

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Direct Loan Servicing – Special
and Inventory Property Management
5-FLP**

Amendment 17

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 4 B has been amended to require State Offices to submit a request for Administrator's Exception by e-mail.

Subparagraph 404 D has been added to provide guidance for Chapter 13 bankruptcies when FSA has a lien on the debtor's principal residence.

Page Control Chart		
TC	Text	Exhibit
	1-5 through 1-8 11-5 through 11-8	

3 FLP Forms (Continued)

E State Office Modified National Forms

State and County Offices shall use national forms unless their use is prohibited by State law. If modification to a national form is required to comply with State law, the State Office shall submit a copy of the national form showing the necessary modifications, through the State Directives Management System.

Note: State-specific forms based on national forms will be made available on the FFAS Employee Forms/Publications Online Website at <http://intra3.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.

Notes: “ST” represents the appropriate State acronym.

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

SED shall issue State supplements, as applicable, to address the use of all State-specific and State-created forms.

Exception: State-specific FSA-2029’s do not require State supplement issuance.

*--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 Extension Service, on-line services, attorney, etc.--*

4 Agency Exception Authority

A General

[7 CFR 766.401] **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)

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/bkforms/index.html>, Part 1, 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 shared appreciation agreements.

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 FLOO 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)**

FLOO 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 in order 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.