

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 46

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 211 A has been amended to update the best lien obtainable on all assets requirement for entities.

Subparagraphs 229 A, B, and C have been amended to provide clarification on FSA’s participation in mediation.

Paragraphs 246 B, 247 B, and 248 B have been amended to ensure that signature requirements for all liable parties are obtained.

Paragraph 249 B has been amended to include signature requirements for all liable parties and to provide a reminder that SED must approve all write downs.

Paragraph 602 C has been amended to add a note about prior lien holder payment.

Exhibit 4 has been amended to change paragraph reference 229 B to 229 A.

Exhibit 14 has been amended to revise the Youth Loan Notification Letter.

Exhibit 17 has been amended to reflect the results of the 2020 Delphi study and provide CY 2021 constants.

Page Control Chart		
TC	Text	Exhibit
	6-1, 6-2	4, page 1
	6-37, 6-38	14, page 1
	6-61 through 6-66	17, pages 38, 42
	17-3, 17-4	

Part 6 Common Requirements and Final Processing**Section 1 Security****211 Additional Security for Servicing Actions****A Requirements**

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

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

B Allowable Security

Security may include but is not limited to:

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

211 Additional Security for Servicing Actions (Continued)

C Exceptions

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

- (1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;
- (2) When the property could have significant environmental problems or costs as *--described in 7 CFR part 799 of this chapter;--*
- (3) When the Agency cannot obtain a valid lien;
- (4) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or
- (5) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

212-225 (Reserved)

229 State Mediation and Voluntary Meeting of Creditors

A Introduction

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

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

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

This also applies to USDA certified mediation States.

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

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

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

*--SED will issue a State supplement detailing State mediation requirements.

SED will:

- ensure 1-APP and the State supplement is followed where applicable
- designate the FSA employee who will represent FSA at the mediation
- set the authority limit for the FSA representative
- ensure the FSA representative is prepared for the mediation.--*

B States With Certified Mediation Programs

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

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

* * *

229 State Mediation and Voluntary Meeting of Creditors (Continued)**C States Without Certified Mediation Programs**

--SED will contract with qualified mediators within their State and participate in mediation-- according to 1-APP, Part 5.

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

It is expected the mediator will:

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

D Documenting Mediation or Voluntary Meeting of Creditors

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

Section 3 Closing**246 Closing Consolidated/Rescheduled Loans****A Introduction**

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

B Closing Rescheduled Loans

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- *--ensure that all liable parties have correctly executed FSA-2026--*
- mark the existing promissory note or assumption agreement "rescheduled" and attach it to the new FSA-2026
- file the new FSA-2026 according to 32-AS
- file a copy of the new rescheduled FSA-2026 with the copy of the existing promissory note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new rescheduled FSA-2026 to the borrower at closing
- file the original eDALR\$ report in position 3.

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

PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.

247 Closing Reamortized Loans**A Introduction to Reamortization**

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

B Closing Reamortized Loans

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- *--ensure that all liable parties have correctly executed FSA-2026--*
- mark the existing promissory note or assumption agreement "reamortized" and attach it to the new FSA-2026
- file the new FSA-2026 according to 32-AS
- file a copy of the new reamortized FSA-2026 with the copy of the existing note or assumption agreement in position 2 of the borrower's case file
- provide a copy of the new reamortized FSA-2026 to the borrower at closing
- file the original eDALR\$ report in position 3.

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

PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.

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

248 Closing Deferred Loans

A Introduction to Deferrals

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

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

B Closing Deferrals

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- *--ensure that all liable parties have correctly executed FSA-2026--*
- 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 32-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, FaSB. 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. Deferral flags cancelled as part of PLS transactions will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.

249 Closing Write-Downs**A Introduction**

FLP loans can be fully or partially written down.

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

249 Closing Write-Downs

B Closing Write-Down

The authorized agency official will:

- ensure that the payments on FSA-2026's match the final eDALR\$ report
- *--ensure that all liable parties have correctly executed FSA-2026--*
- mark the existing promissory note or assumption agreement "Satisfied by Approved Debt Writedown" if the loan is completely written down or "Restructured with Partial Debt Writedown" if the loan is partially written down, and attach it to the new FSA-2026
- attach the promissory note, if required, to the new FSA-2026
- file FSA-2026 according to 32-AS
- provide a copy of the new FSA-2026 to the borrower at closing
- file the original eDALR\$ report in Position 3
- *--SED must approve all writedowns.--*

C SAA Required

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

- (1) Owns any real estate that serves or will serve as loan security; and**
- (2) Accepts a writedown in accordance with section 766.111 (paragraph 172).**

FSA requires FSA-2543 when debt is written down on a loan secured by real estate. If the specific loans that are to be written down are not secured by real estate before the current servicing action, FSA-2543 does not need to be completed even if other serviced loans are secured by real estate.

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

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

249 Closing Write-Downs (Continued)**D Processing Write-Down**

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

The equity record will be for the total amount of debt written down on all loans, including those not secured by real estate. This total amount will be used when recording the DLS transactions and also used when completing FSA-2543.

--PLS transactions processed within the DLS Special Servicing system will be systematically created and sequenced. Manual user creation of these transactions is not required or authorized. Refer to the DLS User Guide for additional information.--

E Additional Security Required

The borrower must agree to additional liens on available security according to paragraph 211. FSA's real estate and chattel liens will be maintained by cross collateralization even if all real estate or chattel type loans are written off.

As noted in subparagraph 211 A, if additional real estate security is pledged, the filing information and appraised market value of this security will be included when completing FSA-2543. Any sales or conveyances of the additional real estate security will also be subject to recapture according to paragraph 342.

Example A: A borrower receives a write-down on a loan that is secured by real estate with an appraised value of \$65,000. As part of the servicing, the borrower will also be providing the agency with a lien of previously unencumbered security. This additional security is appraised and valued at \$45,000. When completing FSA-2543, the market value of all real property securing FSA notes will be \$110,000 and filing information for both properties will be included on the form.

602 Involuntary Liquidation by a Prior Lienholder (Continued)**C Contacting the Prior Lienholder**

The authorized agency official may contact the prior lienholder as necessary to protect FSA's security interest. FSA may pay off the prior lien if:

- paying off the prior lien is clearly in FSA's best interest according to Exhibit 60
- SED approves the pay-off to the prior lienholder.

***--Note:** Paying off the prior lien holder should only be completed in rare instances, as it is not typically in FSA's best financial interest.--*

D Bidding at a Liquidation Sale

The policies and procedures for bidding at a real estate foreclosure sale by a prior lienholder are similar to the bidding process described in paragraph 567.

At the sale of chattel property by a prior lienholder, FSA normally does not bid but may bid when the chattel property under the prior lien has a market value that is significantly more than the prior lien. If FSA holds a junior lien on several items, the authorized agency official should seek SED's advice on whether to enter a bid.

If FSA will not enter a bid at a foreclosure sale, SED will determine whether an authorized agency official will attend the sale and write a narrative report outlining the results of the sale and plans for future servicing of the borrower's account.

E Sale by Prior Lienholder Without FSA's Knowledge

If FSA learns that a prior lienholder has repossessed and intends to sell or has already sold property on which FSA has a lien, the authorized agency official immediately notifies the prior lienholder that FSA:

- has a lien on the property
- requires receipt of sale proceeds that exceed the prior lienholder's debt.

The authorized agency official also obtains guidance on the sale of security by a prior lienholder from SED and, as necessary, OGC.

603 Involuntary Liquidation by a Junior Lienholder**A Junior Lienholder Initiates Liquidation**

The authorized agency official will write a letter informing the lienholder that FSA holds a prior lien. The letter should state that, if the lienholder holds a sale, FSA will announce at the sale that:

- FSA has a prior lien on the property, specifying each item and the lien amount, including principal and interest
- any property sold continues to be subject to FSA's lien and the purchaser will need to contact FSA to determine the conditions for the release of the lien. FSA should be paid within 30 to 60 calendar days.

The authorized agency official must maintain close communication with SED during this process. The authorized agency official must consult with SED on how to proceed after sending the initial letter.

If the junior lienholder does not recognize FSA's lien, the authorized agency official must forward the file to SED so that OGC can initiate legal action against the junior lienholder.

B Bidding on Property

FSA does not bid on property at any sale conducted by a junior lienholder.

C Contacting the Purchaser

If a buyer purchases FSA security property from a junior lienholder, the authorized agency official will contact the purchaser, and inform them of FSA's lien on the property and ask about the purchaser's intentions for settling the remaining FSA debt applicable to the security items.

If the authorized agency official cannot reach an acceptable resolution with the purchaser, the authorized agency official refers the case to SED for guidance and, normally, liquidation.

***--D Assignment of Lien Instruments**

If a third party asks to purchase FSA's lien instruments and FSA-2580 has been completed and reviewed, and with OGC concurrence, SED may request an Administrator's Exception under paragraph 4.--*

State Supplements

The following table lists required State supplements.

Subparagraph	Required State Supplement
3 C	Guidance on Notary Acknowledgement
3 D	Guidance on Signature Requirements
3 F	Using State-Specific and State-Created Forms
104 A	Obtaining PLS Appraisals
196 B	Filing of Conservation Contracts
--229 A--	State-Certified Mediation Requirements
247 B	Closing Reamortized Loans
302 A	Homestead Protection According to State Laws
343 B	Real Estate Appraisals for Determination of SAA Recapture
345 C	Satisfying Shared Appreciation Agreements (SAA) According to State Laws
346 E	Maintaining Lien Position When Amortizing SAA Recapture
401 E	State Policies and Procedures for Bankruptcy
402 F	Reaffirmation of Debt
421 C	State Policies and Procedures for Civil and Criminal Actions
443 C	Managing the Liquidation Process
462 B	Title Searches
464 B	Lien Searches
498 A	Convergence of Rights With Real Property
531 A	Loan Acceleration
533 A	Case File Preparation for Acceleration
533 E	Determination of Property Value Prior to Acceleration
534 E	Notification of Prior Lienholders After Acceleration
535 C	Partial Payments After Acceleration
551 A	General Involuntary Liquidation
566 D	Real Property Foreclosures
567 C	Bidding at Foreclosure Sales
568 A	Acquisition of Inventory Property
568 E	Addressing Outstanding Loan Balances After Real Estate Foreclosure
551 D	Calculating Amount To Be Reported to DOJ
601 A	Third-Party Foreclosures
601 C	Contract Forfeiture
602 A	Prior Lienholder Liquidation
604 D	Redemption Rights

State Supplements (Continued)

Subparagraph	Required State Supplement
705 C	Custodial Property
707 F	Removal of Abandoned Vehicles From Inventory Property
724 A	Taxes on Inventory Real Property
776 D	Advertisement of Inventory Property for Sale
776 F	Contracting With Real Estate Brokers to Sell Inventory Property
778 E	Sale of Inventory Property
Exhibit 17, subparagraph 5 F	<ul style="list-style-type: none"> • Estimated Cost and Average Holding Period • Factors to Use When Adjusting Market Value.
Exhibit 60, Page 1	*--Holding Period of Less Than 165 Days (.45 years; 5.5 months).--* Redemption Period Established Under State Law.

Youth Loan Notification Letter

Exhibit 14 is available in a fillable format. Go to <https://intranet.fsa.usda.gov/dam/ffasforms/currentforms.asp>, in the “Form Number” block type “5-FLP Exhibit 14”, and CLICK “Submit”.

*--

Youth Loan Notification Letter

This Exhibit may only be revised by SED.

(Use Agency letterhead format with local return address)

[Borrower’s name]
[Borrower’s address]

Dear [Borrower’s name]:

Your Farm Service Agency (FSA) Farm Loan Program (FLP) youth loan is 90 days, or more, past due. Included in this package is form FSA-2510 and form FSA-2701. Please read both of these forms.

The FSA-2510 provides information about loan servicing options that may help bring the loan current. Youth loans are not eligible for every loan servicing option listed on the FSA-2510. However, please see page 2 of the form where it says that youth loans are eligible for rescheduling or deferral. It also says that youth loans are not eligible for debt writedown. Debt writedown is different than debt settlement. Youth loans are eligible for debt settlement. See section (e) of the form for more information.

If you are interested in applying for loan servicing or debt settlement as described in the FSA-2510, we would encourage you to submit a complete application by __ (insert date) __. If the attached also mentioned that your loan is in non-monetary default, you will also need to resolve the non-monetary default.

The FSA-2701 provides information about FSA offsetting any Federal payments that you may be scheduled to receive. It also describes what you must do if you don’t agree that the loan is delinquent, and/or if you want to stop FSA from offsetting any payments.

If you do not submit a complete application, or pay the delinquent amount owed by the above date, FSA will have no choice but to proceed with acceleration. Acceleration means that the debt is all due and payable. Foreclosure would then occur as mentioned in the attached FSA-2510.

If you have any questions, please contact this office.

Sincerely,
Farm Loan Manager

--*

***--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 eDALRS (Continued)

5 Periodic Data

A Administrative Liquidation Costs

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

Loan Type	Calculation	Cost
OL	*--46.36 X \$26.45 =	\$1,226
FO/SW/CL	46.36 X \$26.45 =	\$1,226
EM/EE	46.36 X \$26.45 =	\$1,226
RH (Used for RHF loans only.)	46.36 X \$26.45=	\$1,226--*

*--**Note:** Costs were calculated using the 2020 Delphi study for the average number of hours spent on a liquidation activity by FSA employees, and used the 2020 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 eDALRS (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 and no later than December 31st of each year.--*

Instructions for Using eDALRS (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. The following has been completed based on national average data with an average holding period of 5.5 months.

Determining Property Management Costs

*--

Delphi Data for Inventory Actions		2020 GS 11/1 Hourly Pay		Administrative Costs for 2021
23.3	X	\$26.45	=	\$616

Note: Costs were calculated using the 2020 Delphi study for the average number of hours spent on inventory property activities by FSA employees, and used the 2020 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.--*