

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

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

**Amendment 36**

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



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**Amendment Transmittal**

**A Reasons for Amendment**

The following have been amended to provide 1-FLP as a reference. Subparagraph 3:

- C
- D
- E
- F
- G.

The following subparagraphs have been amended to replace “running record”, “case file”, and similar references with “FBP”:

- 66 A
- 160 A
- 343 E
- 346 B
- 362 A
- 384 C
- 519 A
- 531 B
- 533 F
- 551 B
- 601 B
- 703 B
- 706 D.

Subparagraph 248 B has been amended to clarify addressing all actions on a promissory note.

**Amendment Transmittal (Continued)**

**A Reasons for Amendment (Continued)**

Exhibit 2 has been amended to:

- update the following definitions:
  - compromise
  - debt settlement
  - entity
  - liquidated
  - loan servicing programs
  - recoverable cost
  - security
  - security instruments
  
- remove the definition of conveyance and debtor.

Exhibit 17 has been amended to update administrative liquidation costs and property management costs for FY 2016.

**Note:** The State supplement shall be issued and eDALR\$ updated no later than December 5, 2015. See Exhibit 17, subparagraph 5 F.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	1-3 through 1-6	2, pages 5-12
	3-1, 3-2	pages 17, 18
	4-51, 4-52	pages 23-26
	6-63, 6-64	17, pages 37, 38
	9-5, 9-6	pages 41, 42
	9-9, 9-10	
	9-41, 9-42	
	10-3, 10-4	
	14-75, 14-76	
	15-1 through 5-4	
	16-1, 16-2	
	17-1, 17-2	
	18-1, 18-2	
	18-5, 18-6	

## 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.

<b>Form Number</b>	<b>Form Title</b>
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**

\*--See 1-FLP, subparagraph 3 C.

**D Applicant and Borrower Signatures**

See 1-FLP, subparagraph 3 D.--\*

**3 FLP Forms (Continued)**

**E State-Modified National Forms**

\*--See 1-FLP, subparagraphs 3 E and 3 H.

**F State-Created Forms**

See 1-FLP, subparagraphs 3 F and 3 H.

**G Other Sources of Forms**

See 1-FLP, subparagraph 3 G.--\*

## 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

### 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 FBP 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.**

## 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 determining length of deferral must be well documented in the FBP.--\***

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.

## 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
- \*--complete box 9 of FSA-2026 to address all actions requiring the promissory note, including "deferral", 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.

**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 FBP--\*
- 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.

**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 FBP.--\*

**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.**

## 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 \* \* \*.

**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 FBP:--\*

- 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.

## 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 documentation of the results of the lien search, the chattel inspection, appraisal, and likely recovery value from Exhibit 37 in the FBP.--\*

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.

**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 \*--FBP 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 a narrative description of the borrower’s financial condition and the conclusion of all appeals and mediation in the FBP.--\*

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 FBP.--\*

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.

**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 FBP 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.

**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 FBP 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.

**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 FBP.--\*

**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.

**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 FBP.--\*

**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.

## 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 FLP 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.

\* \* \*

**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 FLP 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-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**

**\*--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****Essential family living expenses:**

- (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**

**False information 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**

**Family living expenses are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.**

**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.

\* \* \*

**Definitions of Terms Used in This Handbook (Continued)****Liquidation**

**Liquidation 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**

**Liquidation expenses 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**

**Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.**

**Loan Servicing Programs**

**\*--Loan servicing programs include any primary loan servicing program, conservation--\* contract, current market value buyout, and homestead protection.**

**Market Value**

**Market value 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)

### 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

**\*-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 right of any kind that is subject to a real or personal property lien. Any reference to "collateral" or "security property" will be considered a reference to the term "security."**

**Security Instrument--\***

**Security 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.

**\*--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.

**Instructions for Using eDALR\$ (Continued)**

**5 Periodic Data**

**A Administrative Liquidation Costs**

The administrative liquidation costs for each loan type are provided in the following table.

<b>Loan Type</b>	<b>Calculation</b>	<b>Cost</b>
OL	*--(3063 ÷ 60 = 51.05) X \$24.58 =	\$1,255
FO/SW/CL	(3063 ÷ 60 = 51.05) X \$24.58 =	\$1,255
EM/EE	(3063 ÷ 60 = 51.05) X \$24.58 =	\$1,255
RH (Used for RHF loans only.)	(3063 ÷ 60 = 51.05) X \$24.58 =	\$1,255--*

**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 \*--2015 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)**

**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	( <u> .215</u> X <u> 5.5</u> = <u> 1.1825</u> ) Average Actions Per Property/Month      Average Holding Period
2	( <u> 180</u> ÷ <u> 60</u> = <u> 3</u> ) Delphi Data for Real Estate Loans
*--3	( <u> 1.1825</u> X <u> 3</u> X <u> 24.58</u> = <u> 87.20</u> )--* Amount from Step 1      Amount from Step 2      2015 GS 11/1 Hourly Pay
4	( <u> 648</u> ÷ <u> 60</u> = <u> 10.8</u> ) Delphi Data for Inventory Actions
*--5	( <u> 10.8</u> X <u> 24.58</u> = <u> 265.46</u> ) Amount from Step 4      2015 GS 11/1 Hourly Pay
6	( <u> 87.20</u> + <u> 265.46</u> = <u> 353.00</u> )--* Amount from Step 3      Amount From Step 5      Administrative Costs for Inventory Property (Rounded to nearest \$)