclose the above described security instruments and pursue any other available remedies.

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

Full payment may be made in any of the following ways:

A) CASH

Payment should be made by cashier's check, certified check, or postal money order payable to the Farm Service Agency and delivered to FSA at _____. If you submit to the UNITED STATES any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between the Farm Service Agency and yourself, that payment WILL NOT CANCEL the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the UNITED STATES may have for breach of any promissory note or covenant in the security instruments will result and the Farm Service Agency may proceed as though no such payment had been made.

B) TRANSFER AND ASSUMPTION

You may transfer the collateral for your loans to someone who is willing and able to assume the debt. Contact FSA immediately if you are interested in this.

C) SALE

You may sell the collateral for your loans for its market value and send the proceeds to FSA or to other creditors with liens prior to FSA's lien. Contact FSA immediately if you are interested in this.

*D) VOLUNTARY CONVEYANCE

You may convey all of your collateral to the Government. Contact FSA immediately if you are interested in this.

--*

**Notice of Acceleration of Farm Loan Programs Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy (Continued)**

*--



** The above-described security instruments provide that the United States may foreclose without court action by selling the property at public sale after _____. The United States intends to sell the property in this manner.

*** If you have not been advised of your rights to request deferral of payments or other servicing options you should contact FSA at the above mentioned address within 15 days of the receipt of this notice.

If you fail to comply with the requirements outlined in this notice within the next 30 days, the United States plans to proceed with foreclosure/liquidation.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FSA DEBTS.

***UNITED STATES OF AMERICA***

***BY:*** _____
District Director
Farm Service Agency
United States Department of Agriculture

Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index.html), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

*This will be included as an option only if it would be in the Government's financial interest to accept a voluntary conveyance offer.

**This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.

*** This paragraph will be omitted when accelerating accounts for failure to graduate or accelerating accounts of Non-Program Loan debtors.

--*

**Notice of Intent to Foreclose on Your Property Serving as Security for the United States of America and Acceleration of Your Loan Accounts**

***--Note:** Exhibit 50 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 50**".

**5-FLP, Exhibit 50**

This Exhibit may only be revised by SED with concurrence of OGC.

(Use Agency Letterhead format with local return address.)

CERTIFIED MAIL

[Date]

(Borrower)
(Co-Borrower)
(Address)
City, State Zip code

**NOTICE OF INTENT TO FORECLOSE ON YOUR PROPERTY SERVING AS SECURITY FOR THE UNITED STATES OF AMERICA AND ACCELERATION OF YOUR LOAN ACCOUNTS**

Dear (Borrower):

The United States of America intends to enforce its (real estate mortgages, deeds of trust, security agreements, etc.) given or assumed by you as security for your loans. The security instruments referred to above as described below were perfected as follows:

| Security Instrument | Date | Recording Office | Recording Information |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

The security instruments executed by you in favor of the UNITED STATES are not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debt, although a discharge under the Bankruptcy Code does render any debt discharged unenforceable as your personal obligation. If the proceeds from the sale are not sufficient to pay off the debt, the UNITED STATES will not seek a personal judgment against you for any deficiency. This letter is not intended as an act to collect or recover any debt from you for which your personal obligation has been discharged, but rather is intended to inform you that the UNITED STATES intends to collect as much of the secured debt as possible from the property which serves as security for the loans made to you. In order to do so, it is necessary for your loans to be accelerated. Therefore, pursuant to the terms of the debt instruments, the United States is now exercising its option to declare your entire debt immediately due and payable. **Any Farm Loan Programs family living and farm operating expenses which you may be receiving are hereby terminated.**

The reasons for taking this action are as follows:

[If the loan account is in monetary default, list this as one reason for accelerating. If the loan account is not in monetary default, OGC must advise. ]

**--***

**Notice of Intent to Foreclose on Your Property Serving as Security for the United States of America and Acceleration of Your Loan Accounts (Continued)**
*--



The debt instruments are described as follows:

| Debt Instrument | Date of Instrument | Original Amount |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

The UNITED STATES will not file its foreclosure action or liquidate its security, under the authority granted in the above-described instruments, for 30 days. During that period you may purchase the property for the market value, which the Farm Service Agency has appraised to be $_____. Payment should be made by cashier's check, certified check, or postal money order payable to the Farm Service Agency and delivered to the county official at _____.

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

*You may not stop the foreclosure by paying an amount less than the market value.

** The above-described security instruments provide that the UNITED STATES may foreclose without court action by selling the property at public sale after _____. The Government intends to sell the property in this manner.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FSA DEBTS.

***UNITED STATES OF AMERICA***

***BY:*** _____
District Director
Farm Service Agency
United States Department of Agriculture

Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index.html ), or call toll free at (1-866-945-7920) to obtain a copy by

--*

**Notice of Intent to Foreclose on Your Property Serving as Security for the United States of America and Acceleration of Your Loan Accounts (Continued)**

*--



mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

*This sentence can only be used with the approval of the Regional OGC.

**This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.

--*

**Notice of Acceleration of Your Debt to the Farm Service Agency Based on Confirmed Bankruptcy Plan With Discharge and Demand for Payment of That Debt**

**Note:** Exhibit 51 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 51**".

*--

**5-FLP, Exhibit 51**

This Exhibit may only be revised by SED with concurrence of OGC.

(Use Agency Letterhead format with local return address.)

CERTIFIED MAIL

[Date]

(Borrower)
(Co-Borrower)
(Address)
City, State Zip code

**NOTICE OF ACCELERATION OF YOUR DEBT TO THE FARM SERVICE AGENCY BASED ON CONFIRMED BANKRUPTCY PLAN WITH DISCHARGE AND DEMAND FOR PAYMENT OF THAT DEBT**

Dear

PLEASE TAKE NOTE that the entire indebtedness due under the Chapter _____ Plan confirmed on _____ in Bankruptcy Case No. _____ which evidences the loan(s) received by you from the United States of America, acting through the Farm Service Agency (FSA), United States Department of Agriculture is now declared immediately due and payable. The obligation set out in the confirmed Chapter _____ Plan is described as follows:

| Date of Bankruptcy Plan Confirmation Order | Amount |
|---|---|

The amount(s) set out in the confirmed Chapter _____ Plan is/are secured by real estate mortgage(s), deed(s) of trust, security agreements(s), financing statement(s), etc. described (perfected) as follows:

| Security Instrument | Date | Recording Office | Recording Information |
|---|---|---|---|

The acceleration of your indebtedness is made in accordance with the authority granted in the above-described instrument(s). Although, this is not an acceleration of your debt owed to the FSA prior to confirmation of the Chapter _____ Plan, it is fully effective to accelerate the debt as set out in the Chapter _____ Plan.

--*

**Notice of Acceleration of Your Debt to the Farm Service Agency Based on Confirmed Bankruptcy Plan With Discharge and Demand for Payment of That Debt (Continued)**

*--



The reason(s) for the acceleration of your indebtedness is(are) as follows:

[If debt under the confirmed Chapter ___ Plan is in monetary default, list this as one of the reasons. If the debt is not in monetary default, obtain concurrence of OGC before acceleration.]

The indebtedness due as a result of your Chapter _____ Plan is $_____ unpaid principal, and $_____ unpaid interest, as of _____ plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances. Unless full payment of your indebtedness is received, made by one of the methods described below, within 30 days from the date of this letter, the United States will foreclose the above described security instrument(s) and pursue any other available remedies.

Full payment may be made in any of the following ways:

(A) CASH

Payment should be made by cashier's check, certified check, or postal money order payable to the Farm Service Agency and delivered to FSA at _____. If you submit to the United States any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between FSA and yourself, that payment WILL NOT CANCEL the effect of this notice. If such insufficient payments are received and credited to your account, no waiver of prejudice of any rights which the United States may have for breach of any promissory note or debt evidenced by your confirmed Chapter _____ Plan or covenant in the security instrument(s) will result and FSA may proceed as though no such payment had been made.

(B) TRANSFER AND ASSUMPTION

Subject to FSA approval, you may transfer the collateral for your debt to someone who is eligible for FSA assistance and is willing and able to assume the debt. Contact FSA at _____ immediately if you are interested in this.

(C) SALE

You may sell the collateral for your loan(s) for its market value and send the proceeds to FSA to or other creditors with liens prior to FSA's lien. Contact FSA immediately if you are interested in this.

--*

**Notice of Acceleration of Your Debt to the Farm Service Agency Based on Confirmed Bankruptcy Plan With Discharge and Demand for Payment of That Debt (Continued)**

*--



*(D) VOLUNTARY CONVEYANCE

You may convey all of your collateral to the United States. Contact FSA at _____ immediately if you are interested in this.

**(The above-described security instrument(s) provide(s) that the UNITED STATES may foreclose without Court action by selling the property at public sale after _____. The United States intends to sell the property in this manner.

***If you have not been advised of your rights to request deferral of payments or other servicing options you should contact FSA at the above-mentioned address within 15 days of the receipt of this notice.

If you fail to comply with the requirements outlined in this notice within the next 30 days, the UNITED STATES plans to proceed with foreclosure/liquidation.

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FSA DEBTS.

UNITED STATES OF AMERICA

[name]
[title]
Farm Service Agency
United States Department of Agriculture

CC: FSA State Executive Director,
FSA Farm Loan Programs Division,
FSA Farm Loan Manager

Notice to Customers Presenting Checks
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A Privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index.html), or call toll free at (1-866-945-7920) to obtain a copy by

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**Notice of Acceleration of Your Debt to the Farm Service Agency Based on Confirmed Bankruptcy Plan With Discharge and Demand for Payment of That Debt (Continued)**

*--



mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

*This will be included as an option only if it would be in the United States financial interest to accept a voluntary conveyance offer.

**This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.

***This paragraph will be omitted when accelerating accounts for failure to graduate or accelerating accounts of non-program loan debtors.

--*

**Notice of Acceleration for FLP Accounts Held by American Indian Borrowers and Secured by Real Estate Located Within a Recognized Reservation and Borrower Rights**

***--Note:** Exhibit 52 is available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "**FFAS Employee Forms/Publications Site**" and CLICK "**Find Current Forms Using Our Form Number Search**". For "Form Number", ENTER "**5-FLP Exhibit 52**".

**5-FLP, Exhibit 52**

This Exhibit may only be revised by SED with concurrence of OGC.

(Use Agency Letterhead format with local return address.)

CERTIFIED MAIL

[Date]

**NOTICE OF ACCELERATION FOR FLP ACCOUNTS HELD BY AMERICAN INDIAN BORROWERS AND SECURED BY REAL ESTATE LOCATED WITHIN A RECOGNIZED RESERVATION AND BORROWER RIGHTS**

Borrower
Co-Borrower
Address of Borrower
City, State, Zip

Subject: NOTICE OF ACCELERATION OF YOUR DEBT TO THE FARM SERVICE AGENCY, DEMAND FOR PAYMENT, AND NOTICE OF ADDITIONAL RIGHTS PRIOR TO FORECLOSURE

Dear (Borrower):

The entire indebtedness you owe to Farm Service Agency (FSA) evidenced by the promissory notes and assumption agreements described below is now declared immediately fully due and payable. Such promissory notes and assumption agreements are described as follows:

| Type of Instrument | Date of Instrument | Amount |
|---|---|---|

These promissory notes and assumption agreements are secured by real estate mortgages, deeds of trust, financing statements, security agreements, etc. described as follows:

| Type of Instrument | Date of Instrument | Place of Recordation (Filing) |
|---|---|---|
| Recorded In: | Book No. | Record under Document No. |

This acceleration of your indebtedness is made in accordance with the authority granted in the above-described instruments.

**--***

**Notice of Acceleration for FLP Accounts Held by American Indian Borrowers and Secured by Real Estate Located Within a Recognized Reservation and Borrower Rights (Continued)**
*--



The reason for the acceleration of your indebtedness is as follows:
(If the borrower is in monetary default, list this as one reason for accelerating. If the borrower is not in monetary default, obtain concurrence of OGC before acceleration.)

The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of _____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by FSA for the protection of its security and interest accruing on any such advances. Unless full repayment of your indebtedness is received through one, or a combination, of the methods described below within 60 calendar days from the date of this letter, FSA will foreclose the above described security instruments and pursue any other available legal means to resolve your remaining indebtedness.

Under section 335(e) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1985(e)), you are entitled to receive notification from FSA of additional rights available to you for liquidation or settlement of your FSA loan account prior to United States Government completion of a legal foreclosure sale of your FSA-secured real estate. This letter lists those additional CONACT rights. This letter also lists other alternatives you may wish to utilize to resolve your indebtedness to FSA.

If you wish to pursue an alternative to legal foreclosure, you must inform this office in writing within 60 calendar days of this letter specifying which of the following settlement or liquidation alternative, or combination of alternatives, you wish to pursue:

**Alternative A:** You may request the Tribe, having jurisdiction over the reservation in which the real property is located, be assigned the loan from FSA. FSA will forward your assignment request along with all other applicable loan information for Tribal consideration and determination.

If the Tribe agrees to accept the assignment within 30 calendar days after FSA notifies the Tribe of your request, the following will occur:

1. FSA will not foreclose the loan because of any default that occurred before the date of assignment.

2. The Tribe will pay FSA the lesser of the amount owed on the debt or the market value of the real estate that secures the loan in exchange for the assignment of your loan to the Tribe. The Tribe may pay for the purchase of the loan assignment over time under terms and conditions similar to an Indian Tribal Land Acquisition Program (ITLAP) loan. Note that ITLAP servicing options may be available except that ITLAP write down servicing options are not available for this loan.

3. If the Tribe agrees to accept the assignment of your loan, your loan will be assigned to the Tribe. Your future payments will be made to the Tribe and future servicing will be done by the Tribe. FSA will no longer be responsible for the collection or servicing of your loan. The Tribe does not have to agree to the assignment.

--*

**Notice of Acceleration for FLP Accounts Held by American Indian Borrowers and Secured by Real Estate Located Within a Recognized Reservation and Borrower Rights (Continued)**
*--



**Alternative B:** You may request that your loan be assigned to the Secretary of Interior. If you request this option, FSA will send your loan information to the Secretary of Interior for review. If the Secretary of Interior agrees to accept the assignment of your loan, your loan will be assigned to the Secretary of Interior, and FSA will no longer be responsible for the collection or servicing of your loan. The Secretary of Interior does not have to accept your request for the assignment of your loan.

**Alternative C:** You may voluntarily convey the security to FSA. Subject to acceptable environmental review, you can deed your property to FSA and FSA will credit your account with the market value of the property or the total debt, whichever is greater. Under this alternative, you will lose your property but will no longer owe a debt to FSA.

**Additional Alternatives**

**Alternative D:** You may sell the property to a buyer of your choice.

1. You still retain the right to sell your property to a buyer of your choice for cash, as long as the price you receive for such sale is not less than the market value.

2. Your chosen property buyer must have the financial ability to buy the property within a reasonable period of time. In most cases, the sale of your property should be completed within 90 calendar days of your notification to FSA of your selection of this option.

3. You can sell the property to a buyer of your choice by transferring your ownership of your property and transferring the obligation of your FSA indebtedness, if your chosen buyer qualifies for loan transfer under FSA regulations, and if the property is sold for a price that is not less than its market value. This process is referred to as “transfer and assumption”.

**Alternative E:** You may pay your FSA indebtedness in full. All FSA borrowers are entitled to fully repay the entire indebtedness they owe to FSA at any time, unless a legal action has occurred that prevents or supersedes FSA enforcement of its loan instruments.

**WARNING:** If you wish to pursue settlement or liquidation of your FSA indebtedness through one, or a combination, of the alternatives presented in this letter, your written request, including which alternatives you want, must be received by FSA within **60** calendar days of this letter. If you do not respond to this letter within 60 calendar days, FSA will continue to foreclose on your property. While FSA will not delay the actions necessary to initiate and process a legal foreclosure proceeding beyond the 60 calendar days offered in this letter, FSA will consider your requested account resolution alternatives as authorized, if they can be completed BEFORE a scheduled foreclosure sale.

--*

**Notice of Acceleration for FLP Accounts Held by American Indian Borrowers and Secured by Real Estate Located Within a Recognized Reservation and Borrower Rights (Continued)**
***--**



If you have not been advised of your rights to request deferral of payments or other servicing options, you should contact FSA at the above mentioned address within 15 calendar days of the receipt of this letter. (****Note**: Omit this paragraph when accelerating accounts for failure to graduate or accelerating accounts of Non-Program Loan debtors.)

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney's fees may be added to your debt as well as a Department of Justice fee of 3 percent.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FSA DEBT.

In accordance with the requirements of section 335(e) of the CONACT (7 U.S.C. 1985(e)), a copy of this letter and FSA's determination of the value of the real estate security is being provided to the Tribe that has jurisdiction over the Reservation in which the real estate security is located.

We are also enclosing, with this letter, a more detailed explanation of the additional CONACT rights that are available to you.

Sincerely,

District Director

Attachment
cc: Tribe
Area Office, BIA
SED/FLC
DD
FLM

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When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – A privacy Act Statement required by 5.U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (http://www.fms.treas.gov/otcnet/index.html ), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.

**--***

## Notification of Options Available to the Tribe

*--

**5-FLP, Exhibit 53**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**NOTIFICATION OF OPTIONS AVAILABLE TO THE TRIBE**

(Tribe)
(Address)

SUBJECT: (Borrower's Name)

Dear Sir or Madame:

This letter concerns (borrower's name) (hereafter referred to as "borrower") Farm Service Agency (FSA) real estate, and, if applicable, chattel security, and the options available in lieu of foreclosure on _____acres with a market value of_____

Attached is a copy of the letter (with all attachments) that was sent to the borrower who has debt obligations with FSA that are in default. The borrower has pledged real estate security for this debt, and that security lies within the jurisdiction of your Tribe's Reservation.

Under section 335(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985(e)), one of the liquidation options offered to the borrower is the assignment of the borrower's FSA loans to the Tribe. If the borrower requests FSA to assign the loan to the Tribe and the Tribe is agreeable to the assignment, the Tribe would purchase the loan at the lesser of the market value of the property securing the loan or the outstanding principal and interest due under the loan.

If the Tribe purchases the borrower's loan, the borrower's obligation will be to the Tribe under the assigned promissory note. Notwithstanding any loan servicing needs, or loan servicing arrangements between the borrower and the Tribe, the Tribe will be independently obligated to pay, or continue to make payments to, FSA for the purchase of the assignment.

The Tribe may pay the value of the assigned loan under terms and conditions similar to an Indian Tribal Land Acquisition Program (ITLAP) loan under 7 CFR part 770 or it may pay this amount in full at the time of the assignment. All ITLAP servicing options, except any writedown servicing options, may be applied to such loans.

We encourage you to contact the borrower to discuss these options and contact FSA for information on requirements necessary to complete the transaction.

--*

**Notification of Options Available to the Tribe (Continued)**

*--



If the borrower has not responded to the attached letter in writing within **60** calendar days, the matter will be referred for collection and foreclosure. We will be in contact with you if the borrower requests us to assign the loan to the Tribe.

Sincerely,

Farm Loan Manager

Attachments
cc: Borrower
SED/FLC
DD
Area Office, BIA

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**Information on American Indian Borrower Rights Under the Consolidated Farm and Rural Development Act**

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This Exhibit may only be revised by SED.

**INFORMATION ON AMERICAN INDIAN BORROWER RIGHTS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT**

EXPLANATION AND APPLICABILITY OF OPTIONS OFFERED TO AMERICAN INDIAN BORROWERS AND INDIAN TRIBES WITH RESPECT TO REAL PROPERTY SECURING FARM SERVICE AGENCY LOANS THAT IS LOCATED WITHIN THE BOUNDARIES OF A FEDERALLY RECOGNIZED INDIAN RESERVATION

I. INDIAN RESERVATION

The term "Indian Reservation" means all land located within the limits of any Indian Reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Tribe.

II. BORROWER CONSULTATION WITH TRIBE

Borrowers may consult with the Tribe that has jurisdiction over the Indian Reservation in which the real property is located to determine if State or Tribal law provides rights and protections that are more beneficial than those provided the borrower under the Consolidated Farm and Rural Development Act (CONACT). After such consultation, you may advise us of your findings (citing applicable authorities), and we will consider such findings for possible application in your loan.

III. BORROWER RIGHT TO VOLUNTARILY CONVEY REAL ESTATE TO FARM SERVICE AGENCY

An American Indian borrower whose loan is secured by real property located within the boundaries of an Indian Reservation may voluntarily convey the real property to the Farm Service Agency (FSA), and, in the absence of environmental concerns, FSA will agree to accept that voluntary conveyance. Real property so conveyed will be placed in the inventory of FSA. FSA will credit the borrower's account with the market value of the property or the total debt, whichever is greater. This means that if the borrower voluntarily transfers ownership of the property that serves as collateral for the borrower's FSA loans, the borrower's account would be credited such that the borrower would no longer owe FSA any indebtedness. The property will then be owned by FSA.

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**Information on American Indian Borrower Rights Under the Consolidated Farm and Rural Development Act (Continued)**

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IV. GOVERNMENT ACTIONS IF THE REAL PROPERTY IS NOT CONVEYED OR THE DEBT OWED FSA IS NOT OTHERWISE RESOLVED

If, after notification and consideration of delinquent borrower servicing rights, the borrower does not voluntarily convey the real property to FSA or does not otherwise resolve the outstanding debt owed to FSA:

1) FSA may foreclose on the property.

2) In the event of such foreclosure, the FSA security property will be offered for sale to the public. Sales are conducted on a "high bid basis".

3) FSA must offer a bid for the property at the foreclosure sale that is equal to the market value of the property (as determined by FSA), or the outstanding principal and interest owed on the loan, whichever is higher.

4) The property may be purchased through such foreclosure sale by another party who bids higher than FSA.

5) If the property is purchased by another party at such foreclosure sale, the property will not be placed in FSA inventory and you will forfeit, and will not have access to, further real estate rights in the property and protections provided under the CONACT.

V. PRIORITY ESTABLISHMENT FOR SALE OF INVENTORY REAL ESTATE - IF FSA BECOMES OWNER OF THE PROPERTY

Not later than 90 calendar days after FSA acquires ownership of real property, whether such ownership was gained through voluntary conveyance by the borrower, or through a successful bid by the FSA at a foreclosure sale, FSA will afford an opportunity to purchase the real property in accordance with the order of priority established by the Tribe having jurisdiction over the Indian Reservation within which the real property is located. If no order of priority is established by the Tribe, the real property will be sold in the following order: (1) to a member of the Tribe that has jurisdiction over the Reservation within which the real property is located; (2) to an Indian corporate entity; or (3) to the Tribe.

The governing body of the Indian Tribe having jurisdiction over an Indian Reservation may revise, or re-arrange, the order of priority stated above, and may restrict the eligibility for purchase to: (1) persons who are members of the Tribe; (2) Indian corporate entities that are authorized by the Tribe to purchase lands within the boundaries of such Reservation; or (3) the Tribe itself. These sale conditions or requirements are in accordance with section 335(e) of the CONACT (7 U.S.C. 1985(e)).

--*

**Information on American Indian Borrower Rights Under the Consolidated Farm and Rural Development Act (Continued)**

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VI. TRANSFER OF INVENTORY LAND FROM THE SECRETARY OF AGRICULTURE TO THE SECRETARY OF INTERIOR

If real property comes into FSA ownership from the borrower, is not purchased under paragraph V above, and the Tribe having jurisdiction over the reservation where the real property is located is unable to purchase the real property, FSA will transfer the real property to the Secretary of Interior who will administer the real property as if the real property were held in trust by the United States for the benefit of the Tribe.

From the income generated from that property, the Secretary of Interior will pay those State, county, municipal, or other local taxes to which the real property was subject at the time of acquisition by FSA until the earlier of: (1) the expiration of the 4-year period beginning on the date on which the real property was transferred to FSA; or (2) such time as the lands are transferred into trust. When real property is transferred to the Secretary of Interior, FSA will have no further responsibility for collection of any amounts with regard to the farm program loan that had been secured by real property, nor with regard to any lien arising out of the loan transaction, nor for repayment of any amount with regard to the farm program loans or liens to the Treasury of the United States. The Secretary of Interior will succeed to all rights, title and interest of FSA in the real estate, including the obligation to remit to the Treasury of the United States amounts in repayment of the original loan. Repayment will occur in that after the payment of required taxes, all income generated from the property will be deposited as miscellaneous receipts in the Treasury of the United States until the amount deposited is equal to the lesser of: (1) the amount of the outstanding lien of the United States, as of the date the property was acquired by FSA; (2) the market value of the real property, as of the date of the transfer to the Secretary of Interior; or (3) the capitalized value of the property, as of the date of transfer to the Secretary of Interior.

When the total amount that is required to be deposited with respect to any real property has been deposited into the Treasury of the United States, title to the real property will be held in trust by the United States for the benefit of the Tribe having jurisdiction over the Indian Reservation within which the real property is located.

Notwithstanding any other provision, the Tribe having jurisdiction over the Indian Reservation within which the real property is located may, at any time after the real property has been transferred to the Secretary of Interior, offer to pay the remaining amount of the lien, or the market value of the real property, whichever is less. Upon payment of such amount, title to such real property will be held by the United States in trust for the Tribe and such trust or restricted lands that have been acquired by FSA foreclosure or voluntary transfer, and transferred to an Indian person, entity, or Tribe, will be deemed to have never lost trust or restricted status.

--*

**Information on American Indian Borrower Rights Under the Consolidated Farm and Rural Development Act (Continued)**

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VII. FARM SERVICE AGENCY FORECLOSURE SALE BIDDING REQUIREMENTS

At a foreclosure sale of real property described in this letter, FSA will offer a bid for the property being foreclosed that is equal to the higher of: (1) the market value of the property; or (2) the outstanding principal and interest of the real estate secured FSA loans. If an environmental concern is located on the property and FSA would find it necessary to take remedial action to protect human health or the environment if the property were to be taken into inventory, FSA's bid at the higher of "the market value" or "the outstanding debt balance" would apply only if FSA determines that it is in the best interest of the Federal Government to offer such bid.

--*

**Notification to a Tribe of an American Indian Borrower's Request to Have a Loan Assigned to the Tribe (With Example Information)**

*--



This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**NOTIFICATION TO A TRIBE OF AN AMERICAN INDIAN BORROWER'S REQUEST TO HAVE A LOAN ASSIGNED TO THE TRIBE**

(Tribe)
(Address)

SUBJECT: Borrower Request that Farm Service Agency Loans Be Assigned to the Tribe _____.

Dear Sir or Madam:

This letter concerns the request of (borrower's name) that the enclosed Farm Service Agency (FSA) loans and security instruments be assigned to the Tribe pursuant to section 335(e)(1)(A)(v) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985(e)(1)(A)(v)).

| Borrower's Name and Address: | | | | | | | |
|---|---|---|---|---|---|---|---|
| Loan No. | Type | Principal | Interest | Balance | Rate | Daily Interest Accrual | Status |
| *43-02* | *EM* | *$100,000* | *$51,000* | *$151,000* | *5%* | *13.70* | *1,000B* |
| | | | | | | | |
| | | | | | | | |
| Total | | | | | | | |

If the Tribe agrees to accept the assignment of these loans, the Tribe will pay FSA $ _____ in exchange for the assigned loans. The amount to be paid for the assignment of the loans represents the lesser of the outstanding principal and interest of the loans or the market value of the security for the loans. The Tribe may pay for the purchase of the assignment over time under terms and conditions similar to those applicable to the Indian Tribal Land Acquisition Program under 7 C.F.R. part 770, or the Tribe may purchase the assignment without FSA financing.

--*

**Notification to a Tribe of an American Indian Borrower's Request to Have a Loan Assigned to the Tribe (With Example Information) (Continued)**

*--



We request that you inform this office of your decision regarding your intention to accept the assignment of the loans by returning within 30 calendar days from the date of this letter, a copy of this letter with the appropriate box marked below. If we do not receive a response within this 30-day time period, we will proceed as if you have denied the borrower's request. Your decision must be to either accept assignment of all or none of the loans the borrower has requested be assigned to the Tribe. We will treat any response that does not accept the assignment of all loans as a denial of the borrower's request.

[ ] Yes, the Tribe intends to accept the borrower's loan assignment request **without** FSA financing.

[ ] Yes, the Tribe intends to accept the borrower's loan assignment request **with** FSA financing.

[ ] No, the Tribe does not intend to accept the borrower's loan assignment request.

If you have any questions, please contact the undersigned.

Sincerely,

Return Response to:

_____
_____
_____
_____

Farm Loan Manager

cc: Area Office, BIA
SED/FLC
DD
Enclosures

--*

**Notification to an American Indian Borrower of Acceptance of an Assignment Request**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**NOTIFICATION TO AN AMERICAN INDIAN BORROWER OF ACCEPTANCE OF AN ASSIGNMENT REQUEST**

(Borrower)
(Address of Borrower)

Dear (Borrower):

In response to your request, we submitted a request to the (Tribe or the Secretary of Interior) to accept an assignment of the following Farm Service Agency (FSA) Farm Loan Programs loans: (loan numbers). Your request was granted.

FSA will immediately proceed in transferring the referenced loans to the (Tribe or the Secretary of Interior). Because FSA will have no further responsibility to the servicing or collection of these loans, all your future contacts and questions concerning these loans should be directed to the (Tribe or the Bureau of Indian Affairs Area Office).

Sincerely,

Farm Loan Manager

cc: Tribe
Area Office, BIA
SED/FLC
DD

**Notification to an American Indian Borrower of Denial of an Assignment Request**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

NOTIFICATION TO AN AMERICAN INDIAN BORROWER OF
DENIAL OF AN ASSIGNMENT REQUEST

(Borrower)
(Address of Borrower)

Dear (Borrower):

In response to your request, we submitted a request to the (Tribe or the Secretary of Interior) to accept the assignment of your Farm Service Agency (FSA) Farm Loan Programs loans identified as (loan numbers). Unfortunately, your request was denied.

Therefore, you may wish to pursue option C, D, or E contained in our letter of (date of letter sent to borrower pursuant to paragraph 537). If you do not successfully pursue one of these options, FSA will proceed toward foreclosure action. Although FSA's foreclosure process will not be delayed while you attempt other options or resolution actions, FSA will stop the foreclosure process and sale if you otherwise successfully resolve your indebtedness with FSA before any scheduled foreclosure sale.

Sincerely,

Farm Loan Manager
cc: Tribe
Area Office, BIA
SED/FLC
DD

**Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property**

_____
(present owner/borrower)

See data published according to Exhibit 17, subparagraph 2 B for guidance in estimating the incomes and expenses to be used in this exhibit. The holding period to be used is 165 days (5.5 months) ***--**or less if it can be justified by the actual State average holding period. See subparagraph 568 A and any State supplement about right of redemption.

1. MARKET VALUE OF PROPERTY $ _____

   Date of Appraisal _____**--***

   ESTIMATED HOLDING PERIOD IN YEARS: _____

2. INCOME

   a. Annual Rent _____ x Holding Period _____ = _____

   b. Annual Royalties ____ x Holding Period _____ = _____

   c. Other Annual Income _____ x Holding Period _____ = _____

   d. Annual % Land Appreciation _____ x Holding Period _____ = _____

   e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____

   f. Other (describe) _____x Holding Period _____ = _____

   TOTAL ADDITIONS = $_____

**Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property (Continued)**

3. EXPENSES

a. Total Prior Lienholder Indebtedness (P and I) = _____

b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, junior liens, etc.) List:

_____ _____ = _____

c. Annual Taxes and Assessment _____ x Holding Period _____ = _____

d. Annual Building Depreciation _____ x Holding Period _____ = _____

e. Annual Management Costs _____ x Holding Period _____ = _____

f. Total Essential Repairs to Secure and Resell = _____

g. Annual % Decrease In Land Value _____ x Holding Period _____ = _____
(if applicable)

h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____

i. Total Interest Cost:

MKT Value $ _____ x Regular OL Rate_____ x Holding Period = _____

j. Value loss because of restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____

k. Hazardous Waste Clean-up Costs = _____

TOTAL DEDUCTIONS (ITEMS A THROUGH K) = _____

**Worksheet for Determining Farm Loan Programs Maximum Bid on Real Estate Property (Continued)**

4. BID WILL BE THE LESSER OF

*****--a. 1. _____+ 2. _____- 3. _____ = _____+_____= _____

| Market Value | Total Additions | Total Deductions | * Net Recovery Value (NRV) if zero or negative, do **not** bid | Only if NRV is positive, add prior liens, unless the property is being sold subject to prior liens | * NRV + Prior Liens Bid |
|---|---|---|---|---|---|

or, [FSA's Debt + Prior Liens]--*****

b. _____ + _____ = _____

| Unpaid FSA Balance on Secured Debt | Prior Liens | Total |
|---|---|---|

_____ _____
Agency Official Date

Concurrence by: _____ _____
State Executive Director Date

**Notification of Personal Property**

(Use Agency Letterhead format with local return address.)

NOTIFICATION OF PERSONAL PROPERTY

Dear (Borrower or Lien holders Name)

This is to inform you that the following personal property was located by the Farm Service Agency (FSA) on the real property located at _____ which is now in the possession of the United States of America:

We have reason to believe that this property is [owned by you] [subject to your lien], but make no claims or guarantees regarding its true status. Further, FSA does not take responsibility for securing the property or its maintenance.

Please be advised that FSA will consider this property to be abandoned 7 days from the date of this letter, and will thereafter sell or discard it at a time determined by FSA. Proceeds will be distributed in accordance with known lien priority subject to a pro rata share of any and all expenses incurred by FSA.

Please contact this office if you wish to discuss the disposition of these items.

Sincerely,

**Notification of Transmittal to the Internal Revenue Service (IRS)**

(Use Agency Letterhead format with local return address.)

Dear

As required by law, the attached FSA-2585 has been transmitted to the Internal Revenue Service (IRS) and may affect your tax liability.

We recommend you contact the IRS or a tax advisor if you have any questions on tax issues as the Farm Service Agency does not give tax advice.

Please contact this office if you have any questions on your FSA account.

Sincerely,

**Notice of Sale**

This Exhibit may only be revised by SED.

**UNITED STATES DEPARTMENT OF AGRICULTURE**
**Farm Service Agency**

# NOTICE OF SALE

Notice is hereby given that the United States of America, acting through an agency of the U.S. Department of Agriculture (USDA) will sell by □ Public Auction □ Regular Sale □ Sealed Bid on FSA-2592 the following described □ Real □ Chattel
□ Real and Chattel property:

The property will be sold for cash unless otherwise indicated herein. For security property (title not in USDA) USDA reserves the right to bid at any public auction sale. For inventory property (title in USDA) USDA reserves the right to reject all bids. (Note: "**" preceding any property listed herein indicates that USDA will consider credit sales. Information concerning credit sales may be obtained from the USDA office listed below.)

The property may be examined at _____
The sale will be held _____

Inquiry concerning the sale of the above property may be made at the USDA Agency address shown below.

UNITED STATES OF AMERICA
By
*(Date)*
*(Title)*
*(Telephone) (Office Address)*

## Notification to Tribe of Availability of Farm Property for Purchase

*--

**5-FLP, Exhibit 71**

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

**NOTIFICATION OF OPTIONS AVAILABLE TO THE TRIBE**

(Tribe)
(Address)

SUBJECT: (Borrower's Name)

Recently the Farm Service Agency (FSA) acquired title to _____ acres of farm real property located within the boundaries of your Reservation. The previous owner of this property was _____. The property is available for purchase or lease with the option to purchase by persons who are members of your Tribe, an Indian corporate entity, or the Tribe itself. The lease may not exceed 5 years. FSA regulations provide for those three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of categories. Following is a more detailed description of these categories:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FSA's loan programs may also purchase this property with a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities. You may restrict eligible Indian corporate entities to those authorized by your Tribe to purchase lands within the boundaries of your Reservation. These entities also must meet the eligibility requirements established for the type of assistance granted. Entities not eligible for FSA's loan programs may also purchase this property with a Non-Program loan on ineligible rates and terms.

3. The Tribe itself also is considered eligible to exercise the right to purchase the property. If available, Indian Land Acquisition program funds may be used or the property may be financed with a Non-Program loan on ineligible rates and terms.

We are requesting that you notify FSA of your selection or intentions within 45 days of receipt of this letter. If you have questions regarding eligibility for any of the groups mentioned above, please contact this office. If the Tribe wishes to purchase the property, but is unable to do so at this time, contact this office.

Sincerely,

(Agency Official)
cc: DD

--*

**Conservation Easement for Wetlands**

*[Attached to Deed of Trust] [Use this exhibit to establish easements on wetlands with full restrictive conditions (including adjacent nonwetland buffers).]*

## CONSERVATION EASEMENT RESERVATIONS IN THE UNITED STATES

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States has reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

### I. DESCRIPTION OF THE EASEMENT AREA.

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat. In certain cases, a specific route on and across the easement area for landowner access to other portions of the property for farming or other uses may be designated if such access is not reasonably available from other routes outside the easement area.]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc.] over the property conveyed by this deed as follows:

[legal description – center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing].

The above right of way shall be sufficiently wide (not to exceed ___feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.][1/] In the event that the location of a road or trail becomes impractical due to erosion, Acts of God, or other cause said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

1/ Use when access to the easement area is over road or roadway that will be constructed or require maintenance.

*** * ***

**Conservation Easement for Wetlands (Continued)**

## II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings or other structures shall be built within the easement area.

B. the vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner including: (1) cutting or mowing; (2) cultivation; [(3) grazing;] (4) harvesting wood products; (5) burning; (6) placing of refuse, wastes, sewage, or other debris; (7) draining, dredging, channeling, filling, dicing, pumping, diking, impounding and related activities; or (8) diverting the natural flow of surface or the underground waters into, within, or out of the easement area.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all Federal, state and local laws for the control of noxious or other undesirable plants on the easement area. The responsibility for such plant control may be assumed in writing by the easement manager where the control or manipulation of such plants is deemed by the easement manager to affect easement management programs or policies.

[D. Cattle or other stock shall not be permitted on the easement area, except that the easement manager shall permit access to and use of waters within the area necessary for stock watering under such terms and conditions as the easement manager deems necessary to protect and further the purposed of this easement, provided:

(1) The easement manager bears the costs of building and maintaining fencing or other facilities necessary to preclude stock from entering the easement area;

(2) the easement manager shall consult with the landowner to determine the need for and the scope of fencing; and access for stock watering need not be permitted where other waters are reasonably available from other sources outside the easement area.][2/]

2/ Use only when paragraph III-F is used.

## III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access t the easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

B. The right but not the obligation to install, operate, and maintain structures for the purpose of reestablishing, protecting, and enhancing wetlands functional values including the taking of construction materials to and from said sites.

C. The right to establish or re-establish vegetation through seedlings, plantings, or natural succession.

D. The right but not the obligation to manipulate vegetation, topography and hydrology on the easement area through diking, pumping, water management, excavating, island construction, burning, cutting, pesticide application, fertilizing, and other appropriate practices. The easement manager shall consult with the landowner prior to any such manipulatory action possible damage to the property(s) adjoining the easement area.

E. The right to conduct predator management activities.

F. [The right but not the obligation to construct and maintain fences in order to prevent or regulate grazing or other type of encroachment on the easement area.][3/]

G. [Notwithstanding permissive provisions of State or Federal law, the right to prohibit or regulate hunting or fishing or other taking of migratory birds, fish and wildlife. This right to prohibit any of these activities shall be effected by (1) the easement manager posting the area, or (2) otherwise giving notice of the prohibitions to the landowner.][4/]

H. [the right to exclude landowner and/or public entry, if such entry is deemed to pose a threat to fish and wildlife or their habitat.][5/]

3/ Use only if the easement manager intends to fence the easement area or a portion of the easement area.

4/ Use only when this is a necessary precondition for the easement manager to accept the easement.

5/ Use only when FWS recommends, with recommendation based upon severe existing or potential threat to fish and wildlife.

## IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a state fish and wildlife agency is the easement manager.]

A. this easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, except as provided in paragraph V-H, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may, from time to time, be promulgated under its general governmental authorities.

## IV. EASEMENT MANAGEMENT AND ADMINISTRATION

[Provisions to be used for management by the U.S. Fish and Wildlife Service.]

A. All rights, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the national Wildlife Refuge System Administration Act, 16 U.S.C. 778dd et sea. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of wetlands functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

## V. GENERAL PROVISIONS

A. The agreed upon purpose of this reservation are the protection and restoration of the wetland areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "wetland" is defined and determined by the Natural Resources Conservation Service of the U.S. Department of Agriculture in accordance with Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et. seq.). Any ambiguities in this easement shall be construed in a manner which best effectuates wetland protection and restoration and fish and wildlife purposes.

**Conservation Easement for Wetlands (Continued)**

B. Any subsequent amendment to or repeal of any federal law or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, wetland management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of wetland functional values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land recorded of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon our use of land. [Unless the easement manager prohibits public entry, the landowner may permit it at the landowner's discretion.][6/]

F. [Subject to paragraph III-G in this easement,][7/] the landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors or assigns. The easement manager shall have all discretionary powers of the United States under this easement, except that the power to release or modify, in any manner, the terms of this easement may be exercised only by a designated employee of the United States Department of Agriculture. Any such succession or assignment of authority must be by express written language, and no power to modify or release all or part of the easement may be inferred from or implied by the conduct of any individual, entity or governmental entity. In the performance of any rights of the easement manager under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

6/ Use this sentence whenever paragraph III. H is used.

7/ Use this introductory phrase whenever paragraph III. G is used.

**Conservation Easement for Wetlands (Continued)**

[**VI. STATE OR LOCAL REQUIREMENTS.**]

[Insert any State or local wetland protection requirements that are more restrictive than those contained in the preceding paragraphs.]

**Conservation Easement for Floodplains**

*[Attached to Deed of Trust] [Use only for floodplains (no wetlands)]*

**CONSERVATION EASEMENT RESERVATIONS IN THE UNITED STATES**

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended and Executive Order 11988 providing for the protection of floodplains. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States has reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

## I. DESCRIPTION OF THE EASEMENT AREA AND ACCESS THERETO

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description or reference to appended plat.]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, rail, etc.] over the property conveyed by this deed as follows:

[legal description – center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing].

The above right of way shall be sufficiently wide (not to exceed ___feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.] In the event that the location of a road or trail becomes impractical due to erosion, acts of God, or other cause said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

*** * ***

**Conservation Easement for Floodplains (Continued)**

## II. COVENANTS BY THE LANDOWNER

A. No dwellings, barns, outbuildings or other structures shall be built within the easement area when the easement manager determines, in consultation with the landowner, that a practicable alternative location outside the easement area is available to the landowner. Also, no dwellings, barns, outbuildings, or other structures shall be built within the easement area unless the construction conforms, at minimum, to the requirements of the National Flood Insurance Program (NFIP). Repairs to existing structures within the easement area may be made subject to the NFIP. The construction of fences needed for the purpose of livestock retention will be permitted within the easement area provided they do not impede the flow of water.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner including: (1) placing earthen or other material fill on the easement area, or (2) placing of refuse, wastes, sewage, or other debris. This restriction does not apply to application of agricultural chemicals in accordance with Environmental Protection Agency Use Restrictions, except that application of agricultural chemicals within 100 feet of a stream or river is prohibited. The landowner shall have the right to carry on farming practices such as grazing, hay cutting, plowing, working and cropping the easement area without further degradation of floodplain values.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all Federal, state and local laws for the control of noxious or other undesirable plants on the easement area.

D. Notwithstanding the provisions of paragraph II-B above, the landowner may establish or repair stream-bank riprap if such actions are necessary to protect the integrity of fields or buildings and provided such riprap is performed in consultation with the easement manager and under the direction of appropriate Federal, State, and local authorities.

## III. RIGHTS RESERVED IN THE UNITED STATES

The United States, on behalf of itself, its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area in order to conduct floodplains management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I.

B. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

## IV. EASEMENT MANAGEMENT AND ADMINISTRATION

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a state fish and wildlife agency is the easement manager.]

A. This easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, except as provided in paragraph V-H, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may, from time to time, be promulgated under its general governmental authorities.

## IV. EASEMENT MANAGEMENT AND ADMINISTRATION

[Provisions to be used for management by the U.S. Fish and Wildlife Service.]

A. All rights, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the national Wildlife Refuge System Administration Act, 16 U.S.C. 778dd et. seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of wetlands functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

## V. GENERAL PROVISIONS

A. The agreed upon purpose of this reservation are the protection and restoration of the wetland areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "floodplain" is defined by reference to section 6(c) of Executive Order 11988. Any ambiguities in this easement shall be construed in a manner which best effectuates floodplain protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any federal law or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, floodplain management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of floodplain values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land records of the respective county in which the property is located.

**Conservation Easement for Floodplains (Continued)**

E. The easement reservation does not authorize public entry.

F. The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors or assigns. The easement manager shall have all discretionary powers of the United States under this easement, except that the power to release or modify, in any manner, the terms of this easement may be exercised only by a designated employee of the United States Department of Agriculture. Any such succession or assignment of authority must be by express written language, and no power to modify or release all or part of the easement may be inferred from or implied by the conduct of any individual, entity or governmental entity. In the performance of any rights of the easement manager under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

## [VI. STATE OR LOCAL REQUIREMENTS]

[Insert any State and/or local floodplain protection requirements that are more restrictive than those contained in the preceding paragraphs.]

**Notice of Special Flood, Mudslide, or Earthquake Hazard Area**

(Use Agency Letterhead format with local return address.)

NOTICE OF SPECIAL FLOOD, MUDSLIDE, OR EARTHQUAKE HAZARD AREA

To: _____
Date: _____

This letter is to notify you that the real property located at _____ is located in a (special flood) (mudslide)(earthquake) hazard area. This identification means that the area has at least a one percent chance of being flooded [or affected by a mudslide] [or earthquake] in any given year. Because of the hazard area on the property, the following restrictions will be imposed:

INSERT RESTRICTIONS

These use restrictions will be included in the conveyance and will apply to the purchaser and the purchaser's heirs, assigns, and successors. The use restrictions will be construed as both a covenant running with the property and as equitable servitude subject to release by the Farm Service Agency when or if no longer applicable.

FSA will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service. Where additional acreage is accepted by FSA for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

_____
(Farm Loan Manager, District Director, or Real Estate Broker)

***--Guide for Calculating the Proportionate Share of Market Value/Proceeds From Joint Mortgages**

The proportionate share is based on the market value less prior liens and selling costs, as follows:

- the following table provides the 3 steps for calculating FSA's share

| Step | Calculation | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **1** | $_____ FSA Debt 1/ | Divided by | $_____ Total RD and FSA Debt 2/ | = | _____% FSA Percent of Debt | Multiplied by | $_____ Market Value or Sales Proceeds Less Prior Liens | = | $_____ FSA Share of Market Value or Sales Proceeds |
| **2** | _____% FSA Percent of Debt from Step 1 | Multiplied by | $_____ Liquidation or Selling Expenses | = | $_____ FSA Share of Expenses | | | | |
| **3** | $_____ FSA Share of Market Value or Sale Proceeds from Step 1 | Minus | $_____ FSA Share of Expenses from Step 2 | = | $_____ Net FSA Share of Market Value or Sale Proceeds | | | | |

1/ This is the unpaid FSA debt that is equally secured with an RD loan that was made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.

2/ This is the total unpaid balance of the FSA and RD loans that are equally secured. All other loans made before and after will not be counted in this calculation.

**Note:** Debt includes unpaid principal, interest, protective advances, and any FSA recapture due. RH recapture will **not** be included if acquired by FSA or RD.**--***

***--Guide for Calculating the Proportionate Share of Market Value/Proceeds From Joint Mortgages (Continued)**

- the following table provides the 3 steps for calculating RD's share.

| Step | Calculation | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **4** | $_____ RD Debt 1/ | Divided by | $_____ Total RD and FSA Debt 2/ | = | _____% RD Percent of Debt | Multiplied by | $_____ Market Value or Sales Proceeds Less Prior Liens | = | $_____ RD Share of Market Value or Sales Proceeds |
| **5** | _____% RD Percent of Debt from Step 4 | Multiplied by | $_____ Liquidation or Selling Expenses | = | $_____ RD Share of Expenses | | | | |
| **6** | $_____ RD Share of Market Value or Sale Proceeds from Step 4 | Minus | $_____ RD Share of Expenses from Step 5 | = | $_____ Net RD Share of Market Value or Sale Proceeds | | | | |

1/ This is the unpaid RD debt that is equally secured with an FSA loan that was made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.

2/ This is the total unpaid balance of the FSA and RD loans that are equally secured. All other loans made before and after will **not** be counted in this calculation.

**Note:** Debt includes unpaid principal, interest, protective advances, and any FSA recapture due. RH recapture will **not** be included if acquired by FSA or RD.**--***

**ADPS 3E Transaction Guide**

Complete the following for all acquisitions when the borrower has both an FSA and RD loan. Do **not** process an ADPS 3E transaction. Complete 1 for each property acquired.
***--**

To: ATTENTION: _____
NFAOC, DLD FAX: 314-457-4478

From: _____
Name of Preparer, Agency, and Telephone Number

Subject: Acquisition – Borrower with FSA and RD Loans

1. Acquiring Agency Name (FSA or RD): _____
2. Case Number: _____
3. Name of Borrower: _____
4. OK Code: (Leave Blank)
5. Date Acquired: _____
6. Most Secured FLP Loan: _____
7. Most Secured RD Loan: _____
8. Property ID of Acquiring Agency: _____
9. Property Description Code: _____
10. Property Suitability Code: _____
11. Taxpayer ID: _____
12. Property Address: (Leave blank if acquired property is chattels.)
    _____
    _____
    Street City, State, ZIP
13. Acres Acquired: Cropland _____ Pasture _____ Woodland _____ Other _____
14. Market Value – Acquisition: $_____
15. Date Last Appraisal: _____
16. Amount Credited – FSA $_____ RD $_____ Total $_____
17. Date Submitted: _____
18. Business Code: _____
19. How Acquired: _____
20. Farm Code: _____
21. Card Code: (Leave Blank)
22. Loans to Acquire:
    (Enter Fund Code and Loan Number. Leave blank if all FSA and RD loans are to be acquired.)
    FSA _____ _____ _____ _____ _____ _____ _____ _____
    RD _____ _____ _____ _____ _____ _____ _____ _____

**--***