

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 57

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

The spelling of “write-down” has been corrected throughout as revised in the amended CFR.

Subparagraph 5 A has been amended to include a reference to DBSA.

Paragraph 7 has been added to address non-procurement debarment and suspension requirements.

Part 2 has been amended to add DBSA in the title.

Subparagraphs 43 A and B have been amended to revise 7 CFR Part 766 requirements.

Subparagraph 45 B has been amended to revise 7 CFR 766.

Subparagraph 46 A has been amended to specify the type of credit action for DSA.

Subparagraph 46 B has been amended to update form number.

Subparagraphs 46 D and 46 H have been removed.

Paragraphs 51 through 58 have been added to implement the Distressed Borrower Set-Aside provisions of 7 CFR Part 766.451.

Subparagraph 65 A has been amended to add a note clarifying notification requirements.

Subparagraph 65 C has been amended to clarify good faith determinations.

Subparagraph 67 A has been amended to require the DBSA fact sheet be included with FSA-2510.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 81 B has been amended to:

- describe the application form
- remove acknowledgement form references

Subparagraph 65 C has been amended to clarify good faith determinations.

Subparagraph 81 C has been amended to:

- update 7 CFR Part 766 reference
- add FSA-2002 as a format that can be used to provide financial records.

Subparagraphs 81 C through H have been amended to update the 7 CFR Part 766 citations.

Subparagraph 81 I has been added to include 7 CFR Part 766.102(a)(8) to provide for Other Special Servicing applications requirements.

Subparagraph 82 A has been amended to update the 7 CFR Part 766 citation.

Subparagraph 83 D has been amended to include 7 CFR Part 766.101(e).

Subparagraph 102 C has been amended to add a note clarifying good faith determinations for PLS.

Subparagraph 102 D has been amended to include 7 CFR Part 766.104(a)(1)(iv).

Section 5 has been amended to change the title to Amending Promissory Notes Without PLS.

Subparagraphs 128 C and E have been amended to include references to DBSA.

Paragraph 129 has been added for extending direct loans with balloon payments without PLS.

Subparagraphs 132 A and B have been amended to revise 7 CFR Part 766.107.

Subparagraphs 211 A and C have been amended to revise 7 CFR Part 766.112.

Subparagraph 230 B has been amended to revise 7 CFR Part 766.115(a).

Subparagraph 321 B has been amended to add a note about debarment and suspension screening requirements.

Subparagraph 342 A has been amended to remove reference to SAA's signed before August 18, 2000.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 346 A has been amended to add a note about debarment and suspension screening requirements.

Subparagraph 346 E has been amended to revise the additional security requirements for Shared Appreciation Payment Agreements.

Paragraph 388 has been added to describe providing equitable relief.

Subparagraph 441 D has been amended to remove the quarterly LSPMD collaboration requirement.

Subparagraph 444 A has been amended to:

- replace “family member” with “relative”
- remove reference to FSA-2515.

Subparagraph 462 A has been amended to clarify that an operational review is not required if all FSA debts will be paid in full.

Subparagraph 497 A has been amended to update 7 CFR Part 766.353(a)(8).

Subparagraph 498 C has been amended to clarify the need for a due diligence review.

Subparagraph 517 A has been amended to:

- replace “chattel” with “personal property”
- revise 7 CFR Part 766.354(a).

Subparagraph 551 F has been amended to update 7 CFR Part 766.357(c)(3).

Subparagraph 566 B has been added to clarify the need for a due diligence review.

Subparagraphs 568 E and 569 C have been amended to update 7 CFR Part 766.357(b).

Subparagraph 601 D has been added to clarify the need for a due diligence review.

Subparagraph 603 D has been amended to clarify when a third party or junior lienholder can acquire title to FSA security.

Subparagraph 702 A has been amended to remove FSA-2511 and FSA-2515.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Exhibit 2 has been amended to:

- revise definitions for Beginning Farmer, Debt Forgiveness, Essential Family Living and Farm Operating Expenses, Feasible Plan, Good Faith, Non-Essential Assets, Primary Loan Servicing Programs, Related by Blood or Marriage, and Relative
- add definitions for Distressed Borrower Set-Aside, Equitable Relief, and Personal Property.

Exhibit 9 has been amended to delete an obsoleted reference to a lien on all assets for DSA.

Exhibit 10 has been amended to:

- delete the additional security requirements for DSA and DBSA
- revise FSA-2501 title for use with DBSA and DSA
- add language to advise borrowers that loan balances may be incorrect.

Exhibit 10.5 has been amended to address deceased borrowers.

Exhibit 17:

- subparagraph 1 D has been amended to address feasible plans that include planning for cash reserves and impacts to eDALR\$ calculations
- subparagraph 3 B has been amended to clarify use of unequal installments when new direct term loans are made in conjunction with PLS.

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A Reasons for Amendment (Continued)

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4 Agency Exception Authority (Continued)

B Submitting Exception Requests (Continued)

- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- discussion of graduation
- how the action is in the best financial interest of the Government
- additional information SED thinks is needed to review the case
- *--a Farm Business Plan credit action pertaining to the requested exception, including but not limited to:
 - updated farm assessment
 - appropriate environmental review, if needed
 - credit presentation demonstrating all other feasibility, eligibility, and security requirements are met for the request.--*

C Liquidation Appraisal Exception Authority Delegated to SED

See subparagraph 462 G.

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

A Direct Loan Servicing – Special

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

- (1) Are financially distressed;**
- (2) Are delinquent in paying direct loans or otherwise in default;**
- (3) Have received unauthorized assistance;**
- (4) Have filed bankruptcy or are involved in other civil or criminal cases affecting the Agency; or**

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

A Direct Loan Servicing – Special (Continued)

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

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

(1) Youth loans:

--(i) May not receive DSA under subpart B of this part or DBSA under Subpart J of this part:--

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

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

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

B Inventory Property Management

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

(1) Managing inventory property;

(2) Selling inventory property;

(3) Leasing inventory property;

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

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

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

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

6 ECOA Requirements for Actions Involving Real Estate Security

A Release of Real Estate Appraisals

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

*--7 Non-Procurement Debarment and Suspension

A Covered Transactions

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

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

[2 CFR 417.970] (a) “Non-procurement transaction” means any transaction, regardless of type (except procurement contracts), including, but not limited to . . . (6) Loans.

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

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

. . . .

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

Current Market Value Buyout resulting in a loss to FSA (Part 8) and Shared Appreciation Amortization (Part 9) are the non-procurement transactions in this handbook not covered by exceptions.--*

--7 Non-Procurement Debarment and Suspension (Continued)*B System for Award Management (SAM) Exclusions**

[2 CFR 417.500] SAM exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

[2 CFR 416.595] (a) Federal agency officials use SAM Exclusions to determine whether to enter into a transaction with a person, as required under section 180.430 of this title.

Before offering a borrower a Current Market Value Buyout with a loss to FSA (Part 8) or Shared Appreciation Amortization (Part 9), the agency approval official will check SAM Exclusions at <https://sam.gov/content/home> to ensure that the borrower has not been excluded or disqualified. DNP portal users may use DNP. A copy of this search will be placed in position 3 of the case file.

If a borrower has been excluded or disqualified, the transaction will not be offered. Appeal rights will be provided as set forth in Parts 8 or 9. Refer to 1-FLP paragraph 43.--*

8-40 (Reserved)

Part 2 Disaster Set-Aside (DSA) and Distressed Borrower Set-Aside (DBSA)**41 Purpose****A Intent of DSA**

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

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

--DSA will not be used to circumvent the servicing available under Parts 3 and 4.--

Note: Accounts with loans on full or partial deferral may not be considered for DSA.

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

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

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

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

B Authority

Any authorized agency official may approve or reject all disaster set-aside transactions.

42 Notifying Borrowers of DSA

A When FSA Must Notify Borrowers

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

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

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

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

B How FSA Notifies Borrowers

Borrowers will be notified of DSA availability by sending out Exhibit 9 within 15 calendar days after the service center receives notification of the first disaster designation for a county during a calendar year. This will inform * * * borrowers that the DSA program is available during disaster designations. The letter will list all outstanding disaster designations at the time.

***--Note:** Borrowers with a BAP flag or under bankruptcy protection will be provided Exhibit 9. Exhibit 9 will be sent to the borrower's attorney with a copy to the borrower.--*

43 DSA Applications

A Requests for DSA

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

(2) All borrowers must sign the DSA request.

*** * ***

B Required Financial Information

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

--(2) The borrower must provide any additional information requested by the Agency.--

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

Records provided by the borrower will be retained in the case file.

44 Application Tracking

A Tracking DSA Requests

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

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

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

45 DSA Eligibility and Limitations

A Borrower Eligibility

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

- (1) The borrower must have operated the farm in a county designated or declared a disaster area or a contiguous county at the time of the disaster (see operator definition in Exhibit 2). Farmers who have rented out their land base for cash are not operating the farm.**
- *--(2) The borrower must have acted in good faith, and the borrower's inability to make the upcoming scheduled loan payments must be for reasons not within the borrower's control.**
- (3) The borrower cannot have more than one installment set aside on each loan.--***
- (4) As a direct result of the natural disaster, the borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors and debts to the Agency. (This determination must be fully explained in the FBP credit presentation). This determination will be based on:**
 - *--(i) The borrower's actual production, income and expense records for the year the--* natural disaster occurred;**
 - (ii) Any other records required by the official;**
 - (iii) Compensation received for losses; and**
 - (iv) Increased expenses incurred because of the natural disaster.**
- (5) For the next production cycle, the borrower must develop a feasible plan showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including FLP debts. The borrower must provide any documentation required to support the farm operating plan.**
- (6) The borrower must not be in non-monetary default.**
- (7) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718 (1-CM).**
- (8) The borrower must not become 165 days past due before the appropriate Agency DSA documents are executed.**

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

45 DSA Eligibility and Limitations (Continued)

B Loan Eligibility

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

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

***--(3) All FLP loans must be current or less than 150 days past due at the time the application for DSA is complete.**

If the borrower becomes more than 90 days past due and the DSA has not been completed through the execution of the FSA-2501, the borrower will be immediately provided servicing notifications according to paragraph 66 and initialized into DLS Special Servicing. If a borrower has not provided a complete application for DSA or loan servicing within 150 days past due, the borrower will be notified of the agency's intention to accelerate in accordance with paragraph 85.

Note: YL's, NP's, and loans that are only partially advanced are **not** eligible for servicing under this part.--*

Example: On July 1, 2022, a borrower closes an FO loan for \$50,000 to expand an existing dairy barn, however because of delays, only \$1,000 has been advanced. In December severe storms damaged the existing barn and now the borrower is in dispute with the insurance company. The borrower is unable to make the July 1, 2023, installment of \$1,990 and has requested DSA. Because not all funds are advanced, the loan is not eligible for DSA. The borrower can request PLS as current but financially distressed.

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

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

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

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

Note: The limitation for DSA includes COVID DSA granted that has an outstanding balance.--*

45 DSA Eligibility and Limitations (Continued)

C Borrowers in Bankruptcy

When FSA receives a request for DSA from a borrower, co-borrower, or related entity that has filed for bankruptcy, FSA will consult with OGC to determine if and how the bankruptcy impacts the farm operation and FSA debt, and whether court approval of the DSA is required. If court approval is required, the appropriate documentation must be received before eligibility is determined according to subparagraph 43 B.

A borrower who does not have a confirmed reorganization bankruptcy plan may be eligible for DSA, provided the borrower addresses the terms of the DSA as part of the confirmed bankruptcy plan.

A borrower who has re-affirmed FSA debt or has successfully completed a reorganization bankruptcy and is no longer under bankruptcy court jurisdiction is eligible for DSA, subject to the eligibility and limitations in subparagraphs A and B.

Note: A borrower discharged under a chapter 7 bankruptcy who failed to re-affirm FSA debt is not eligible for DSA. See subparagraph 407 B [7 CFR 766.303(c)].

D Borrowers Paying Under a Debt Settlement

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

E Limitations

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

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

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

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

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

46 DSA Approval

A Decision

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

--The authorized agency official must prepare a Special Servicing credit action in FBP to-- document the decision about eligibility/approval. Borrowers will be notified of the decision by letter within 5 working days after the decision is made. The letter will be hand delivered with borrower acknowledgement in position 4 of the case file or sent by regular mail. Exhibit 10 will be used as a template for an affirmative letter. Rejection letters will be prepared according to 1-APP.

If the borrower does not execute all required agency documents within the required timeframe, the DSA request will be rejected and the authorized agency official will notify the borrower per 5-FLP, subparagraph 47 A.

B Borrower Acceptance of DSA

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

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

If the borrower does not execute all required agency documents within the required timeframe, the DSA request will be rejected and the authorized agency official will notify the borrower per 5-FLP, subparagraph 47 A.

C Required Forms

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

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

* * *

46 DSA Approval (Continued)**D Installments To Be Set-Aside**

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

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

E Interest Accrual

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

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

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

F Recording DSA

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

* * *

47 Adverse Determinations**A Notifying Borrowers of Adverse Determinations**

DSA applications that do **not** meet the DSA requirements or timeframes will be rejected. The borrower will be notified of the adverse decisions by letter detailing which requirements they did not meet and providing appeal rights according 1-APP.

48 Canceling and Reversing DSA

A Canceling DSA

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

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

If an account is accelerated, the DSA must be canceled as part of the acceleration action.

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

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

[7 CFR 766.60I] The borrower pays the set-aside installment.

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

B Reversing DSA

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

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

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

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

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

49 Borrower Payments

A Applying and Processing Borrower Payments

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

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

B Applying Payments of Borrowers With Multiple Set-Asides

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

50 COVID DSA**A DSA Expansion**

As a result of the COVID-19 National Emergency, a temporary COVID DSA expansion was implemented. The temporary expansion authorized:

- DSA when, as a direct result of the COVID-19 outbreak, the borrower did not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency.
- A second DSA for borrowers who already had a DSA when, as a direct result of the COVID-19 outbreak, the borrower did not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency. An eligible loan could have two COVID DSA's or one COVID DSA and one DSA for a natural disaster.
- COVID DSA for annual operating loans even if there was less than 2 years remaining on the term of the loan. Maturity dates were extended up to 12 months to allow for the set-aside.
- The disaster designation number for the COVID-19 outbreak as C2019. If a second COVID-19 DSA was approved, the disaster designation number was C2021.
- COVID-19 DSA for installments due through December 31, 2022.
- Requests for COVID-19 DSA through March 31, 2023.

--51 Distressed Borrower Set-Aside (DBSA)*A Intent of DBSA**

[7 CFR 766.451] (a) DBSA is available to borrowers with at least one program loan authorized in subtitle A, B, or C of the CONACT (the loan must be an OL, FO, CL, SW or EM) and who are a delinquent borrower or financially distressed borrower.

Note: YL's, NP's, and loans that are only partially advanced are **not** eligible for servicing under this part.

(b) DBSA is not intended to circumvent other servicing options available under this part.

DBSA is only intended to relieve some of the borrower's immediate and temporary financial stress. When the operation has demonstrated that it cannot make the payments due and requires restructure or other special servicing options, primary loan servicing under Parts 3 and 4 will be used. DBSA will not be used with PLS.

Note: Accounts with loans on full or partial deferral may not be considered for DBSA.

B Authority

Any authorized agency official may approve or reject all DBSA transactions.

C Notification of Availability of DBSA

Local Service Centers will publicize DBSA through GovDelivery articles at least annually, or more frequently as determined by FLC or SED. The DBSA Fact Sheet shall be included in all loan servicing notification packets sent according to paragraphs 66 and 67.--*

--52 DBSA Applications*A Requests for DBSA**

[7 CFR 766.454(a)] (1) A borrower must submit a request for DBSA to the Agency in writing.

Unlike DSA, a borrower does not have to have been affected by a disaster to qualify but must only demonstrate their financial distress.

(2) All borrowers liable for the loan must sign the DBSA request.

B Required Financial Information

[7 CFR 766.454(b)] (1) The borrower must submit actual production, income, and expense records for the current and upcoming production cycle unless the Agency already has that information for the borrower.

(2) The borrower must provide any additional information requested by the Agency.

The borrower must also provide any documentation required to support the farm operating plan as required in paragraph 54, such as 3 years of production, income, and expense records.

Records provided by the borrower will be retained in the case file.--*

--53 DBSA Application Tracking*A Tracking DBSA Requests**

The authorized agency official must date stamp the borrower's DBSA request as of the date FSA received it. The application will be entered in and tracked through completion in DLS under Security Instruments Other Workflows.

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

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

--54 DBSA Eligibility and Limitations*A Borrower Eligibility**

[7 CFR 766.452(a)] The borrower must meet all of the following requirements to be eligible for DBSA:

- (1) The borrower must currently be operating the farm. Farmers who have rented out their land base for cash are not operating the farm. (see operator definition in Exhibit 2).**
- (2) The borrower must have acted in good faith, and the borrower's inability to make the current or upcoming scheduled loan payments must be for reasons not within the borrower's control.**
- (3) The borrower cannot have more than one DBSA on each loan.**
- (4) The borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency. This determination will be based on:**
 - (i) The borrower's actual production, income and expense records; and**
 - (ii) Any other records required by the Agency;**
- (5) For the next production cycle, the borrower must develop a feasible plan showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including Agency debts. The borrower must provide documentation required to support the farm operating plan.**
- (6) The borrower must not be in non-monetary default.**
- (7) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718 (1-CM).**
- (8) The borrower must not become 165 days past due before the appropriate Agency DBSA documents are executed.**

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

--54 DBSA Eligibility and Limitations (Continued)*B Loan Eligibility**

[7 CFR 766.452(b)] (1) To be considered for DBSA the loan must have been either an OL, FO, CL or EM outstanding prior to September 25, 2024.

(2) All of the borrower's program and non-program loans must be current after the Agency completes DBSA for the scheduled payment installment.

(3) All FLP loans must be either current or less than 150 days past due at the time the complete application for DBSA is received by the Agency.

If the borrower becomes more than 90 days past due and the DBSA has not been completed through the execution of the FSA-2501, the borrower will be immediately provided servicing notifications according to paragraph 66 and initialized into DLS Special Servicing. If a borrower has not provided a complete application for DBSA or loan servicing within 150 days past due, the borrower will be notified of the agency's intention to accelerate in accordance with paragraph 85.

Loans that are partially advanced are not eligible for DBSA.

Example: On July 1, 2022, a borrower closes an FO loan for \$50,000 to expand an existing dairy barn, however because of delays, only \$1,000 has been advanced. In December the borrower determines he does not have sufficient income from milk sales due to lower prices and will be unable to make the February 1, 2023, installment of \$1,990 and requests DBSA. Because not all funds are advanced, the loan is not eligible for DBSA. The borrower can request PLS as current but financially distressed.

(4) The Agency has not accelerated the borrower's account.

The borrower cannot currently be accelerated.

(5) For any loan that will receive DBSA, the remaining term of the loan must equal or exceed 2 years from the due date of the DBSA agreement.

(6) The loan must not have an DBSA or DSA in place.

Notes: The loans can have only one set-aside in place at any time, either DBSA or DSA. The loans must remain eligible until Form FSA-2501 is executed.

The limitation for DSA includes COVID DSA granted that has an outstanding balance.

(7) The loan must not have been consolidated with any other loan that would not be eligible for DBSA on its own merits.--*

--54 DBSA Eligibility and Limitations (Continued)*C Borrowers in Bankruptcy**

When FSA receives a request for DBSA from a borrower, co-borrower, or related entity that has filed for bankruptcy, FSA will consult with OGC to determine if and how the bankruptcy impacts the farm operation and FSA debt, and whether court approval of the DBSA is required. If court approval is required, the appropriate documentation must be received before eligibility is determined according to subparagraph A.

A borrower who does not have a confirmed reorganization bankruptcy plan may be eligible for DBSA, provided the borrower addresses the terms of the DBSA as part of the confirmed bankruptcy plan.

A borrower who has re-affirmed FSA debt or has successfully completed a reorganization bankruptcy and is no longer under bankruptcy court jurisdiction is eligible for DBSA, subject to the eligibility and limitations in subparagraphs A and B.

Note: A borrower discharged under a chapter 7 bankruptcy who failed to re-affirm FSA debt is not eligible for DBSA. See subparagraph 407 B [7 CFR 766.303(c)].--*

--54 DBSA Eligibility and Limitations (Continued)*D Borrowers Paying Under a Debt Settlement**

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

E Limitations

[7 CFR 766.453(a)] The DBSA amount is limited to the lesser of:

- (1) The amount of the delinquent installment or upcoming scheduled installment; or**
- (2) The amount the borrower is unable to pay the Agency. Borrowers are required to pay any portion of an installment they are able to pay.**

[7 CFR 766.453(b)] The amount set aside will be the unpaid balance remaining on the installment at the time DBSA is complete. The amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

[7 CFR 766.453(c)] Recoverable cost items may not be set aside.--*

--55 DBSA Approval*A Borrower Acceptance and Decision**

[7 CFR 766.455] Subject to the 165 calendar day limitation in § 766.452(a)(8), the borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DBSA, which will be within 30 days of having submitted a complete application.

Subject to the 165-calendar-day limitation in subparagraph 54 A, the borrower must sign FSA-2501 within 45 calendar days (48 calendar days if the letter is sent by mail to allow 3 calendar days for delivery) of the date of FSA's approval letter for each loan DBSA. Any exception must be requested according to paragraph 4.

If the borrower does not execute all required agency documents within the required timeframe, the DBSA request will be rejected and the authorized agency official will notify the borrower according to subparagraph 57 A.

B Agency Decision

The authorized agency official must prepare a Special Servicing credit action in FBP to document the decision about eligibility or approval. Borrowers will be notified of the decision by letter within 5 working days after the decision is made. The letter will be hand delivered with borrower acknowledgement in position 4 of the case file or sent by regular mail. Exhibit 10 will be used as a template for an affirmative letter. Rejection letters will be prepared according to 1-APP.

C Required Forms

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

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

***--56 Payments Toward Set-Aside Installments**

A Interest Accrual

[7 CFR 766.456(a)] Interest will accrue on any principal portion of the DBSA installment at the rate of one eighth of a percent.

B Due Date

[7 CFR 766.456(b)] The DBSA amount, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

C Applying Payments

[7 CFR 766.456(c)] The Agency will apply borrower payments toward DBSA installments first to interest and then to principal

D Recording DBSA

Office will follow interim guidance until modernization of FLP systems are completed.--*

***--57 Adverse Determinations**

A Notifying Borrowers of Adverse Determinations

DBSA applications that do **not** meet the DBSA requirements or timeframes will be rejected. The borrower will be notified of the adverse decisions by letter detailing which requirements they did not meet and providing appeal rights according 1-APP.--*

--58 Canceling and Reversing DBSA*A Canceling DBSA**

[7 CFR 766.457(a)] The Agency will cancel a DBSA agreement if the Agency takes any PLS action on the loan;

Office will follow interim guidance until modernization of FLP systems are completed.

[7 CFR 766.457(b)] The Agency will cancel a DBSA agreement if the borrower pays the:

(1) Current market value buyout in accordance with § 766.113; or

(2) The set-aside installment.

Office will follow interim guidance until modernization of FLP systems are completed.

B Reversing DBSA

[7 CFR 766.458] If the Agency determines that the borrower received an unauthorized DBSA, the Agency will reverse the DBSA after all appeals are concluded.

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

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

- notify RDBCSO, FLB in writing to reverse DBSA
- attach this notification to Form FSA-2501, which should remain stapled to the promissory note or assumption agreement.

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

59-64 (Reserved)

Part 3 Loan Servicing – General Procedures

65 Borrower Non-Compliance With Loan Agreements

A Documenting Non-compliance

Borrowers must be in compliance with loan agreements to be eligible for loan servicing options. Non-compliance will be documented in the FBP running record by the authorized agency official. Documentation must include:

- type, nature, circumstances, and reasons for non-compliance
- any actions taken by the borrower to correct the non-compliance
- requirements of 4-FLP, subparagraph 181 A for conversion.

Note: Failure to complete borrower training is not a non-compliance issue for loan servicing. See 3-FLP, subparagraph 474 C for loan making restrictions for failure to complete borrower training.

Borrowers in non-compliance will be given the opportunity to correct the matter whenever possible. The borrower will be contacted and provided the opportunity to explain the potential non-compliance using Exhibit 10.5 or 4-FLP, Exhibit 31 for conversion (4-FLP, Part 7, Section 2). The borrower will also be initialized into DLS Special Servicing under “Borrower Potentially Commits a Non-monetary Default” category and tracked until servicing is completed. Any response received from the borrower will be documented in FBP and any supporting documentation will be included in the case file. The authorized agency official will review the borrower’s response and determine if the potential non-compliance has been satisfactorily resolved. If the issue is resolved, the FBP running record will be documented and no further action will be taken.

***--Notes:** In situations where all liable parties are deceased, Exhibit 10.5 or 4-FLP, Exhibit 31 will be sent to the appropriate estate(s) as this will provide notification to the heirs.--*

In extraordinary circumstances the authorized agency official may determine that borrower resolution of non-compliance is not feasible. In these cases, the SED or FLC will contact LSPMD for further instructions.

B Non-monetary Default

Third party foreclosures, failure to pay real estate taxes or insurance, and UCC renewal fees are non-monetary default decisions that can be made by the authorized agency official. If the authorized agency official determines that the non-compliance has not been resolved and the borrower is in non-monetary default, the account will be referred to SED for concurrence. FSA-2551 will be prepared by the local office and must include all pertinent information, documentation, and any responses provided by the borrower regarding the potential non-compliance. FSA-2551 and all documentation will be forwarded to SED for concurrence of non-monetary default determination. OGC concurrence is not required.

65 Borrower Non-Compliance With Loan Agreements (Continued)

C Lack of Good Faith

--SED will determine if a lack of good faith determination will be pursued. OGC concurrence is not required but can be pursued if SED determines it is warranted. OGC can make its own independent lack of good faith determinations that may result in the case being submitted for civil or criminal action as described in Part 11. In all cases, a lack of good faith determination must be made for each decision according to 3-FLP, subparagraph 65 A.--

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 non-monetary default and is already being serviced according to this part.

Example: A borrower misses their January 1, 2021, payment and is properly notified when they become 90 calendar days past due. Processing is then delayed and while FSA continues PLS they make the January 1, 2021, payment on January 15, 2022. At this point, they are less than 90 calendar days past due; however, since the delinquency was not cured at any point, FSA continues to process PLS. They are 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.

Example: A borrower’s annual installment is due January 1. The borrower fails to make the payment and a local agency official contacts the borrower to discuss the missed payment. The borrower promises to sell steers on May 1st to make the annual installment. The agency official acknowledges the proposal, but reminds the borrower that PLS notices must be sent if the account becomes 90 days past due. The account is shown as 90 days past due on the April 540 Report, therefore, the local agency official must send the borrower the required servicing package and enters the PLS action in DLS Special Servicing.

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 non-compliance must be determined according to paragraph 65 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.**67 Providing Loan Servicing Notification Package****A Forms for Notifying Borrowers**

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

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

67 Providing Loan Servicing Notification Package (Continued)

A Forms for Notifying Borrowers (Continued)

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

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

The authorized agency official must send FSA-2510 within 15 calendar days of the determination of the default. Notification will be sent by certified mail. The account will be *--flagged "PLS" (Exhibit 11), according to subparagraph 67 B, until the primary loan servicing process has been completed or the account accelerated.

Note: The DBSA fact sheet must be included with the FSA-2510.

If non-monetary default is subsequently identified, the borrower's noncompliance must be determined and notification sent according to paragraph 65. The borrower will not be sent--* FSA-2514 and a new PLS packet. The non-monetary default will be addressed in the appropriate pre-acceleration notice unless it is resolved.

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

If a potential non-monetary default cannot first be resolved through the steps in subparagraph 66 A, FSA-2514 will be sent by certified mail. The account will be flagged *--"PLS" (Exhibit 11), according to subparagraph 67 B, until the primary loan servicing--* process has been completed, the default resolved, or the account accelerated.

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

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

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

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

Section 2 Completing the Loan Servicing Application

81 Required Information

A General Application Requirements and Signatures

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

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

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

Note: Until the CFR has been updated, FSA-2510 has been revised to remove reference to PLS forms that are replaced by the new FSA-2001.

* * *

B Application Form

--[7 CFR 766.102(a)(1)] Completed Agency application form;--

The borrower and, in the case of an entity, all entity members must complete FSA-2001. The authorized agency official will order personal and/or commercial credit reports immediately upon receipt of the signed FSA-2001 * * * . No credit report fee is collected for applications for servicing only.

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

81 Required Information (Continued)**C Financial Records**

***--[7 CFR 766.102(a)(2)] Financial records for the three most recent years, including income tax returns;**

The borrower must provide all farm and nonfarm income and expense records, including family living expenses. Financial records will be submitted through FSA-2001, FSA-2002, or other similar format. FSA does not release a borrower's income tax records--* without OGC's consent. Failure to provide income tax records is considered an incomplete application. Follow subparagraph 83 C for notification requirements. However, there are circumstances when an individual may not be required to submit income tax returns, such as certain tribal members or operations that do not meet minimum income thresholds.

D Production Records

***--[7 CFR 766.102(a)(3)] The farming operation's production records for the 3 most--* recent years or the years the borrower has been farming, whichever is less;**

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

E Compliance With Environmental Requirements

--[7 CFR 766.102(a)(4)] Documentation of compliance with the Agency's environmental regulations contained in part 799 of this chapter (1-EQ);--

* * *

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

F Verification of Non-Farm Income

[7 CFR 766.102(a)(5)] Verification of all non-farm income;

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

G Farm Operating Plan

***--[7 CFR 766.102(a)(6)] A current financial statement and the operation's farm--* operating plan, including the projected cash flow budget reflecting production, income, expenses, and debt repayment plan. In the case of an entity, the entity and all entity members must provide current financial statements;**

--FBP will be prepared from FSA-2001 using the borrower's historical data.--

81 Required Information (Continued)**H Verification of Debt and Collateral**

--[7 CFR 766.102(a)(7)] Verification of all debts and collateral; and--

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

***--I Other Application Requirements**

[7 CFR 766.102(a)(8)] Upon Agency request, any leases, contracts, options and other agreements related to the operation.--*

82 Additional Information Required if Applying for Other Loan Servicing Programs**A Debt Settlement**

[7 CFR 766.102(c)] To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under *--part 761 subpart F of this chapter. (7-FLP, Part 12)--*

To apply for debt settlement, a borrower must complete and submit FSA-2732 and may do so at any time. The loan account does not need to be delinquent and the borrower does not need to apply for primary loan serving before applying for debt settlement. See 7-FLP, Parts 8 and 12.

B Conservation Contract

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

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

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

See Part 5 for more information on conservation contracts.

83 Borrower Response Timeframes

A Borrower Response Timeframes

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

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

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

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

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

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

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

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

83 Borrower Response Timeframes (Continued)**B When Loan Servicing Application Timeframes Begin**

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

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

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

C Incomplete Applications

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

D SED Extension Authority

--[7 CFR 766.101(e)] In extraordinary circumstances, after the application period described in (d)(2) and (3) of this section has expired (subparagraph 83 A), the SED may extend the application deadline when requested by the borrower in writing.--

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

84 Releasing Divorced Spouses of Liability**A General**

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

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

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

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

B Release of Liability Requirements

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

- (1) The remaining individual submits a complete application in accordance with this section;**
- (2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all Agency loan payments;**
- (3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and**
- (4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.**

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

Section 3 Loan Servicing Processing and Requirements

101 Initial Processing

A General Policy

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

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

102 Eligibility

A General

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

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

B Entity and Operator Requirements

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

The borrower must have been the operator as defined in Exhibit 2.

C Good Faith

[7 CFR 766.104(a)(4)] The borrower has acted in good faith. If loan servicing is to be denied based on “lack of good faith”, a determination must be made according to paragraph 65.

***--Note:** A lack of good faith determination requires SED concurrence for each new application package submitted. See 3-FLP, subparagraph 65 A.--*

102 Eligibility (Continued)**D Reason for Delinquency or Distress**

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

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

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

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

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

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

--(vi) Catastrophic medical expenses for the care of a family member of the borrower or entity member, in case of an entity borrower.--

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

--FSA will not require a borrower to liquidate IRS recognized education or retirement savings accounts to make annual installments to FSA before a special servicing action is considered. However, all other working capital reserves and liquid savings accounts of the operation, including funds which are accumulated for specific farm related capital purchases, will typically be used to fully resolve financial distress or delinquency, as the reason for delinquency must be beyond the borrower's control. Accordingly, borrowers are expected to use available liquid funds, if available, to fully resolve delinquency.--

102 Eligibility (Continued)**E NRV of Nonessential Assets**

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

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

--F Borrower in Non-Monetary Default--

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

G Financially Distressed Borrower

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

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

H Federal Crop Insurance Violation

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

I Debtors With SA Only

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

- (1) Be delinquent due to circumstances beyond their control;**
- (2) Have acted in good faith.**

103 Consideration of Servicing**A General Policy**

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

B Order in Which FSA Considers Servicing Options

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

- (1) Conservation Contract, if requested;**
- (2) Consolidation and rescheduling or reamortization;**
- (3) Deferral;**

--(4) Write-down; and--

- (5) Current market value buyout.**

C Debt Service Margin

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

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

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

104 Appraisals

A Current Appraisals

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

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

--(i) A write-down is required to develop a feasible plan;--

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

Note: When security for the borrower's account is cross-collateralized, SED may waive the appraisal requirement for real estate and/or non-essential assets for current market value buyout, when the chattel security appraised value exceeds the borrower's total debt. This authority may be redelegated to FLC, FLS, and/or DD.

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

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

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

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

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

105-115 (Reserved)

--Section 5 Amending Promissory Notes Without PLS--**128 SED Exception Authority to Change Installment Due Date Without PLS****A Purpose**

On an individual case-by-case basis, an Administrator's exception under 7 CFR 766.401 to change the due date of FLP loan installments outside of the regular PLS process may be approved by SED according to this paragraph when:

- the borrower's operational income does not coincide with the installment(s) due date leading to potential chronic delinquencies; and
- changing the due date of the installment(s) will prevent the need for typical PLS action.

Administrator's exception authority may not be further redelegated.

B Determining Possible Need for Exception

During the regular servicing of the FLP loan account, it may become apparent the installment due dates no longer allow the borrower to pay the FLP loan installments when due. An example would be when the timing of the borrower's income stream does not align with when installments on a loan are due.

Example 1: A borrower received an FSA term loan to purchase a combine to harvest wheat. The initial installment date was set for July 1 when harvesting was complete, and the crop proceeds were received. However, because of losses of leased land, the borrower has had to change his crops to soybeans, which are harvested in October. The borrower's due date could be revised with this exception to October 1 to coincide with operational change.

Example 2: A borrower has restructured an FSA term loan for their cow/calf operation with installment due date of May 1 which reflected the normal marketing period for this operation. However, because of reoccurring drought affecting the breeding cycles, the marketing period has moved to late summer. The borrower has been able to pay current, however payment depletes their operating capital for hay production. The borrower's due date could be revised with this exception to August 1 to better coincide with most of their calf sales.

128 SED Exception Authority to Change Installment Due Date Without PLS (Continued)

B Determining Possible Need for Exception (Continued)

Example 3: A borrower applied for a Farm Ownership loan on September 1. Because of delays in processing the application (i.e., appraisals and environmental review), the loan was not approved until December 15. Because of the expiration of the real estate contract, the local office scheduled closing on January 15 even though the borrower's income stream was not available until mid-March. The borrower's due date could be revised to April 15 to better fit the income stream and prevent chronic delinquencies because of an earlier payment due date.

Using this exception is not authorized for a single occurrence where the borrower is unable or unwilling to make the current installment due. The exception will be used to correct long-term operational changes without restructure or rescheduling. This exception will not be used concurrently with PLS or DSA.

C Requirements

This exception authority will not be used to extend the final maturity date of the loan. The borrower will be expected to pay the final installment and any remaining balance on the original maturity date.

This exception must not be used if any of the following apply:

- the due date for the loan has been previously revised using this exception authority

Example: Loan 44-01 with a due date of January 1 was revised to March 1 using this exception. Loan 44-01 is no longer eligible for this exception unless it is restructured to a new loan.

- the loan is deferred
- *--if a borrower has a partial or complete application for DSA, DBSA or PLS as a--* distressed/current borrower, those applications have not been processed to approval or denial with all appeal rights exhausted
- *--there is a DBSA or DSA on the loan--*
- any of the borrower's FLP loans are delinquent when the exception request is made or at the time the addendum to the promissory note is to be signed
- the remaining term of the loan is less than 2 years from the date of the installment payment due date that will be extended

128 SED Exception Authority to Change Installment Due Date without PLS (Continued)

C Requirements (Continued)

- *--the borrower has not acted in good faith as determined in 3-FLP, subparagraph 65 C--*
- the borrower is in non-monetary default
- the borrower is ineligible because of disqualification resulting from a Federal Crop Insurance violation according to 7 CFR part 718.

The proposed new installment due date must not be more than 3 months from the due date listed on the promissory note. This exception authority will not be used to extend the final maturity date of the loan. The borrower will be expected to pay the final installment and any remaining balance on the original maturity date.

[7 CFR 766.104(a)(5)] Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans. A borrower who is not delinquent must pay as much interest as feasible. The interest payment will be applied to the loan account as a regular payment according to 4-FLP, paragraph 62.

*--**Note:** If a borrower has loans that are deferred and/or has loans with a DBSA or DSA, only those loans that are not deferred and do not have a DBSA or DSA are eligible for this exception. Do **not** cancel loan deferrals, DBSA, or DSA to use this exception.--*

--128 SED Exception Authority to Change Installment Due Date Without PLS (Continued)*D Exception Process**

If an FSA loan official, through a loan analysis action or request by the borrower, determines the current note due date does not coincide with the borrower's income and not changing the due date will continue to cause chronic late payments, FSA may consider using this exception.

Local servicing official will:

- verify the loan meets the applicable requirements in subparagraph C, including an analysis of why the Agency's financial interest would be adversely affected by acting according to published regulations or policies, and granting the exception would resolve or eliminate the adverse effect upon its financial interest
- initiate a credit action in FBP to process the proposed change in the due date ensuring all elements of paragraph 4 are included with a recommendation including an updated cash flow that demonstrates whether the borrower has the ability to pay a portion of the interest accrued before revising the due date.

Note: If a credit action is already in process, for example a new loan request, this exception request and recommendations may be included in the open credit action rather than separate credit action. For a standalone action, County Offices should use a Classification/LR/YEA Only credit model.

FLM and SFLO's may submit requests for exception under this subparagraph directly to FLC. Requests must address the requirements of subparagraph 4 B and the issues noted in this subparagraph.--*

--128 SED Exception Authority to Change Installment Due Date without PLS (Continued)*D Exception Process (Continued)**

After the exception request and FBP have been received and reviewed, State Office will:

- determine if the exception request meets the requirements of this paragraph and paragraph 4
- notify the local office of the determination in writing and document the determination in FBP

Note: SED can authorize FLC to document the approval in the credit presentation.

- notify LSPMD of the transaction using email provided in 1-FLP, subparagraph 4 E.

Note: OMB clearance of Exhibit 12 of the State form is not required if used less than 10 times per calendar year. Contact LSPMD for assistance with the Paperwork Reduction Act requirements.

If the borrower is not interested in changing the installment due date(s), the local office will document the FBP providing the applicable details of the conversation/emails/letters etc.

If the borrower is interested in changing the installment due dates, local offices will:

- document the FBP credit action providing the applicable details of borrower communication, including communications advising the borrower the final due date of the loan does not change with this modification
- create a custom workflow in DLS to track the exception according to subparagraph F and update it as needed
- coordinate with the State Office to notify the RD Business Center that the transaction changing the due date may be processed once the agency has received the signed addendum (or other document) and interest payment from the borrower.

Note: For additional guidance concerning the process, information needed, and any State specific requirements, local offices should contact the State Office.--*

128 SED Exception Authority to Change Installment Due Date Without PLS (Continued)**E Concurrence and Addendum**

The borrower must sign an addendum to the promissory note (or sign another type of document as determined by the applicable Regional OGC) for each loan where the due date will be changed. Exhibit 12 is provided as an example. It may be used if acceptable to the applicable Regional OGC, or changed as needed. If it is changed, add the State initials after the form number (i.e. 5-FLP Exhibit 12 TX) so it is clear that the example form has been changed. The applicable Regional OGC must concur with any form or other document that a State will be using to change the installment due date.

Note: New promissory notes will not be used to document the change to the installment due date. This change is not being done as part of the PLS, DBSA, or DSA and no new loan funds are being advanced in this transaction. This exception authority will not be used to extend the final maturity date of the loan.

F Custom Workflow

The exception will be tracked to completion in DLS under Security Instruments Other Workflows. The DLS enhancement is not yet completed. Offices must manually track these exceptions until this enhancement is released.

The authorized agency official must track at a minimum the following:

- loan number
- original installment date
- proposed/new installment date
- date SED approved or denied the exception
- date addendum to the promissory note/other document was signed
- date transaction was completed to change the due date
- interest amount and date paid.

Note: The County Office will maintain tracking of individual cases in the operational file FLPF-5-a.

G Transaction Code

Transaction code 4L will be used by the RD Business Center to record the new installment due date on each applicable loan. State Office coordinators will send completed FSA-2446 to the RD Business Center. See 1-FLP, subparagraph 5 B. After the transaction has completed successfully, the RD Business Center will notify the applicable State Office that the transaction was completed.

--129 Extending Maturity Date for Direct Loans with Balloon Payments*A General Requirements and Signatures**

[7 CFR 766.120(a)] At a borrower's written request, the maturity date and installment schedule of a direct term loan with a balloon payment may be extended for up to an additional 8 years from the original maturity date using an addendum to the promissory note when the:

The authorized agency official will date stamp the request received from the borrower on the date it was received.

(1) Loan was originally amortized for no more than 15 years with a balloon payment scheduled in the final year of the loan;

Term loans with a balloon installment on a 21-year amortized installment schedule are not eligible for extension of maturity under this paragraph.

(2) Loan has not received PLS, DBSA, or DSA;

(3) Borrower has made all scheduled loan installments in the last 36 months;

(4) Balloon payment is due in less than 12 months;

(5) Borrower does not have an outstanding DBSA or DSA on any loan;

Accounts with DBSA or DSA on any loan are not eligible and will require servicing under Parts 3 and 4 if the borrower is unable to make the final balloon installment plus any set-aside amount.

(6) Borrower has not received PLS on any loan in the last 36 months;

(7) Borrower has only had equal installments scheduled on any direct term loan in the last 36 months;

Loans beginning with unequal installments may be eligible if the unequal installments were before 36 months from the maturity date. This requirement is specific to the loan being considered for extension of the maturity date.

Example: On July 1, 2017, a borrower closed a term loan maturing in 7 years. Scheduled installments included interest only payments for the first 3 installments with remaining payments based on a 12-year amortization. All payments were made by the borrower as scheduled. On May 1, 2024, the borrower requested to extend the maturity date of this loan for an additional 8 years. This loan would meet this requirement since equal amortized installments were made in the final 36 months of the term.--*

--129 Extending Maturity Date for Direct Loans with Balloon Payments (Continued)*A General Requirements and Signatures (Continued)**

(8) Borrower's direct loans are fully secured with each loan having a security value of at least 100 percent of the remaining balance of the loan;

The authorized agency official, to whom SED delegated authority to prepare personal property appraisals and real estate evaluations under 1-FLP Exhibit 7, will estimate the remaining market value or any need for additional security before extending the maturity date. The authorized agency official must document the value in FBP, with the basis for the estimates.

(9) Borrower is unable to partially or fully graduate;

Graduation reviews will be completed according to the operational review requirements completed according to 4-FLP Part 2.

(10) Borrower has acted in good faith;

(11) Borrower is not otherwise financially distressed or delinquent;

Extension of the maturity date will not be used to circumvent the servicing available under Parts 3 and 4.

(12) Borrower must pay a portion of the interest due on the loan; and

A borrower who is not delinquent must pay as much interest as feasible. The interest payment will be applied to the loan account as a regular payment according to 4-FLP, paragraph 62.

(13) Addendum is signed by the borrower before the original maturity date.

The borrower must sign an addendum to the promissory note for each loan where the maturity date will be extended. FSA-2503 will be used as the addendum to extend the maturity date of the loan. The FSA-2503 must be signed in accordance with state issued supplements for promissory notes based on OGC guidance for the respective state. All liable parties on the promissory note must sign the FSA-2503. Payment of the annual installment amount must be made prior to execution of the FSA-2503.

Note: New promissory notes will not be used to document the extension of maturity date.

(b) In no event may the loan exceed applicable term limits described in this part.

The purpose of this provision is to extend the repayment term up to 15 years from the date of the original FSA-2026 without rescheduling or reamortization. The payment amount included in the FSA-2503 will be the regular installment amount provided on the FSA-2026, with the new maturity date provided.--*

--129 Extending Maturity Date for Direct Loans with Balloon Payments (Continued)*B Notification Requirements**

The County Office will monitor all term loans with balloon payments for the final installment due date to ensure that the borrower is notified they could extend the maturity date if qualified.

County and State Offices will ensure that 4-FLP Exhibit 25.3 is sent to the borrower according to 4-FLP, subparagraph 64 C.

C Approval Actions

The authorized agency official will prepare a credit presentation in FBP to document the borrower's eligibility to continue payments as scheduled. Approval of the extension will be recorded in the FBP.

D Special Servicing Actions

DLS Special Servicing activity will be initiated utilizing Chart 23 "Extending Maturity Date for Term Loans with Balloon Payments".

E Transaction Code

Transaction code 4L will be used by the RD Business Center to record the new installment due date on each applicable loan. State Office coordinators will send completed FSA-2446 to the RD Business Center. See 1-FLP, subparagraph 5 B. After the transaction has completed successfully, the RD Business Center will notify the applicable State Office that the transaction was completed.

F Tracking Notes with Balloon Installments

DLS LS Custom OM Reminders will be used to track and monitor any accounts that have loans with a balloon payment due at maturity. Refer to Section 7.5 Reminders, of the DLS User's Guide for detailed directions on creating custom reminders.

G Appeals Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.--*

130 (Reserved)

Part 4 Primary Loan Servicing Programs

Section 1 Consolidation and Rescheduling

131 Co-signers

When a co-signer's non-farm income is required to obtain a feasible cash flow plan, the co-signer will sign the restructured FSA-2026.

132 Eligibility and Loan Terms

A Loans Eligible for Consolidation

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

- (1) The borrower meets loan servicing eligibility requirements in § 766.104 (paragraph 102);
- (2) The Agency determines that consolidation will assist the borrower to repay the loans;
- (3) Consolidating the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;
- (4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;
- (5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR Part 12, if applicable (see 6-CP);
- (6) The loans are not secured by real estate;
- (7) The Agency holds the same lien position on each loan;
- (8) The Agency has not serviced the loans for unauthorized assistance under subpart F (Part 10) of this part; and
- (9) The loan is not currently deferred, as described in § 766.109 (Section 3), or set-aside, ***--as described in subpart B or J (Part 2) of this part. The Agency may consolidate loans upon cancellation of the deferral, DBSA, or DSA (Part 2).**

Notes: Consolidating loans eligible for DBSA with loans not eligible for DBSA will cause the loss of eligibility for a future DBSA for loans that are consolidated.--*

Stimulus bill loans will **not** be consolidated. Loans obligated with stimulus funds must retain their stimulus loan identifier. Stimulus loans are identified by TOA Codes 564 through 583. See DLS Customer Loan Information Section for TOA codes.

132 Eligibility and Loan Terms (Continued)**A Loans Eligible for Consolidation (Continued)**

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

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

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.

B Loans Eligible for Rescheduling

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

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

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

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

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

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

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

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

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

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.

--Section 4 Write-Down*172 Considering a Write-Down****A Eligibility**

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

- (1) Meets the eligibility criteria in § 766.104 (paragraph 102);**
- (2) Is delinquent;**
- (3) Has not previously received debt forgiveness on any FLP direct loan; and**
- (4) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR Part 12.**

B Conditions

[7 CFR 766.111(b)] (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, is achieved with a debt service margin of 101 percent or more, the Agency will permit a borrower to accept a *--non-write-down servicing offer and waive the right to a write-down offer when the write-down offer will require additional time and appraisals to fully develop. If, after obtaining an appraisal, a feasible plan is achieved with and without a write-down--* and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

Note: Borrowers will be notified using FSA-2517 and FSA-2518 giving them the option to proceed without an appraisal or to wait for an appraisal to be completed.--*

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

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

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

C Associated Loan Servicing

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

173-190 (Reserved)

Part 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, an additional amount of security will be required, if available, to reach a 125 percent security margin when the agency is servicing a loan, except as provided in paragraph (b) (subparagraph 211 C) of this section. Total loan security in excess of what is needed to achieve a security margin of 125 percent will only be taken when it is not practicable to separate the security.**

FSA will take the best lien obtainable on all assets the borrower, or entity members in the case of an entity, owns to reach a 125 percent security margin 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 to achieve a 125 percent security margin. 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 assets of the borrower and co-borrowers to meet the 125 percent security margin requirement, except that the following assets will not be considered available to meet this requirement:**

(1) When taking a lien on an asset will prevent the borrower from obtaining credit--* from other sources;

Note: Releases of security are processed according to 4-FLP, Section 5.

--(2) When an asset could have significant environmental problems or costs as described in 7 CFR part 799 of this chapter (1-EQ);--

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

***--(4) When an asset is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, educational savings 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)

230 Appraisals

A Overview of Options to Challenge Appraisals

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

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

B Challenging the Agency Appraisal

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

- (1) Obtain a USPAP compliant technical appraisal review prepared by a State Certified *--General Appraiser of the Agency's appraisal and provide it to the Agency within 90 days of the request for reconsideration or appeal and prior to reconsideration or the appeal hearing;**
- (2) Obtain an independent appraisal within 90 days of request for reconsideration or appeal request and completed in accordance with § 761.7 as part of the request for reconsideration or appeals process. The borrower must:--***
 - (i) Pay for this appraisal;**
 - (ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is 5 percent or less.**

230 Appraisals (Continued)

B Challenging the Agency Appraisal (Continued)

--[7 CFR 766.115(a)(3)] Use the second appraisal completed under paragraph (a)(2) of this section to negotiate the Agency's appraisal.--

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

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

[7 CFR 766.115(a)(3)] (ii) If the difference between the two appraisals is greater than five percent, the borrower may request a third appraisal within 30 days from the date of the second appraisal is provided to the Agency. The Agency and the borrower will--* share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.

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

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

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

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

C Continued Processing

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

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

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 *--Write-down" if the loan is completely written down or "Restructured with Partial Debt Write-down" 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 write-downs.--*

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 write-down 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 Write-down-- 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.

Part 8 Current Market Value Buyout**321 Buyout at Current Market Value****A Introduction**

If a feasible plan cannot be developed through primary loan servicing, FSA will offer the borrower current market value buyout if they are determined eligible according to subparagraph B.

Current market value allows the borrower to pay FSA the current market value of the security less any prior liens. FSA will release all of the borrower's debt and security instruments when current market value is paid in full within the required timeframes. If the total FLP debt is less than current market value, FSA will accept payment in full at any time.

B Borrower Eligibility

[7 CFR 766.113 (a)] A delinquent borrower may buy out the borrower's Agency loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:

- (1) The borrower has not previously received debt forgiveness on any other FLP direct loan;**
- (2) The borrower has acted in good faith;**
- (3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;**
- (4) The borrower is unable to develop a feasible plan through primary loan servicing programs or a Conservation Contract, if requested;**
- (5) The present value of the restructured loans is less than the net recovery value of Agency security;**
- (6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and**
- (7) The amount of debt forgiveness does not exceed \$300,000.**

***--Note:** Current market value buyouts resulting in a loss to FSA must be screened for debarment and suspension. See 5-FLP, paragraph 7.--*

321 Buyout at Current Market Value (Continued)

B Borrower Eligibility (Continued)

Debt reduction from FSA-2535's is not included in the \$300,000 limit described in this subparagraph.

If eDALR\$ shows that FSA would write off more than \$300,000 of the borrower's debt in restructuring the debt or accepting the current market value, the borrower is not eligible for primary loan servicing or current market value buyout. The borrower may be considered for debt settlement according to 7-FLP, Part 12.

C Approval of Buyout

*--SED must approve all current market value buyouts, which will result in a loss to the government.

If the account will be paid in full, SED signature is not required.--*

Part 9 Servicing Shared Appreciation Agreements**341 Monitoring Shared Appreciation Agreements*****--A RDBCSO Reports**

RDBCSO sends a monthly report to the County Office listing:--*

- shared appreciation agreements that will soon be maturing
- past due amounts owed by borrowers on shared appreciation agreements that have been triggered or have matured.

B Borrower Reminder of Shared Appreciation Agreement

The authorized agency official will send Exhibit 25 to all borrowers who executed a shared appreciation agreement as a reminder of shared appreciation agreement requirements. This letter will be sent in the fourth quarter of every FY during the term of the shared appreciation agreement, starting 1 year after the shared appreciation agreement is signed.

C Consideration of Shared Appreciation Amounts

FSA considers the amount of shared appreciation as a contingent liability of the borrower until it is determined whether there is any shared appreciation due and payable according to paragraph 342.

FSA includes shared appreciation amounts that are due and payable or amortized as part of the borrower's total FSA debt.

342 Triggering Shared Appreciation Agreements

A When Shared Appreciation Agreement Is Due

**[7 CFR 766.201(b)] The borrower must repay the calculated amount of shared
*--appreciation after a term of 5 years from the date of the write-down, or earlier if:--***

*** * ***

**[7 CFR 766.201(b)] (1) The borrower sells or conveys all or a portion of the Agency's
real estate security, unless real estate is conveyed upon the death of a borrower to a
spouse who will continue farming;**

[7 CFR 766.201(b)] (2) The borrower repays or satisfies all FLP loans;

[7 CFR 766.201(b)] (3) The borrower ceases farming; or

[7 CFR 766.201(b)] (4) The Agency accelerates the borrower's loans.

343 Determining Amount of Shared Appreciation Due (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 write-down; or

(2) Fifty percent of such appreciation if the agreement is triggered more than four years from the date of the write-down 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 write-down.--*

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.**

***--Note:** Borrower must be screened for debarment and suspension. See 5-FLP, paragraph 7.--*

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.

346 Amortizing Shared Appreciation (Continued)**D Amortized Loan Interest Rate**

[7 CFR 766.205(a)] The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

E Amortized Loan Security

The Shared Appreciation Payment Agreement must retain the same security position of the original notes identified in SAA. SED will issue a State supplement on maintaining FSA's *--lien position. The authorized agency official will take the best obtainable lien on assets not to exceed 125 percent security margin according to subparagraph 211 A. The Shared--* Appreciation Payment Agreement does not have to be fully secured if the borrower meets all requirements in subparagraph A and the borrower provides the best lien obtainable on all assets.

The authorized agency official will close the Shared Appreciation Payment Agreement only after the equity recapture amount has been established by the processing of a 3 V - Equity Receivable transaction in DLS. The interest rate to be used for the amortization must be the SA rate in effect at the time of approval. The amortization will be closed according to the requirements listed in subparagraphs F through I and 3-FLP, Part 16. The amortization approval date shall not be before the date shared appreciation is due as described in subparagraph 342 A.

F Amortized Loan Processing

The authorized agency official will mark SAA "Amortized," attach it to the new FSA-2026, and file the original promissory note and its copies according to 32-AS. The copies of the new FSA-2026 and SAA will be filed in position 2 of the borrower case file.

If a Shared Appreciation Payment Agreement becomes due because of a partial sale of security and SAA has not yet matured, the authorized agency official will attach a copy of SAA to the new FSA-2026.

The authorized agency official will process a 3O – Equity Receivable Amortization transaction in the DLS SI Other Shared Appreciation Amortization workflow to record the Shared Appreciation Payment Agreement.

346 Amortizing Shared Appreciation (Continued)**G Amortized Loan Approval**

The authorized agency official will use FSA-2025 to notify the borrower of approval of shared appreciation agreement amortization. FSA-2026, with all covenants relating to graduation, credit elsewhere, restrictions on leasing, and FLP operating requirements removed, will be used as the loan agreement.

H Amortized Loan Application Denied

If amortization cannot be approved, the authorized agency official will deny the application to amortize the shared appreciation amount and servicing will continue according to Part 3 as *--the borrower is in non-monetary default.--*

I Servicing SA

[7 CFR 766.204(b)] If the borrower later becomes delinquent or financially distressed, reamortization of the Shared Appreciation Payment Agreement can be considered under subpart C (Part 3) of this part.

If the borrower has other program loans, the Shared Appreciation Payment Agreement will be considered as a part of the overall restructure process, but can only be reamortized.

Borrowers who do not have any program loans will be notified according to subparagraph 67 A.

Shared Appreciation Payment Agreements cannot be consolidated, deferred, or written down.

The DLS SI “Other Shared Appreciation (SA)” workflow shall be completed upon satisfaction of the SA amortization loan.

347 (Reserved)

387 Recovering Unauthorized Assistance (Continued)**C Unauthorized Assistance Remittance in a Lump Sum**

[7 CFR 766.253(a)(1)] The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.

The authorized agency official must make every reasonable attempt to collect the amount of the unauthorized assistance calculated in paragraph 385 from the borrower in a lump sum. If the borrower agrees to remit the unauthorized assistance in a lump sum, the borrower must remit the unauthorized assistance within 90 calendar days of receipt of Exhibit 31.

FSA can make the borrower a new loan or a subordination to refinance the unauthorized loan as long as the new action meets all requirements for the type of new loan or subordination.

D Other Unauthorized Assistance Remittance Options

[7 CFR 766.253(a)] (2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower's ability to repay.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the loan will be converted to a Non-program loan under the following conditions:

- (i) The borrower did not provide false information;**
- (ii) It is in the interest of the Agency;**
- (iii) The debt will be subject to the interest rate for Non-program loans;**

The borrower must develop a feasible plan which includes the unauthorized assistance amount at NP rates and terms.

- (iv) The debt will be serviced as a Non-program loan;**
- (v) The term of the Non-program loan will be as short as feasible, but in no case will exceed:**
 - (A) The remaining term of the FLP loan;**
 - (B) Twenty-five (25) years for real estate loans; or**
 - (C) The life of the security for chattel loans.**

--A new FSA-2026 will not be taken. Instead RDBCSO, FLB will be informed of the-- change by memorandum identifying the loan to be affected, noting the new rates and terms, and referring to the authority in the regulation in this subparagraph. Copies of the memorandum will be attached to FSA-2026 of affected loan and all copies.

387 Recovering Unauthorized Assistance (Continued)**E Borrower Refusal to Pay**

[7 CFR 766.254(b)] If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C (Part 3) of this part.

Borrowers who can pay but refuse are in non-monetary default.

F When FSA Pursues Legal Action to Collect Unauthorized Assistance

The authorized agency official will move toward liquidation by notification of the borrower according to Part 3 if:

- the borrower fails to attend the scheduled meeting
- the borrower fails to respond to FSA within 30 calendar days of the date of receipt of Exhibit 31
- the borrower has not completed the corrective action within 90 calendar days of the date of receipt of Exhibit 31.

If OIG determines that unauthorized assistance was caused by incomplete or false information, the authorized agency official services the borrower's account and recovers unauthorized assistance according to OIG instructions.

G Processing Any Account Adjustments

The authorized agency official will process any payment made to resolve the unauthorized assistance case as an extra payment according to 4-FLP, subparagraph 63 A.

--388 Providing Equitable Relief*A Equitable Relief**

7 CFR 768.1(a)] If the Agency determines that a borrower is not in compliance with direct FO, OL or EM loan requirements, the Agency may consider equitable relief as specified in this section:

Examples of a borrower not being in compliance with loan requirements include, but are not limited to:

- not being eligible for a loan or loan servicing action that was received
- borrower inability to comply with loan agreements
- borrower inability to make a scheduled loan installments.

Borrower noncompliance may be discovered through docket reviews, routine operational reviews, or other account or security instrument reviews.

B Requirements

[7 CFR 768.1(a)(1)] After determination that a borrower is in noncompliance with loan program requirements, the Agency may provide relief to a borrower if it determined that the borrower:

- (i) Acted in good faith; and**
- (ii) Relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation or the action approved by the Agency official resulted in the borrower becoming noncompliant with the loan program requirements.**

C Determination

[7 CFR 768.1(a)(2) The material action, advice, or response from an Agency official under paragraph (a)(1) (subparagraph 388 B) of this section must be documented, unless the Agency official with authority to grant equitable relief determines that documentation is not reasonably available. Notwithstanding any delegations in this chapter, only the Secretary, FSA Administrator, Deputy Administrator for Farm Loan Programs, or any other official within USDA specifically designated by the Secretary, may make the determination for the Agency to grant equitable relief and must document the basis for that determination.

Relief will not be considered for actions taken outside of FSA's control (implementation of NAD determinations, compliance with court rulings, etc.). Relief will not be considered for accounts or issues which have already received another form of relief under FSA or other USDA programs to resolve the issue or account.--*

--388 Providing Equitable Relief (Continued)*D Relief**

[7 CFR 768.1(a)(3)] If the borrower meets the requirements in paragraph (a)(1) (subparagraph 388 B) of this section, the Agency may provide to a borrower either or both of the following forms of equitable relief:

- (i) The borrower may choose to keep loans or at current rates or other terms received in association with the loan which was determined to be noncompliant; or**
- (ii) The borrower may receive other equitable relief as the Agency determines to be appropriate**

Relief proposals that include extension or modifications of terms, or retention of unauthorized loans, are preferable to those that result in financial loss to the Agency.

An example of relief being granted would be in the case of the Agency incorrectly determining a borrower to be eligible for loan assistance and later determining that an error had been made.

After reviewing other potential options, it is determined that the borrower cannot repay the loan in full, and their operating plan does not support a change to NP rates and terms. Equitable relief can be considered and granted to allow the borrower to continue on with the loan as an eligible borrower.

Non-cash credit is a form of other equitable relief for the loan that may be used as determined to be appropriate.

An example of relief not being granted would be in the case of a borrower requesting relief from their debt because of delayed processing of their loan request. Delayed funding resulted in the operation not being able to fully realize profits originally projected in the plan. In this instance, relief would not be granted because the borrower did not rely on FSA documented advice or actions to decide to continue with the operation despite delayed FSA funding. Additionally, the Agency has other potential remedies (PLS servicing) that can be used to return the account to good standing.

E Conditions

[7 CFR 768.1(a)(4)] As a condition of receiving relief, the Agency may require the borrower to take actions to remedy the noncompliance, provided the borrower agrees those actions do not adversely affect the long-term viability of the borrower's operation.

Attempts must be made to first resolve unauthorized assistance in accordance with 5-FLP, paragraph 387 before consideration of equitable relief.--*

--388 Providing Equitable Relief (Continued)*F Administrative Appeal; Judicial Review**

[7 CFR 768.1(b)] A determination or action under this section is final and not subject to administrative appeal or judicial review.

G Requesting Equitable Relief

Requests for equitable relief identified by County or State Offices will be reviewed and submitted by the State Office to the National Office Direct Loan Servicing Branch using the contact process as outlined in 5-FLP, subparagraph 4 B. Requests for equitable relief should include the following information:

- brief background on the case, including how the noncompliance was identified
- 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 (personal property or real estate) and estimated value
- prior liens
- details of documented Agency error that lead to noncompliance, or details of why documentation could not reasonably be available
- discussion of how resolution of the noncompliance in accordance with 5-FLP, paragraph 387 is not feasible
- recommended proposed relief
- additional information needed to review the case.--*

***--388 Providing Equitable Relief (Continued)**

G Requesting Equitable Relief (Continued)

Agency Officials may be requested to provide input regarding the potential for equitable relief as part of mediation or appeals discussions. If the Agency Official believes that borrower noncompliance exists because of Agency error and could be resolved with equitable relief, they may agree to submit a request for relief as part of any mediation or appeal resolution. If the Agency Official believes that borrower noncompliance does not meet the requirements for a relief request, they will decline an agreement to submit a request for relief and explain their position.

If a borrower provides a request for equitable relief, the Agency Official will review the request to determine if it meets the requirements for request submission. If the Agency Official agrees, a request for relief may be submitted. If not, a written response will be provided to the borrower indicating that a request for relief will not be submitted. Appeal rights will not be provided.--*

389-400 (Reserved)

Part 12 Liquidation Overview

441 Introduction to Liquidation

A General Information

Parts 13 through 17 address complete liquidation of security. Partial disposition of security is handled according to 4-FLP, Part 7. The liquidation parts are:

- Part 13, Voluntary Liquidation
- Part 14, Voluntary Conveyance of Security
- Part 15, Loan Acceleration
- Part 16, Involuntary Liquidation
- Part 17, Liquidation by a Third Party.

While FSA works with a borrower to complete voluntary liquidation, FSA does not delay involuntary liquidation procedures to accommodate the borrower.

B Voluntary Liquidation

A borrower may voluntarily liquidate FSA loan security by 1 or more of the following:

- selling security as described in Part 13
- transferring security as described in 4-FLP, Part 9
- conveying security as described in Part 14.

A current borrower or a borrower in default may voluntarily liquidate FSA security.

FSA does not set any time limits or establish formal procedures for the current borrower who voluntarily decides to sell farming assets, as long as the borrower continues to meet all FSA loan obligations and liquidates the security according to FSA requirements.

C Involuntary Liquidation

If a borrower in default has received all servicing options, is unable to develop a feasible plan, and does not voluntarily liquidate FSA security according to FSA mandated servicing timeframes, FSA will initiate or continue involuntary liquidation actions according to Part 16.

D Timeliness

Treasury Report on Receivables (TROR) is the federal government's primary means for collecting data on the status of non-tax receivables (delinquent and non-delinquent debt) owed to the United States. Federal agencies are required to submit TROR information to Treasury on a quarterly basis. Treasury is required to submit an annual TROR report to Congress at the end of each fiscal year. The TROR considers any account greater than two years past due as seriously delinquent, unless it is identified as defalcation, FAP, BAP, CAP, SAA, TPJ, CNC or with an open civil rights complaint (OAC1 without an OAC7). * * * Local offices should work to resolve accounts before they become seriously delinquent.

442 Conditions for Liquidation

A Current Borrowers

With prior Agency approval, a borrower who is not in default may voluntarily liquidate the security to repay FSA loans in full. The borrower may apply for debt settlement according to *--7-FLP, Parts 8 and 12 if complete liquidation of all FSA loan collateral will not satisfy the FSA debt.

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

B Program Borrowers in Default

[7 CFR 766.351(b)] (1) If the borrower does not apply, does not accept, or is not eligible for primary loan servicing, conservation contract, market value buyout or homestead protection, and all administrative appeals are concluded, the Agency will accelerate the borrower's account in accordance with §§766.355 and 766.356 (Part 15), as appropriate.

(2) Borrowers may voluntarily liquidate their security in accordance with §§ 766.352, 766.353 and 766.354 (Part 13). In such case, the Agency will:

(i) Not delay involuntary liquidation action.

(ii) Notify the borrower in accordance with subpart C (Part 3) of this part, prior to acting on the request for voluntary liquidation, if the conditions of paragraph (b)(1) of this section have not been met.

If a borrower in default wants to voluntarily liquidate security before FSA accelerates the borrower's loans, the borrower must pursue voluntary liquidation according to the applicable liquidation method as described in Parts 13 and 14 or 4-FLP, Part 9. However, FSA will continue to notify the borrower of primary loan servicing according to Parts 3 and 6 and to follow the process of acceleration and involuntary liquidation without delay. When discussing voluntary liquidation with the borrower, they should be informed that if they are in default and the default cannot be cured, FSA cannot pause and will continue to process the account to acceleration and liquidation if necessary. The authorized agency official must be aware that several actions may need to be taken simultaneously.

443 Protecting FSA Interests**A Protective Advances**

[7 CFR 766.351(a)(2)] The Agency will charge protective advances against the borrower's account as necessary to protect the Agency's interests during liquidation in accordance with §765.203 (4-FLP, Part 6) of this chapter.

B Recoverable Costs

During the liquidation process, FSA will take timely and appropriate action to protect its security and loan recovery interests. In so doing, the authorized agency official will charge recoverable costs associated with security protection and loan liquidation to the borrower's account according to 4-FLP, Part 6.

In some cases, it may be in FSA's best financial interest to deduct certain recoverable liquidation costs from the liquidation proceeds. In such cases, FSA will not charge these costs against the borrower's account as recoverable costs. Rather, these costs will be subtracted from the security sale proceeds, resulting in lower net sale credit to the borrower's account. Examples of costs FSA will usually pay from liquidation proceeds include the following:

- making emergency repairs to abandoned property
- maintaining security the borrower has not adequately maintained.

Examples of costs FSA will usually charge to the borrower's account include the following:

- paying borrower real estate taxes and assessments
- paying prior or junior liens to protect FSA's interest
- maintaining property, hazard or flood insurance coverage.

Further guidance regarding these costs are provided in 4-FLP, Part 6.

443 Protecting FSA Interests (Continued)**C State Supplements**

The authorized agency official should be familiar with State laws and any guidance issued by SED concerning liquidation policies or procedures specific to that State. This handbook provides general guidance on liquidation, but State laws may require implementation of specific policies and actions not detailed in this handbook. SED will issue State supplements that address these policies and procedures.

D Authorities and Communication

The authorized agency official must know the responsibilities and authorities of all officials involved in the liquidation process, including the DD, SED, and OGC. Authorities are summarized in 1-FLP, Part 2. Clear and open communication must be maintained with DD, SED, and OGC to ensure that FSA completes all liquidation requirements.

444 General Issues**A Deceased Borrower**

***--[7 CFR 766.351(a)(3)] When no surviving relative or third party assumes or repays a--* deceased borrower's loan in accordance with part 765, subpart J, of this chapter, or when the estate does not otherwise fully repay or sell loan security to repay a deceased borrower's Agency loans, the Agency will liquidate the security as quickly as possible in accordance with State and local requirements.**

The authorized agency official will send the executor of the estate or other appropriate entity FSA-2514's * * * according to Part 3. See 4-FLP, Part 10 for a complete discussion on handling deceased borrower cases.

Part 13 Voluntary Liquidation**461 General Requirements****A Voluntary Sale of Property**

[7 CFR 766.352(a)] A borrower may voluntarily sell real property or chattel security to repay Agency debt in lieu of involuntary liquidation if all applicable requirements of this section are met. Partial dispositions are handled in accordance with part 765, subparts G and H (4-FLP, Part 7) of this chapter.

(1) The borrower must sell all real property and chattel that secure Agency debt until the debt is paid in full or until all security has been liquidated.

There are several types of voluntary liquidation including sale, transfer, and conveyance of security. This part addresses voluntary sale of real property and chattel security. Voluntary conveyance is discussed in detail in Part 14 and transfers in 4-FLP, Part 9.

B Notifying the Borrower

With Agency approval, a current borrower may initiate voluntary liquidation at any time.

--For a borrower in monetary or non-monetary default, FSA will notify the borrower of the-- default according to Part 3. The authorized agency official will work with a borrower in default to voluntarily liquidate security; however, the authorized agency official will not delay FSA's required servicing, acceleration, and involuntary liquidation to accommodate the borrower's liquidation efforts.

462 Voluntary Liquidation of Real Property

A Approval Request

[7 CFR 766.352(a)(2)] The Agency must approve the sale and approve the use of proceeds.

The borrower must:

- complete and sign FSA-2061 with the assistance of the authorized agency official

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

- provide a sales contract for the property indicating the price and terms of the sale
- work with FSA to complete an operational review under 4-FLP, Part 2 reflecting the proposed transaction

Notes: If the review shows that the operation will be financially distressed, the borrower should be serviced under Part 3.

--An operational review is not required if the transaction will result in all FSA debts being paid in full.--

- sell the property for not less than the market value unless FSA is being paid in full.

B Title Search

The authorized agency official will conduct a new lien search if adequate title information is not available in the borrower's case file. The purpose of the search is to:

- determine the liens of other parties on the property and their effect on liquidation
- ensure proper distribution of sale proceeds.

The borrower pays the cost of all title searches or it will be charged to the borrower's account if they are unable to pay. The authorized agency official will obtain a title search according to the procedures used in the State where the property is located. SED will issue a State supplement as appropriate.

C Appraisal and Disposition of Collateral Proceeds

FSA will appraise the property according to 1-FLP, Part 6 to determine the property's market value only after receipt of a sales contract. Any sale proceeds received by the borrower over and above the FSA-determined market value must be applied to the borrower's FSA debt until the FSA loans secured by the collateral are paid in full. The authorized agency official will apply sale proceeds according to 4-FLP, Part 5.

497 Real Property Conveyance Application Requirements (Continued)**A Application (Continued)**

[7 CFR 766.353(a)] (6) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;

The borrower must put oral leases, including all terms and conditions, in writing and assign all leases to FSA. If a borrower is leasing land on which FSA holds a security interest to a third party for income, FSA will receive all lease proceeds after the conveyance. See 4-FLP, Part 5 for handling lease proceeds.

[7 CFR 766.353(a)] (8) Complete debt settlement application in accordance with subpart B of part 761, subpart F of this chapter (7-FLP, Part 12) before, or in conjunction with the voluntary conveyance offer if the value of the property to be *-conveyed is less than the FLP debt; and--*

The borrower must complete and submit FSA-2732 with all required supporting documentation for debt settlement, unless the value of the voluntary conveyance security fully satisfies the FSA debt.

The debt settlement application will be processed according to 7-FLP, Part 12. The applications for voluntary conveyance and debt settlement will normally be approved or denied together; however, the voluntary conveyance application can be approved while denying the debt settlement application if SED believes it to be in the Government's best interest.

[7 CFR 766.353(a)] (9) Any other documentation required by the Agency to evaluate the request.

B SED Authority to Accept Applications from Estates

On an individual case-by-case basis, an Administrator's Exception under 7 CFR 766.353(a) to accept an application for voluntary conveyance of real property from an estate may be approved by SED according to this paragraph when:

- servicing the deceased borrower's account has been completed in accordance with 4-FLP, Part 10
- all other requirements in this part are met.

Administrator's Exception authority may not be further redelegated.

498 Additional Requirements**A Other Use Rights**

If water rights, mineral rights, development rights, or other use rights encumbered by FSA are not included in FSA-2569, or other guidance is needed, the authorized agency official refers the case to SED to obtain OGC guidance as required on the appropriate documents needed to transfer these rights to FSA. SED may issue a State supplement as required.

B Obtaining an Appraisal

The authorized agency official will obtain an appraisal of the property to establish its current market value. The appraisal must be based on the “as is” market value according to 1-FLP, Part 6 and must not include potential deed restrictions or easements FSA may place on the property.

C Conducting a Due Diligence Review

*--FSA must complete its due diligence process prior to taking real estate security into inventory via foreclosure or voluntary conveyance.

The authorized agency official will conduct a due diligence review to assess environmental risk according to 2-EQ. At a minimum, a qualified agency official will complete FSA-851--* to determine whether FSA requires a more detailed environmental review. The cost of any hazardous waste or other environmental clean-up identified by the due diligence review may be considered by FSA, but will not usually be included in Exhibit 37 as clean-up is usually not required for sale of the property.

D Obtaining a Title Search

[7 CFR 766.353(a)(7)] Title insurance or title record for the security, if available;

The authorized agency official will conduct a new lien search, according to the standard procedures used in the borrower’s State and the State supplement issued according to subparagraph 462 B, if adequate title information is not available in the borrower’s case file.

The borrower will pay the cost of all title searches or it will be charged to the borrower’s account.

Section 3 Voluntary Conveyance of Chattel

516 Before Receiving Conveyance Offers of Chattel

A Borrower Meeting

Before accepting the conveyance of chattels, the authorized agency official will schedule a meeting with the borrower to discuss FSA's conveyance requirements. The authorized agency official will ensure that FSA has provided a loan servicing notification package to the borrower.

The borrower will be strongly encouraged to execute FSA-2571 as opposed to beginning the voluntary conveyance process as it is simpler and quicker and does not require SED approval or a concurrent debt settlement application. Chattels may sometimes be conveyed as fixtures as described in subparagraph 481 A.

The authorized agency official will also inform the borrower that:

- voluntary conveyance is a part of liquidation

Note: The borrower must liquidate, convey, or do a combination of both for all real property and chattel that secures the borrower's FSA loans.

- any equity in the property to be conveyed may be lost through conveyance
- there could be tax consequences

Note: FSA does not give tax advice. The borrower should consult a tax professional or the IRS for any guidance on this issue. FSA does not release for income taxes. The property is owned by the borrower and the borrower is responsible for any capital gains taxes.

- FSA may determine that it is able to accept the conveyance of the chattel security, but is *--unable to approve FSA-2732 that was submitted with the conveyance offer.--*

Note: In these cases, FSA will accept the conveyance and deny the debt settlement application. See subparagraph 499 F for additional guidance.

The authorized agency official will provide the borrower with FSA-2570, FSA-2070, *--FSA-2732, and a list of the requirements to make a complete conveyance offer.--*

--517 Personal Property Conveyance Application Requirements--**A Application**

[7 CFR 766.354(a)] The borrower must supply the Agency with the following:

[7 CFR 766.354(a)] (1) An Agency application form;

The borrower must complete FSA-2570.

[7 CFR 766.354(a)] (2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

[7 CFR 766.354(a)] (3) Information on present and future income and potential earning ability;

[7 CFR 766.354(a)] (4) A bill of sale including each item and titles to all vehicles and equipment, as applicable;

The borrower must complete FSA-2070 for all personal property securing FSA debt.

The borrower must provide FSA with titles for all titled vehicle or equipment security if FSA does not have such titles on file.

[7 CFR 766.354(a)] (5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity borrower;

An entity borrower must provide a resolution approved by the organization's governing body. The resolution must identify the officials authorized to execute the offer and deed on behalf of the borrower. If shareholder approval is required, the resolution must confirm that the entity has obtained shareholder approval.

The authorized agency official may request additional information from the borrower if it is required to make a determination on the conveyance offer.

--517 Personal Property Conveyance Application Requirements (Continued)--**A Application (Continued)**

[7 CFR 766.354(a)] (6) Complete debt settlement application in accordance with part 761, subpart F of this chapter (7-FLP, Part 12) before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the *--FLP debt.--*

The borrower must complete and submit FSA-2732 with all required supporting documentation for debt settlement, unless the value of the voluntary conveyance security will fully satisfy the FSA debt.

The debt settlement application will be processed according to 7-FLP, Part 12. The applications for voluntary conveyance and debt settlement will normally be approved or denied together; however, the voluntary conveyance application can be approved while denying the debt settlement application if SED believes it to be in the Government's best interest.

518 Additional Requirements**A FSA Actions After Receiving Offer**

[7 CFR 766.354(b)] The Agency will accept conveyance of chattel only if:

[7 CFR 766.354(b)] (1) The borrower has made every possible effort to sell the property voluntarily;

This includes consideration of the execution of FSA-2571.

[7 CFR 766.354(b)] (2) The borrower can convey the chattel free of other liens;

- The authorized agency official will conduct a lien search to verify that FSA is the only lienholder on the chattels.
- The authorized agency official conducts or obtains a chattel inspection and appraisal. The inspection and appraisal are required to account for all chattel security listed in the borrower's offer and to determine the market value of the property. The authorized agency official will conduct the appraisal according to 1-FLP, Part 6 as appropriate.
- The authorized agency official will determine the likely recovery value to FSA and whether the conveyance will satisfy the borrower's account. To calculate the recovery value, the authorized agency official will subtract all estimated expenses, including acquisition, preparation, and auction costs, from the appraised market value of FSA security.

The authorized agency official will document that approval of the voluntary conveyance is in FSA's best interest.

[7 CFR 766.354(b)] (4) The borrower conveys all chattel securing the Agency loan; and

The authorized agency official will confirm that the conveyance offer includes all chattel property securing FSA debts. If the borrower has real property securing an FSA loan that is not part of the conveyance offer, the authorized agency official must document that the borrower is liquidating this security by another method approved by FSA. All sales must be completed before the voluntary conveyance.

[7 CFR 766.354(b)] (5) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C (Part 3) of this part.

The authorized agency official will document that the borrower received the proper primary loan servicing notices according to paragraph 66.

537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation

A Acceleration of Loans to American Indian Borrowers

[7 CFR 766.356] (a)(1) The Agency accelerates loans to American Indian borrowers whose real estate is located on an Indian reservation in accordance with this section, unless State law imposes separate restrictions on accelerations.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part (Part 3), except for borrowers who fail to graduate in accordance with § 766.101(a)(8) (subparagraph 66 A).

(4) At the time of acceleration, the Agency will notify the borrower and the Tribe that has jurisdiction over the Indian reservation of:

(i) The possible outcomes of a foreclosure sale and the potential impacts of those outcomes on rights established under paragraphs (a)(4)(ii) and (iii) of this section;

(ii) The priority for purchase of the property acquired by the Agency through voluntary conveyance or foreclosure;

(iii) Transfer of acquired property to the Secretary of the Interior if the priority of purchase of the property established under paragraph (a)(4)(ii) of this section is not exercised.

(b) The Agency will notify an American Indian borrower of the right to:

(1) Request the Tribe, having jurisdiction over the Indian reservation in which the real property is located, be assigned the loan;

(i) The Tribe will have 30 days after the Agency notification of such request to accept the assignment of the loan.

537 Acceleration of Loans to American Indians With Real Estate Security on an Indian Reservation (Continued)

A Acceleration of Loans to American Indian Borrowers (Continued)

(ii) The Tribe must pay the Agency the lesser of the outstanding Agency indebtedness secured by the real estate or the market value of the property.

(iii) The Tribe may pay the amount in a lump sum or according to the rates, terms and requirements established in part 770 of this chapter (6-FLP, Part 2, Section 3), subject to the following:

(A) The Tribe must execute the promissory note and loan documents within 90 days of receipt from the Agency;

--(B) Such loan may not be considered for debt write-down under 7 CFR part 770.--

(iv) The Tribe's failure to respond to the request for assignment of the loan or to finalize the assignment transaction within the time provided, shall be treated as the Tribe's denial of the request.

(2) Request the loan be assigned to the Secretary of the Interior. The Secretary of the Interior's failure to respond to the request for assignment of the loan or to finalize the assignment transaction, shall be treated as denial of the request;

(3) Voluntarily convey the real estate property to the Agency;

(i) The Agency will conduct a environmental review before accepting voluntary conveyance.

(ii) The Agency will credit the account with the greater of the market value of the real estate or the amount of the debt.

(4) Sell the real estate;

(i) The buyer must have the financial ability to buy the property.

(ii) The sale of the property must be completed within 90 calendar days of the Agency's notification.

(iii) The loan can be transferred and assumed by an eligible buyer.

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.

Note: If the account is to be paid in full, request DAFLP concurrence to process the 3 percent DOJ fee as a noncash credit.

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 FLP loan remains after the sale of--* the repossessed property, the Agency will service the account in accordance with part 761, subpart F of this chapter and part 3 of this title. (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.

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.

Section 2 Real Property**566 Proceeding With Foreclosure After Acceleration****A Failure to Satisfy FSA**

If the borrower fails to pay the FSA debt in full before the acceleration deadline expires according to Part 15, FSA moves to involuntarily liquidate all of the borrower's FSA loan security.

***--B Conducting a Due Diligence Review**

FSA must complete its due diligence process before taking real estate security into inventory via foreclosure or voluntary conveyance. The authorized agency official will conduct a due diligence review to assess environmental risk according to 2-EQ. At a minimum, a qualified agency official will complete FSA-851 to determine whether FSA requires a more detailed environmental review.--*

C National Historic Preservation Act

If the property may fall under the National Historic Preservation Act because of any of the criteria in 1-EQ, SED will note this in the State Office file on advice from the authorized agency official and DD to help eliminate any delays in selling the property after acquisition.

D Initiating Foreclosure

SED may forward the case file with all relevant information and documentation to OGC for required assistance in proceeding with foreclosure. If the borrower has leased the FSA real estate security, the authorized agency official must report the existence and conditions of the lease and report the name of the lessee to OGC.

SED may keep the borrower's file in the State Office. In this case, SED is responsible for initiating and processing the foreclosure process.

E Following State Law and Practices

SED, in consultation with OGC, will issue a State supplement providing guidance and instructions on processing a foreclosure. The authorized agency official, DD, SED, and OGC should maintain communication during the foreclosure process so all parties are aware of the status of the proceedings.

Note: No limitations period exists with respect to actions by government agencies to foreclose mortgages or deeds of trust per 28 U.S.C.A. § 2415(c). Accordingly, State limitations periods, and specifically those governing foreclosures, are not effective against the federal government. Regional OGC should be contacted for guidance on specific cases.

567 Foreclosure Sale

A “FAP” Flag

--The account is flagged “FAP” using FSA-2562 at the time the account is referred to OGC for foreclosure.--

FAP flag (Exhibit 11) must be removed from the account if any of the following occur:

- foreclosure action is concluded on all available FSA security
- all FSA security is voluntary liquidated
- the account is paid in full
- any other action taken that result in foreclosure actions no longer being pursued on the account.

B Establishing a Judgment Account

In judicial foreclosure States only, SED establishes a judgment account after a judgment has been ordered by the court. To establish this account, the authorized agency official processes a 3B transaction in ADPS based on a completed FSA-2576.

568 FSA Actions After Foreclosure (Continued)**E Outstanding Loan Balances Remaining After Foreclosure**

--[7 CFR 766.357(b)(5)] If an unpaid balance on the FLP loan remains after the--
foreclosure sale of the property, the Agency will service the account in accordance with
part 761, subpart F of this chapter and part 3 of this title. (7-FLP, Part 12)

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

569 Real Property Located Within a Federally Recognized Indian Reservation**A General Requirements**

The borrower's real property securing FSA debt must be located within the boundaries of a Federally recognized American Indian reservation.

The borrower must be a member of the tribe that has jurisdiction over the reservation.

B Bidding on Real Property

At a foreclosure sale, FSA bids the greater of the property's market value or FSA's debt against the property.

C Crediting the Borrower's Account

[7 CFR 766.357(b)] (3) Notwithstanding paragraph (b)(2) (subparagraph 568 D), for an American Indian borrower whose real property secures an Agency loan and is located within the confines of a Federally-recognized Indian reservation, the Agency will credit the borrower's account in the amount that is the greater of:

(i) The market value of the security; or

--(ii) The amount of the FLP debt against the property.--

570-580 (Reserved)

Part 17 Liquidation by a Third Party**601 Introduction****A General Information**

Involuntary liquidation by a third party occurs when another lienholder, either prior or junior to FSA's lien, repossesses or initiates foreclosure proceedings against the borrower's FSA security. Foreclosure by another lienholder constitutes a non-monetary 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.

County Offices shall add the "TPF" flag (Exhibit 11) in DLS to indicate there is a foreclosure filed by a third party. The "TPF" flag shall be removed when the foreclosure is no longer applicable.

The "TPF" flag is available from the Manage Flags section of Customer Management. This is a DLS only flag, meaning that it will not process a transaction to ADPS. The flag will only be visible in DLS. Refer to the DLS User Guide for instructions to add and remove the flag.

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.

***--D Conducting a Due Diligence Review**

FSA must complete its due diligence process before taking real estate security into inventory via foreclosure or voluntary conveyance. The authorized agency official will conduct a due diligence review to assess environmental risk according to 2-EQ. At a minimum, a qualified agency official will complete FSA-851 to determine whether FSA requires a more detailed environmental review.--*

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 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.

*--FSA will obtain a current market value appraisal according to 1-FLP, Part 6 before the sale. If the Farm Loan Chief or Farm Loan Specialist determines and documents that a potential liquidation value appraisal will be beneficial in determining FSA's bid, the appraisal order may request a potential liquidation valuation in addition to the market valuation. A potential liquidation valuation may be beneficial when all the following conditions are met:

- the property is in an economically depressed area
- the property has significant functional obsolescence, deferred maintenance, or marginal land resources
- a normal marketing effort is not possible because of brief exposure time, and
- consummation of the sale will be within a short period of time as established by State Law.--*

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 Acquisition of Title**

Any third party that wants to obtain title during the junior lienholder foreclosure can pay off the FSA debt secured by that property in lieu of FSA exercising its right to foreclose. A junior lienholder may not pay off FSA debt unless they acquire title to the property. FSA will not assign its lien position.--*

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 according to subparagraph 703 A.

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 * * * to the borrower's last known address according to Part 3 unless the borrower has already been notified with FSA-2510 * * * or FSA-2514.

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 (PLS and acceleration).--*

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.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None.

Forms

This table lists the forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification		81
FSA-137	Address Information Request		67, 386
FSA-2001	Request for Direct Loan Assistance		81, 344
FSA-2003	Three-Year Production History		81
FSA-2025	Notice of Approval, Terms and Conditions and Borrower Responsibilities		346
FSA-2026	Promissory Note		Text
FSA-2027	Supplemental Payment Agreement		161
FSA-2029	Mortgage/Deed of Trust		Text
FSA-2037	Farm Business Plan Worksheet Balance Sheet		194
FSA-2038	Farm Business Plan Worksheet Projected/Actual Income and Expenses		194
FSA-2040	Agreement and Record of the Disposition of FSA Security/Release of Proceeds		464, 465, 581, 582
FSA-2061	Application for Partial Release or Consent		194, 462, 463
FSA-2070	Bill of Sale		516, 517, 519
FSA-2080	Release From Personal Liability		84
FSA-2489	Assumption Agreement		Text
FSA-2501	Addendum to the Promissory Note or Assumption Agreement for Set-Aside Program		44-46, 48, 53-56, 58
FSA-2503	Addendum to the Promissory Note or Assumption Agreement Extending the Final Installment Due Date For Balloon Payments		129

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2510	Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due		3, 67, 81, 83, 85, 401, 702
FSA-2512	Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due		3, 67, 68, 85, 102
FSA-2514	Notice of Availability of Loan Servicing to Borrowers Who Are in Non-Monetary Default		3, 67, 68, 83, 85, 444, 702
FSA-2516	30 Day Reminder of the Notice of Availability of Loan Servicing		83
FSA-2517	Offer of Primary Loan Servicing for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing		116, 172
FSA-2518	Acceptance of Primary Loan Servicing for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing		116, 172
FSA-2519	Offer of Primary Loan Servicing for Borrowers Who Received Form FSA-2512 and Applied for Servicing		116
FSA-2520	Acceptance of Primary Loan Servicing for Borrowers Who Received Form FSA-2512 and Applied for Servicing		116
FSA-2521	Denial of Primary Loan Servicing and Intent to Accelerate for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing		116, 229, 322
FSA-2522	Borrower Response to Denial of Primary Loan Servicing and Intent to Accelerate for Borrowers Who Received Form FSA-2510 or FSA-2514 and Applied for Servicing		116, 229, 322

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
NRCS-CPA-026 NRCS-CPA-026e	Highly Erodible Land and Wetland Conservation Determination		81, 801
RD 3550-28	Authorization Agreement for Preauthorized Payments		50
SF-750	Claims Collection Litigation Report (CCLR)		403

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ACL	Accelerated	534, Ex. 11
BAP	Bankruptcy Action Pending	42, 401, Ex. 11
CAP	Court Action Pending	421, Ex. 11
CCLR	Claims Collection Litigation Report	403
CL	Conservation Loan	41, 131, 145, Ex. 2, 17
CONACT	Consolidated Farm and Rural Development Act	1, 193, 537, Ex. 2
DEF	Deferral	248, Ex. 11
eDALR\$	electronic Debt and Loan Restructuring System	Text, Ex. 17
FAP	Foreclosure Action Pending	567, Ex. 11
FLB	Farm Loan Branch	Text
FLMAC	Farm Land Market Advisory Committee	Ex. 17
ISA	installment set-aside	46, 48, 131
ITLAP	Indian Tribal Land Acquisition Program	2, 537
LR	limited resource	132, 146
NP	nonprogram loan	Text
NRBRA	Net Recovery Buyout Recapture Agreement	321, 361, 363, 365
NRV	net recovery value	102, 321, 462
PACER	Public Access to Court Electronic Records	403
PLS	primary loan servicing	67, 68, 401, Ex. 11
POC	proof of claim	401, 403
PRB	Program Reports Branch	708
RDBCSO	Rural Development Business Center Service Office	Text, Ex. 11

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM (Continued)

Approved Abbreviation	Term	Reference
SA	shared appreciation loan	66, 67, 102, 145, 146, 191, 346
SAA	shared appreciation agreement Note: When reference is made to a signed agreement as a condition of receiving debt write-down.	197, 249, 343, 344, 346, 403, Ex. 2, 4, 25, 26
SAA	subject to approved adjustment Note: When reference is made to the financial “flag”/designation for an account where FSA has approved a borrower’s debt settlement offer as documented on FSA-2732.	172, 249, 343, 404, 406, Ex. 11
SCRRG	State Civil Rights Review Group	533
SEC	State Environmental Coordinator	802, 821, 837, 839
SI	Security Instrument	344, 346
SOL	Statute of Limitations	533, Ex. 47
ST	softwood timber loan	41
TOA	type of assistance	131
TPJ	third party judgment	421, Ex. 11
YL	youth loan	41, 42, 68, 132

Redelegations of Authority

SED may redelegate to FLC authority to approve PLS where a borrower has received PLS at least 2 times in the previous 5 years or is receiving a second or subsequent consecutive restructure with a deferral.

SED may redelegate to FLC, FLS, and/or DD the authority to waive real estate and/or non-essential asset appraisals for current market value buyout when the chattel appraisal shows that chattel security value exceeds the debt, and security has been cross-collateralized.

Definitions of Terms Used in This Handbook (Continued)

Bankruptcy Trustee

A Bankruptcy Trustee is a court-appointed person who oversees execution of the confirmed bankruptcy plan. A Trustee is less frequently used in Chapter 7 and Chapter 11 bankruptcies than in Chapter 12 and 13 bankruptcies.

Basic Security

Basic security is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

Beginning Farmer

Beginning farmer is an individual or entity who:

- *--(i) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, as applicable;
- (ii) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;--*

Note: Experience obtained through agriculture education programs when the applicant was not the primary owner or operator of the farm or ranch is not included when calculating the 10 year period.

- *--(iii) Will materially and substantially participate in the operation of the farm:

(A) In the case of a loan made to an individual, individually or with the family--* members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with *--the practices in the county or State where the farm is located; or

(B) In the case of a loan made to an entity, all members must materially and--* substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

- *--(iv) Agrees to participate in any loan assessment and borrower training required by--* Agency regulations;

Definitions of Terms Used in This Handbook (Continued)

Beginning Farmer (Continued)

- *--(v) Except for an OL applicant, does not own real farm property or who, directly or--* through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the average acreage of the farms in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm acreage will be determined from the most recent Census of Agriculture;
- *--(vi) Demonstrates that the available resources of the applicant and spouse (if any) are not--* sufficient to enable the applicant to enter or continue farming on a viable scale; and
- *--(vii) In the case of an entity:
 - (A) All the members are related by blood or marriage; and
 - (B) All the members are beginning farmers.--*

Borrower (or Debtor)

Borrower (or debtor) is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term "borrower" includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

Cancellation

Cancellation is the final discharge of, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.

Ceases to Farm

Ceases to farm refers to a borrower who is considered to have "ceased farming" if the borrower is no longer receiving income produced by the farm, if the borrower is no longer operating the farm, and/or if the borrower has leased the farm for more than 3 years or the lease has an option to purchase.

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

***--Cosigner**

Cosigner is a party, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of entity applicant, the cosigner cannot be a member of the entity.--*

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.

***--(i) Debt forgiveness includes:**

(A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;

(C) 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)

***--(ii) Debt forgiveness does not include:**

- (A) Debt reduction through a conservation contract;**
- (B) Any write-down provided as part of the resolution of a discrimination complaint against the Agency;**
- (C) Prior debt forgiveness that has been repaid in its entirety;**
- (D) Consolidation, rescheduling, reamortization, or deferral of a loan; and**
- (E) 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 Write-Down**

Debt write-down means 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)***--Distressed Borrower Set-Aside**

Distressed borrower set-aside means 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 J, of this chapter.--*

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.

Embedded Entity

Embedded entity means entity that has a direct or indirect interest, as a stockholder, member, beneficiary or otherwise, in an entity.

Entity

Entity means a corporation, partnership, joint operation, cooperative, limited liability company, or trust.

Entity Member

An entity member means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.

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.

Definitions of Terms Used in This Handbook (Continued)

Equitable Relief

***--Equitable relief means relief provided in accordance with 7 CFR Part 768.1.**

Equitable relief is waiving a requirement for Direct Farm Ownership, Direct Farm Operating, or Direct Emergency loans when the borrower is not in compliance with loan program requirements, but acted in good faith and relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation.--*

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.

Essential Family Living and Farm Operating Expenses

***--Essential family living and farm operating expenses means expenses that:**

- (i) Are those that are basic, crucial or indispensable.
- (ii) Are determined by the Agency based on the following considerations:
 - (A) The specific borrower's operation;
 - (B) What is typical for that type of operation in the area; and
 - (C) What is an efficient method of production considering the borrower's resources.
- (iii) Include, but are not limited to, essential: Household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; 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.

Definitions of Terms Used in This Handbook (Continued)

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.

Farm

Farm is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term “farm” also includes the term “ranch.” It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farm Income

Farm income is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.

Feasible Plan

***--Feasible plan** means when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to an interest only or otherwise unequal installment, cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only that production cycle is required for approval.--*

Financially Distressed

Financially distressed borrower is a borrower unable to develop a feasible plan for the current or next production cycle.

First Year Plan

A **first year plan** is the borrower's operating plan for the first year of the deferral term.

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

Fixture is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.

Floodplains

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

Foreclosed

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Foreclosure Sale

Foreclosure sale is the act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Former Borrower

A **former borrower** is a borrower who no longer has loans with FSA but may still be obligated to FSA because of a security obligation, such as a Shared Appreciation Agreement, or have continuing rights, such as homestead protection rights.

Good Faith

***--Good faith** means when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. If the borrower's inability to adhere to all agreements is because of circumstances beyond the borrower's control, the Agency will consider the borrower to have acted in good faith. In addition, the Agency may also consider fraud, waste, or conversion actions when determining if an applicant or borrower has acted in good faith. Such determinations that are substantiated by a legal opinion from OGC constitute an independent basis for determinations of not having acted in good faith.

Note: A lack of good faith determination must be made for each decision. See 3-FLP, subparagraph 65 A.--*

Definitions of Terms Used in This Handbook (Continued)

Modification

A modification is a proposed change in the structure of the bankruptcy plan. The Court generally handles any requests for modifications.

Mortgage

Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term “mortgage” also includes the terms “deed of trust” and “security agreement.”

Negligent Servicing

Negligent servicing is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender’s agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.

Negotiated Sale

Negotiated sale is a sale in which there is a bargaining of price or terms, or both.

* * *

Net Recovery Value

Net recovery value of Agency security is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender’s or the Agency’s costs of property acquisition, retention, maintenance, and liquidation.

Net recovery value of non-essential assets is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

Definitions of Terms Used in This Handbook (Continued)

Non-Essential Assets

***--Non-essential assets mean assets in which the borrower has an ownership interest, that:**

(i) Do not contribute to:

(A) Income to pay essential family living expenses, or

(B) The farming operation; and

(ii) Are not exempt from judgment creditors or in a bankruptcy action

For direct loans, working capital reserves and savings that do not exceed the greater of \$30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expense, to be realized in the next operating cycle, are considered essential assets.--*

Non-Monetary Default

Non-monetary default means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements, or loan.

Note: Filing for bankruptcy and failing to complete required borrower training are not considered non-monetary defaults. See 3-FLP, subparagraph 474 C.

Non-Program (Assistance) Loan

Non-program loan is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

Nonrecoverable Costs

Nonrecoverable costs are contractual or noncontractual program loan cost expenses that are incurred by the Agency to maintain property or protect the Agency's interest, but are not chargeable to a borrower or property account. These costs are not added to the outstanding debt owed by the borrower.

Definitions of Terms Used in This Handbook (Continued)

Normal Income Security

Normal income security is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.

Note

A note is written evidence of indebtedness, such as a promissory note, or assumption agreement.

Notification of Meeting of Creditors

A Notification of Meeting of Creditors is usually the first notice to a creditor that a bankruptcy has been filed. It allows opportunity for creditors to establish their claims against the debtor and preserve their interest in security, as applicable. It provides the date by which the claim must be filed.

Office of the General Counsel (OGC)

Office of the General Counsel (OGC) is the OGC of the U.S. Department of Agriculture. Unless otherwise indicated, OGC refers to the Regional Attorney or Attorney-in-Charge in an OGC Field Office.

Operator

Operator is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.

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

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

Example: An individual obtains an FO and later forms an operating-only entity with a relative and obtains an OL for the same operation. The individual then needs servicing for the individual FO. In these cases, if the individual owns at least 50 percent of the operating entity, the definition of operator is met.

Borrowers who obtained individual loans and later formed an operating-only entity with a non-relative must have the entity assume the debt to be eligible for loan servicing, as provided in 4-FLP, subparagraph 248 C. However, transfer of the collateral to the entity is not required.

In either of these circumstances the operating entity must have their own unique tax ID number.

Participation

Participation is a loan arrangement where a primary or lead lender is typically the lender of record but the loan funds may be provided by 1 or more other lenders due to loan size or other factors. Typically, participating lenders share in the interest income or profit on the loan based on the relative amount of the loan funds provided after deducting the servicing fees of the primary or lead lender.

Past Due

Past due is when a payment is not made by the due date.

***--Personal Property**

Personal property 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. It is property that is not real estate, and the term is generally used to replace references to the term “chattel”.--*

Petition in Bankruptcy

A petition in bankruptcy is a document filed in Bankruptcy Court that formally begins the bankruptcy process. The filing of the petition in bankruptcy invokes the automatic stay.

Plan of Reorganization

A plan of reorganization is a plan submitted by the debtor that outlines how the debtor intends to preserve security interests and plans to repay creditors and terms of performance. This process may be repeated until agreement of the parties is reached.

Definitions of Terms Used in This Handbook (Continued)

Post-Acquisition Homestead Protection

Post-acquisition homestead protection is when a borrower applies for homestead protection after FSA obtains title to the real estate security for the borrower's loan.

Post-Deferral Plan

A Post-Deferral Plan is a plan projecting the borrower's operations for the year following the deferral period.

Potential Liquidation Value

Potential liquidation value is the amount of a lender's protective bid at a foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

Pre-Acquisition Homestead Protection

Pre-acquisition homestead protection is when a delinquent borrower applies for homestead protection and it appears that a feasible plan to address the delinquency cannot be developed through primary loan servicing. The Authorized Agency Official begins processing the borrower's request but does not approve homestead protection until FSA obtains title to the property.

Present Value

Present value is the present worth of a future stream of payments discounted to the current date.

Primary Loan Servicing Programs

*--Primary loan servicing programs means:

- (i) Loan consolidation and rescheduling, or reamortization;
- (ii) Interest rate reduction, including use of the limited resource rate program;
- (iii) Deferral;
- (iv) Write-down of the principal or accumulated interest; or
- (v) Any combination of paragraphs (i) through (iv) of this definition.--*

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.

Definitions of Terms Used in This Handbook (Continued)

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.

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.

Definitions of Terms Used in This Handbook (Continued)

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.

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, grandparent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, nephew, niece, cousin, grandson, granddaughter, or the spouses of any of those individuals. “Related by blood or marriage” is used for consistency with a requirement in the CONACT. It has the same meaning as the word “relative” for the Farm Loan Programs regulations in this Chapter.

Relative

Relative means the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of any of those individuals. Relative has the same meaning as the term “related by blood or marriage” for the Farm Loan Programs regulations in this Chapter.--*

Definitions of Terms Used in This Handbook (Continued)**Reposessed Property**

Reposessed 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, write-down, 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.

Security Value

Security value is the market value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

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 write-down on a direct or guaranteed loan secured by real estate to repay the Agency or the lender some or all of the write-down received, based on--* a percentage of any increase in the value of the real estate securing an SAA at a future date.

Socially Disadvantaged Applicant or Farmer

A socially disadvantaged applicant or farmer is an individual or entity who is a member of a socially disadvantaged group. For an entity, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

Socially Disadvantaged Group

A socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

Special Hazard Area

Special Hazard Area is a mudslide hazard area, a special flood area, or an earthquake area.

Subordination

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority to another party providing the other party with a priority lien on the collateral.

Subsequent Loan

Subsequent loan is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

Definitions of Terms Used in This Handbook (Continued)

Termination Date

A termination date is the date specified in a disaster declaration, determination, or notification that establishes the final date after which Emergency Loan applications can no longer be accepted. For both physical and production losses, the termination date is 8 months from the date of the disaster declaration, determination, or notification.

Transfer and Assumption

Transfer and assumption is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

Tools of the Trade

Tools of the trade are assets that are exempt from collection efforts because they are essential to the operation of a business.

Treasury Offset Program (TOP)

TOP is the centralized offset of payments to collect delinquent, nontax debts owed to Federal agencies and States (including past-due child support), according to:

- 7 CFR Part 3, Subpart D
- 31 CFR Part 285, Subpart A
- 31 CFR 901.3(b).

Typical Plan

A typical plan is a projected income and expense statement listing all anticipated cash flows for a typical 12-month production cycle, including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.

Unauthorized Assistance

Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.

Definitions of Terms Used in This Handbook (Continued)**Unauthorized Loan**

An unauthorized loan is any loan, a portion of a loan, interest rate, or interest subsidy that the borrower was not eligible to receive, that was not made according to all Agency procedures and requirements or which the Agency obligated from the wrong appropriation or fund.

Unauthorized Loan Servicing Action

An unauthorized loan servicing action is any loan servicing action not made according to all Agency procedures and requirements or that the borrower was not eligible to receive.

Voluntary Conveyance

Voluntary conveyance is a method of voluntary liquidation by which the borrower transfers title of security property to the lender.

Wetlands

Wetlands are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985. Wetlands generally may be those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs and similar areas, such as sloughs, potholes, wet meadows, mudflats and natural ponds.

Notification of the Availability of the Disaster Set-Aside Program

Exhibit 9 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 9”, and CLICK “Submit”.

*--

5-FLP, Exhibit 9
(09-25-24)

This Exhibit may only be revised by SED.

(Use Agency Letterhead format with local return address.)

NOTIFICATION OF THE AVAILABILITY OF THE DISASTER SET-ASIDE PROGRAM

Dear

I am writing to you because you have loans with the Farm Service Agency (FSA). Recently the county where you farm or a contiguous county to where you farm was declared a disaster. I want you to know that if this disaster caused you to suffer losses that will make it difficult to pay your expenses or make scheduled payments to creditors including FSA, there may be some assistance available to you.

Under the Disaster Set-Aside (DSA) program, you may be eligible to delay any or all of your FSA farm loan payments due this year or next (but not both). This payment will be moved to the end of your loan to be paid on or before the final due date. Loans with less than 2 years remaining are not eligible. DSA will only be approved if all farm loan payments will be up to date after the payments are set aside.

You can apply for DSA anytime you note, from local publications, that your county has an active disaster designation. To apply for DSA, you need to provide this office with a letter, signed by all parties liable for the debt, requesting DSA and your actual production, income and expense records for the last three years. FSA might request additional information later if it is needed to make an eligibility decision. Complete applications must be submitted to FSA before your account becomes 90 days past due and prior to the end of the disaster designation.

We also have primary loan servicing (PLS) which is a comprehensive servicing package available to ALL borrowers regardless if they are in a disaster declared area or not. This comprehensive servicing package includes rescheduling at lower rates, up to a five- year deferment, increased length of repayment, and in some cases possible write-down of debt. This type of servicing may provide for lower payments with or without a deferral because the interest rates can be lowered and the length of the loans extended. If you are interested in this more comprehensive servicing option, contact this office to obtain an application.

Current Disaster Designations

Date Declared	Code	Disaster Description	Final Date to Apply
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For more information, please contact this office.

Sincerely

--*

***--Notice of Approval for Set-Aside Programs**

Following is an example of the Notice for Set-Aside Programs letter.

*--

5-FLP, Exhibit 10
(09-25-24)

(Use Agency Letterhead format with local return address.)

NOTICE OF APPROVAL FOR SET-ASIDE PROGRAM

Date

CERTIFIED MAIL

Borrower's Name
Address
Address
City, State, Zip

Dear:

Your request for installment set-aside has been approved by the Farm Service Agency.

Offer

We have determined that the following loans qualify for ☐Disaster Set-Aside ☐Distressed Borrower Set-Aside:

Loan Number	Amount of Set-Aside
-------------	---------------------

Your payment(s) due _____ will be set-aside to the final scheduled installment if you accept this offer within 45 days of receipt of this notification. To accept this offer, please complete and return the attached FSA-2501(s) "Addendum to the Promissory Note or Assumption Agreement for Set-Aside Programs". Please be aware that your account will become ineligible for installment set-aside if it becomes 165 days past due before the FSA-2501(s) is/are signed and returned. Your account will be 165 days past due on _____.

*Please be aware that Farmers.gov and Pay My Loan may reflect incorrect balances for loan(s) with Distressed Borrower Set-Aside. In addition, your annual loan statement may also contain incorrect interest accrual amounts. Please contact your loan service center for exact loan balances.

If you do not accept this offer, you may still pursue your options under Primary Loan Servicing. If you have questions, please contact this office.

Sincerely,

(Name)
(Title)

Attachment: FSA-2501(s)
New Security Instruments (if required)

* This paragraph will be included for DBSA only.

--*

Notification of Potential Nonmonetary Default

Upon noting an apparent non-monetary default other than conversion, FSA will notify the borrower using the following before beginning the Primary Loan Servicing process. Go to <https://intranet.fsa.usda.gov/dam/ffasforms/forms.html>. CLICK "Find Current Forms Using Our Form Number Search". For "Form Number" ENTER "5-FLP Exhibit 10.5".

*--

5-FLP, Exhibit 10.5
(09-25-24)

(Use Agency Letterhead format with local return address.)

NOTIFICATION OF POTENTIAL NON-MONETARY DEFAULT

Dear:

Upon a review of your Farm Loan Programs (FLP) account, it appears that you may be in non-monetary default on your FLP loan(s). This reason that you may be in default is that:

(Provide a detailed description of the reasons that the account may be in non-monetary default)

We have scheduled an appointment on _____ at the address on this letter to discuss this issue. If you are unable to come to the office on this date, we can discuss the issue by phone. If you believe the information we have provided above is not correct, or if you have additional information the agency should consider, please provide all information you have addressing the reason you are not in non-monetary default. Please bring the information to the meeting or contact us by phone. If you do not respond, or if our review of the information you submit still indicates that you are in non-monetary default, we will send the forms you need to complete to apply for primary loan servicing. The forms to file a primary loan servicing application will provide appeal rights concerning FSA's non-monetary default determination.

[WHEN SENDING THIS LETTER TO DECEASED BORROWERS OR ESTATES DELETE THE PARAGRAPH ABOVE AND INSERT THE FOLLOWING 2 PARAGRAPHS:

If you are receiving this letter on behalf of a deceased person or an Estate, we are sorry for your loss and the difficult situation concerning the status of the FLP loan account.

We have scheduled an appointment on _____ at the address on this letter to discuss the FLP loan account. We would encourage someone to attend the meeting who has the ability/authority to make decisions concerning the loan account, and/or has knowledge of the issue described above. If no one is able to come to the office on this date, we can discuss the issue by phone. If you believe the information we have provided above is not correct, or if you have additional information the agency should consider, please provide all information you have addressing the reason the loan account is not in non-monetary default. Please bring the information to the meeting or contact us by phone. If you do not respond, or if our review of the information you submit still indicates that the account is in non-monetary default, we will send the forms that you need to complete to apply for primary loan servicing. The primary loan servicing options may help resolve the issue. The forms will provide appeal rights concerning FSA's non-monetary default determination.]

Please contact this office if you have any questions about this letter.

Sincerely,

(Name)
(Title)

--*

Exhibit 10.5
(Par. 65)

Notification of Potential Nonmonetary Default (Continued)

*--

5-FLP, Exhibit 10.5
(09-25-24)

Non-Discrimination Statement: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

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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”.

*--

<div>Youth Loan Notification Letter</div> <div style="text-align: right;">This Exhibit may only be revised by SED.</div> <div>(Use Agency letterhead format with local return address)</div> <div>[Borrower's name] [Borrower's address]</div> <div>Dear [Borrower's name]:</div> <div>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.</div> <div>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 write-down. Debt write-down is different than debt settlement. Youth loans are eligible for debt settlement. See section (e) of the form for more information.</div> <div>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.</div> <div>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.</div> <div>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.</div> <div>If you have any questions, please contact this office.</div> <div>Sincerely, Farm Loan Manager</div>

--*

***--Instructions for Using eDALR\$**

1 Overview

A Introduction

This exhibit provides basic information on eDALR\$. It is an introduction to using eDALR\$ and the basic processes and calculations that lead to the eDALR\$ print-out. However, this exhibit does not provide every formula, data flow description, or process eDALR\$ uses. This exhibit is not a substitute for the more detailed training materials on the system. For detailed information, contact the State eDALR\$ Coordinator.

B Purpose of eDALR\$

Delinquent and financially distressed borrowers unable to make FSA program loan payments as scheduled may apply for primary loan servicing. The authorized agency official uses eDALR\$ to assist in evaluating the effects of primary loan servicing. eDALR\$ performs a series of mathematical calculations based on information regarding the borrower's cash flow and loan status obtained from the borrower's case file. The authorized agency official uses this information in attempting to restructure the borrower's debt and maximize repayment ability, while avoiding or minimizing loss to the U.S. Government. eDALR\$ provides a printed report of the computations and outcome of the calculations.

C eDALR\$ Capabilities

FSA uses eDALR\$ when a borrower applies for primary loan servicing. eDALR\$ determines what servicing options, if any, are available to the borrower and develops a servicing offer, including any new interest rates, loan terms, and payment schedules.

eDALR\$ provides many benefits and advantages to FSA and the borrower, compared to manual calculations.

- The results are available immediately as eDALR\$ makes all the necessary calculations--* quickly.
- The results are consistent for all borrowers.
- The borrower is assured of being considered for all available servicing options.
- The number of calculation errors is reduced.

Instructions for Using eDALR\$ (Continued)

1 Overview (Continued)

D Developing a Feasible Plan

A feasible plan represents the ability of the borrower to pay all farm operating expenses, family living expenses, FSA program loan payments, FSA Non-Program and homestead protection payments, and non-FSA debt loan payments with a debt service margin (DSM) of zero or greater. The DSM is the amount of money a borrower has remaining after paying all debts, farm operating expenses, and family living expenses.

***--Notes:** A feasible plan will not include working capital reserves or savings accumulation as described in 7 CFR 761.104(f) (1-FLP, paragraph 242), as eDALR\$ already provides for margin in accordance with regulation.

If the direct loan request is made in conjunction with primary loan servicing, farm operating plans will not budget for working capital reserves or savings accumulation, as eDALR\$ already provides for margin in accordance with regulation. Payments for new direct term loans, except for down payment loans, approved concurrently with PLS will be interest-only for the first year with equally amortized installments beginning year two (unless an alternative repayment schedule is necessary to develop a feasible plan, or if the applicant requests an alternative repayment schedule in writing). A typical year plan will be developed in FBP showing a positive cash flow that includes repayment of the new loan(s) and the restructured loan(s) if unequal installments are used.--*

The eDALR\$ calculations are a looped process. eDALR\$ considers each combination of loan servicing options until a feasible plan is developed, or eDALR\$ determines that a feasible plan is not possible with full use of primary loan servicing options, and Conservation Contract (CC) Debt Cancellation.

During the first phase of the calculations, eDALR\$ attempts to restructure the borrower's debt utilizing all necessary combinations of loan servicing options, excluding write-down, while providing a 10 percent DSM. If a feasible plan cannot be developed, eDALR\$ reduces the DSM to 9 percent and reconsiders these combinations of loan servicing options. eDALR\$ continues to reduce the DSM by 1 percent until a feasible plan is developed or the DSM falls to zero. At a zero percent DSM, after considering all combinations, eDALR\$ considers if write-down or a combination of write-down and other servicing actions results in a feasible plan.

If a feasible plan is not obtained at a zero DSM and the borrower is eligible for buyout, then eDALR\$ will offer a buyout at market value, less prior liens. If the borrower is not eligible for a buyout, eDALR\$ will offer the borrower the opportunity for debt settlement.

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations

A Net Recovery Value (NRV)

eDALR\$ calculates the net recovery value (NRV) for FSA security and nonessential assets.

eDALR\$ computes the NRV for all FLP loan security, other nonessential assets owned by the borrower, and assets not in the borrower's possession. If FSA's lien position or the amount of prior liens varies from item to item, eDALR\$ computes separate NRV's for each item that has a different lien structure.

During the net recovery value calculations, eDALR\$ verifies that the net recovery value of nonessential assets is not greater than the delinquent payment of FSA program loans. If the net recovery value of nonessential assets is greater than the delinquent payment, then the borrower is not eligible for primary loan servicing options.

B New Loan and Annual Operating Expense Payments

eDALR\$ computes new loan and annual operating expense payments at regular interest rates. eDALR\$ calculates debt repayment for new FSA term loans and FSA loans for annual operating expenses as follows.

- eDALR\$ calculates repayment for new term loans based on the regular loan program interest rate and the term of the loan.
- eDALR\$ calculates repayment of loans for annual operating expenses based on the regular interest rate and the projected number of months the loan will be outstanding. eDALR\$ calculates interest accrual for the annual operating loan by multiplying the amount of principal to be repaid during the period of the plan by the monthly decimal equivalent for the regular program interest rate. eDALR\$ then multiplies this amount by the average number of months that the loan will be outstanding. The amount of debt repayment due on annual operating expenses is the total of interest accrual plus the principal amount of the loan.

eDALR\$ initially calculates payments for new FSA loans and FSA loans for annual operating expenses at the regular program interest rate. If a feasible plan cannot be developed, eDALR\$ reduces the rate to a limited resource interest rate, if applicable.

***--Note:** eDALR\$ calculates new term loans using equal amortized schedules. However, applicants may utilize interest-only first-year payments, and may also require additional unequal repayment terms if necessary to develop a feasible plan. While eDALR\$ will base calculations on an equally amortized schedule for the new term loan, the final FBP cash flow budget(s) must reflect the actual repayment terms selected for the new term loan.--*

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations (Continued)

C Loan Payments That Will Pay Loans in Full

eDALR\$ will not apply any loan payments that will adjust the amount of the debt or pay loans in full on the proposed restructure date. Therefore, the authorized agency official must indicate in eDALR\$ that the particular FSA loan will be paid-in-full if the loan will be satisfied before or on the proposed loan servicing date. eDALR\$ can consider only a full payoff of a loan.

If the authorized agency official expects or receives a payment for less than the full amount of the loan, the authorized agency official must apply the payment to the loan before completing the eDALR\$ calculations or apply the amount on the closing date to adjust the loan data inputs.

If after the application of payments to pay loans in full, the borrower is no longer financially distressed or none of the borrower's remaining loans are delinquent or require servicing action, no further servicing action in eDALR\$ is required.

D CC Debt Cancellation

eDALR\$ considers a CC, if requested, to the maximum extent permitted under the regulations according to Part 5. A CC is not provided unless a feasible plan is developed after considering CC and other loan servicing options. eDALR\$ selects CC eligible program loans in the order of lowest security priority first. For loans with equal security priority, eDALR\$ bases the secondary selection on the loan with the largest amortization factor.

***--eDALR\$ restructures any delinquent or distressed loan that receives a debt write-down associated with CC debt cancellation and calculates a new payment amount and term.**

If the borrower is current, any loans that receive a debt write-down associated with CC--* debt cancellation are not restructured with a new payment and term. The current payment amount and schedule remains unchanged and a noncash credit is applied to the particular loan. If the borrower requests restructuring with a new payment and term, FSA handles the borrower as a distressed borrower.

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations (Continued)

I Deferral (Continued)

eDALR\$ selects loans for deferral to minimize the debt repayment in the year after the deferral period. If the full deferral of a loan will result in a first-year cash flow that exceeds the appropriate debt service margin, a partial deferral of the loan is used to eliminate the excess cash flow. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

eDALR\$ attempts to develop a feasible plan for the first year by deferring payments on FSA loans until the end of the deferral period (1 to 5 years). A deferral decreases the payment during the period of the deferral and increases the payment for the remaining term. Deferrals are beneficial only if the debt repayment margin increases in the year after the deferral period. This improvement must be no later than 6 years after the current planning year, since the maximum deferral period is 5 years.

To determine the appropriate deferral period, the authorized agency official and borrower review the farm operation for the upcoming 5-year period. Program loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

Program loans are deferred at the lower of the original note rate, current program interest rate, current regular program rate in effect on the date of a completed primary loan servicing application, or if applicable, the limited resource rate.

To select program loans for deferral, eDALR\$ calculates the payment after the deferral period for each loan as if the loan had been fully deferred. eDALR\$ defers the loan with the smallest ratio first and so forth.

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations (Continued)

J Servicing Program Loans for Rescheduling or Reamortization

eDALR\$ reschedules or reamortizes nondelinquent program loans at the maximum term and with an interest rate at the lower of the original note rate, the current loan program rate, or the current regular program rate in effect on the date of a completed primary loan servicing application. eDALR\$ reschedules or reamortizes limited resource rate loans at the lower of the original note rate, the current regular rate, and/or the current limited resource rate. eDALR\$ reschedules or reamortizes nondelinquent program loans one loan at a time until a feasible plan is developed with the appropriate debt service margin or until eDALR\$ processes all nondelinquent program loans.

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations (Continued)

J Servicing Program Loans for Rescheduling or Reamortization (Continued)

eDALR\$ selects program loans in the order of lowest security priority first. For loans with equal security priorities, eDALR\$ bases the secondary selection on the loan with the lowest amortization factor. For loans with equal amortization factors, eDALR\$ bases the selection on the loan with the lowest present value. If the lowest present value is equal, eDALR\$ bases the final selection on the loan with the smallest amount of debt.

K Servicing Delinquent Non-Program Loans for Rescheduling or Reamortization

eDALR\$ reschedules or reamortizes all delinquent Non-Program loans at the maximum term with an interest rate at the lower of the original note rate or current Non-Program rate.

eDALR\$ restructures only delinquent Non-Program loans during this process. eDALR\$ selects loans that are identified as Non-Program or homestead protection loans and then selects the loan with the lowest amortization factor.

L Write-down

When the debt service margin reaches zero percent and a feasible plan has not been developed, eDALR\$ considers write-off of FSA program debt for a borrower who has not
--received the lifetime limit for write-down and write-off. If eligible for debt forgiveness,--
eDALR\$ offers buyout at current market value, otherwise debt settlement is offered.

- If the cash available for the first year is greater than the cash available for the year after the deferral period, eDALR\$ considers write-down, in combination with other primary loan service programs. When considering a borrower for a write-down, eDALR\$ attempts to maximize the borrower's repayment ability and minimize losses to the Government.

The amount of write-down cannot exceed the \$300,000 limitation according to Part 4. In addition, the present value of the program loan payments plus the amount of the CC cannot be less than the total NRV of the FSA security and nonessential assets.

eDALR\$ prioritizes the program loans for write-down and attempts to develop a feasible plan (pass one). If a feasible plan is not found, eDALR\$ re-orders the program loans based on different criteria and again attempts to develop a feasible plan with write-down (pass two).

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations (Continued)

L Write-down (Continued)

- *--For the first attempt to write-down (pass one), eDALR\$ bases program loan selection to maximize the amount of write-down. eDALR\$ selects the program loan with the lowest security priority first. For program loans with an equal security priority, eDALR\$ bases the secondary selection on the program loan with the largest amortization factor.

If a feasible plan is not developed, eDALR\$ re-orders the program loans based on new criteria and again attempts write-down (pass two). eDALR\$ bases its program loan selection on lowest security priority. For program loans with equal security priority, eDALR\$ bases the secondary selection on the program loan with the smallest present value factor. For program loans with equal present value factors, eDALR\$ bases the selection on the program loan with the highest amortization factor. For program loans with an equal amortization factor, eDALR\$ selects the program loan with the largest debt first.

- If the cash available after the deferral period is greater than the cash available in the first year, eDALR\$ considers a combination of deferral and write-down.

eDALR\$ selects program loans for deferral to achieve a cash flow in the first year. If deferral of a program loan results in a first year cash flow that exceeds the applicable debt service margin, eDALR\$ partially defers the loan to reduce the excess cash flow. If there is a negative cash flow after the expiration of the deferral period, eDALR\$ writes down 1 loan to attempt to develop a feasible plan in the year after the deferral period. This process is repeated until a feasible plan is developed for both the first year and the year after the deferral period, or until eDALR\$ has processed all program loans. The amount of the write-down cannot exceed the \$300,000 limitation and the present--* value of the restructured loans plus the value of the CC cannot be less than the total net recovery value of the FSA security and nonessential assets.

To select program loans for deferral, eDALR\$ calculates the payment for each loan as if it has been fully deferred.

eDALR\$ defers the program loan with the smallest ratio first and so on until the borrower has a first year cash flow with the appropriate debt service margin or all loans have been deferred.

The deferred portion of the loan is considered a separate loan in this process and must be prioritized for consideration with the remaining loans.

Instructions for Using eDALR\$ (Continued)

3 eDALR\$ Calculations (Continued)

M Market Value Buyout

eDALR\$ considers current market value buyout when a feasible plan cannot be developed after considering the borrower for all combinations of servicing options and the borrower *--has not received the lifetime limitation for write-down and write-off. The amount of FSA--* debt to be written off must be less than or equal to the \$300,000 limitation, otherwise the borrower is not eligible for primary loan servicing or current market value buyout. In this case, the borrower is offered debt settlement.

N Cash Improvement

--eDALR\$ determines the amount of cash improvement needed in the first-year balance-- available to develop a feasible plan with a zero percent debt service margin when a feasible plan otherwise cannot be developed.

O Results of Calculations

At this point, eDALR\$ has finished its calculations. A feasible plan has been developed or all possible combinations of servicing actions have been considered. eDALR\$ provides a report of the results of the calculations performed.

If eDALR\$ does not find a solution that will provide a feasible plan, FSA proceeds with the other actions authorized in this handbook, including mediation, debt settlement, offering the borrower a current market value buyout, and considering the borrower for homestead protection.

Shared Appreciation Agreement Reminder

Note: Exhibit 25 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 25," and CLICK "Submit".

*--

5-FLP, Exhibit 25
(09-25-24)

(Use Agency Letterhead format with local return address.)

SHARED APPRECIATION AGREEMENT REMINDER

Dear (Borrower's Name)

Our records indicate that on _____, the Farm Service Agency wrote down _____ of your debt. In processing this write-down, you signed a 5-year Shared Appreciation Agreement (SAA) in relation to the real estate you pledged as security for the FSA debt. We have enclosed a copy of your SAA for your reference.

This letter is intended to remind you of your potential obligation to repay all, or a portion, of the debt that FSA wrote down. In accordance with the SAA, you agreed to pay appreciation, if any, in the value of the property up to the amount of the debt written down. This amount will be due if the property you pledged as security has appreciated in value when any one of the following events occurs:

- 1 - 5 years have passed since you signed the SAA
- 2 - title to the real estate is conveyed
- 3 - your FSA loans are repaid
- 4 - you cease farming
- 5 - your account is accelerated because of default

If you believe your property has increased in value since your write-down, you will need to consider this potential liability as you make your future plans. The amount of repayment is 75 percent of any appreciation if one of the events numbers 2 through 5 above occurs during the first 4 years of the SAA, and 50 percent of any appreciation if one of the events occurs during the fifth year of the SAA. The amount of repayment cannot exceed the amount of debt written down.

If you would like more information on how the SAA may affect you and what options are available, please contact this office to discuss it further.

Sincerely,

--*

*

Calculation of Shared Appreciation Recapture

Step 1. Determine the time period the shared appreciation has been active, the amount of debt written down, and the maximum appreciation still collectible.

<u>(A) Period of SAA</u> (mm/dd/yy to mm/dd/yy)	<u>\$ (B) Amount of Debt</u> Written down	<u>\$ (C) Maximum Appreciation</u> still collectible prior to this calculation - [(B) minus previous appreciation calculated for this agreement.]
--	--	--

<p>(D) CMV of real estate parcel at time of sale minus capital improvements calculated as per 5-FLP, Paragraph 343. For other cases, at time of expiration/termination.</p>	<p>(E) CMV at time of write-down for a partial sale, or CMV of all remaining parcels at time of write-down. If a previous SAA has expired, and has the same security, enter CMV of parcels at end of previous SAA period.</p>	<p>(F) Value Appreciation at time of sale of parcel for partial sale, or at expiration/termination for all other cases.</p>
--	--	--

Step 3. Determine Shared Appreciation based on percent. (Less than 4 yrs. = 75%, 4 years or more = 50%)

$$\frac{\text{\$ (F) Value Appreciation calculated from step 2.}}{\text{(G) Percent of FSA share in appreciation.}} = \frac{\text{\$ (H) Shared Appreciation}}{\text{}}.$$

Step 4. Determine the amount of shared appreciation due FSA. This is the lesser of the amount calculated in step 3 or the amount of debt written down minus any shared appreciation previously due.

Lesser of: \$ _____ or \$ _____ = \$ _____
 (H) Amount calculated (C) Appreciation (I) Amount of Shared
 in step 3 Collectible Appreciation Due
 from step 1 FSA

Calculation of Shared Appreciation Recapture (Continued)

*--

5-FLP, Exhibit 26
(09-25-24)

Complete steps 5 through 7 when more than one SAA exists and appreciation is due from more than 1 agreement at the same time. Complete only after completing steps 1 through 4 as applicable for each agreement.

Step 5. Determine the greater of the amounts calculated in step 4 for each agreement to determine the total shared appreciation due FSA.

Greater of: \$ _____ or \$ _____ = \$ _____
 (I) Amount calculated (I) Amount calculated (J) Total Shared
 in step 4 for in step 4 for Appreciation
 Agreement 1 Agreement 2 due FSA

Step 6. Complete this step if the agreements do not have the same percent of appreciation (50 or 75 percent) and the agreement with the 50 percent appreciation is greater than the agreement with the 75 percent appreciation.

This step determines the 25 percent difference to collect from the agreement from which 75 percent appreciation is due.

\$ _____ X .25 = \$ _____ + \$ _____ = \$ _____
 (F) Total appreciation Difference (K) Shared (J) Shared (L) Total Shared
 in value calculated in percentages Appreciation Appreciation Appreciation
 in step 2 (Agreement due on each due on 75% due on 50% due FSA
 which 75% is due). agreement agreement agreement

Step 7. Determine the amount of shared appreciation due on each agreement (distribution of shared appreciation between the two agreements).

\$ _____ - \$ _____ = \$ _____
 (J) or (L) Total (I) Shared Appreciation (M) Net Amount due on
 Shared Appreciation due on Agreement #1 Shared Appreciation
 Due as determined as calculated Agreement #2
 in step 5 or 6 in step 4
 as applicable.

--*

Calculation of Shared Appreciation Recapture (Continued)

*--

5-FLP, Exhibit 26
(09-25-24)

Example 1: Calculation of shared appreciation at the end of the 5-year period. Shared Appreciation Agreement Period February 1, 2001, to February 1, 2006. Write-down amount was \$100,000.00.

A. Market value at the end of the 5-year period	=	\$75,000
B. Market value at the time of write-down	=	<u>\$50,000</u>
C. Value Appreciation (A - B)	=	\$25,000
D. 50% of positive appreciation		<u>X .50</u>
E. Shared Appreciation due FSA	=	\$12,500

Example 2: Calculation of shared appreciation due when a portion of the property is sold, such as timber or land, in the 1st 4 years of the agreement. Shared Appreciation period February 1, 1996, to February 1, 1999. Write-down amount was \$25,000.00.

A. Market value of the property being sold at the time of sale	=	\$100,000
B. Market value of property being sold as of the effective date of the share appreciation agreement	=	<u>90,000</u>
C. Value Appreciation (A - B)	=	\$ 10,000
D. 75% of positive appreciation		<u>X .75</u>
E. Shared Appreciation due FSA	=	\$ 7,500
F. Maximum appreciation FSA can collect during the remaining period of the agreement. (\$25,000 write-down - \$7,500 appreciation)	=	\$ 17,500

Example 3: Calculation of shared appreciation when there are 2 shared appreciation agreements on the same security and each one expires separately.

Date of #1 Shared Appreciation Agreement:	February 1, 2001
Expiration Date:	February 1, 2006
Market Value of real property at time of agreement:	\$100,000
Market Value of real property at end of 5 years:	\$120,000
Amount of write-down:	\$100,000
Date of #2 Shared Appreciation Agreement:	February 1, 2003
Expiration Date:	February 1, 2008
Market Value of real property at time of agreement:	\$110,000
Market Value of real property at end of 5 years:	\$125,000
Amount of write-down:	\$ 50,000

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Calculation of Shared Appreciation Recapture (Continued)

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5-FLP, Exhibit 26
(09-25-24)

Example 3 (Continued)

(A) Shared Appreciation Agreement for #1		
(1) Market value at the end of the 1st 5-year agreement	=	\$120,000
(2) Market value at the time of write-down	=	<u>-100,000</u>
(3) Value Appreciation (1) - (2)	=	20,000
(4) 50% of positive appreciation	=	<u>X .50</u>
(5) Shared Appreciation due FSA on #1	=	\$ 10,000
(B) Shared Appreciation Agreement for #2		
(1) Market value at the end of the 2nd 5-year agreement	=	\$125,000
(2) Market value at the time of write-down or at the end of the first 5-year agreement whichever is greater	=	<u>- 120,000</u>
(3) Value Appreciation (1) - (2)	=	5,000
(4) 50% of positive appreciation	=	<u>X .50</u>
(5) Shared Appreciation due FSA on #2	=	\$ 2,500

Example 4: Calculation of shared appreciation when there are 2 shared appreciation agreements with the same security and the borrower sells all security property 4½ years after the 1st agreement was effective. The 2nd agreement has a greater appreciation due.

Note: If the agreements did not have the same security, each shared appreciation agreement will stand alone.

Market Value of Real Property Sold:	\$150,000
Date of Sale:	August 1, 2005
Date of #1 Shared Appreciation:	February 1, 2001
Market Value of Real Property at Time of Agreement:	\$120,000
Amount of write-down:	\$ 20,000
Date of #2 Shared Appreciation:	February 1, 2003
Market Value of Real Property at Time of Agreement:	\$125,000
Amount of write-down:	\$ 20,000

(A) Shared Appreciation for #1

(1) Market value of the property being sold	=	\$150,000
(2) Market value of property at time of agreement	=	<u>- 120,000</u>
(3) Amount of Appreciation (1) - (2)	=	\$ 30,000
(4) Appreciation Period (2/1/01 - 8/1/05 = 4 years and 6 months)	=	<u>X .50</u>
(5) Shared Appreciation due FSA on Agreement #1	=	\$ 15,000

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Calculation of Shared Appreciation Recapture (Continued)

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Example 4 (Continued)

(B) Shared Appreciation for #2

(1) Market value of the property being sold	=	\$150,000
(2) Market value of property at time of agreement	=	<u>- 125,000</u>
(3) Amount of Appreciation (1) - (2)	=	\$ 25,000
(4) Appreciation Period (2/1/03 - 8/1/05 = 1 year and 6 months)		<u>X .75</u>
(5) Shared Appreciation due FSA on Agreement #2	=	\$ 18,750

In this example, 2step 6 is not required as Agreement #2 with the 75 percent value had a greater appreciation due than Agreement #1.

(C) Shared Appreciation due FSA (Greater of A5 or B5) = \$ 18,750 (B5)
Agreement #1 (A5) \$15,000 vs. Agreement #2 (B5) \$18,750)

(D) Shared Appreciation due FSA on Agreement #1 = \$ -15,000
(G) Net Amount due FSA on Agreement #2 (C - D) = \$ 3,750

Note: If B5 - A5 had been a negative number, the shared appreciation due on agreement #2 will equal \$0.

Example 5: Calculation of shared appreciation when there are 2 shared appreciation agreements with the same security and the borrower sells all security property 4½ years after the 1st agreement was effective. In this example, agreement #1 has a greater appreciation value.

Market Value of Real Property Sold:	\$150,000
Date of Sale:	August 1, 2005
Date of #1 Shared Appreciation:	February 1, 2001
Market Value of Real Property at Time of Agreement:	\$ 90,000
Amount of write-down:	\$ 50,000
Date of #2 Shared Appreciation:	February 1, 2003
Market Value of Real Property at Time of Agreement:	\$125,000
Amount of write-down:	\$ 40,000

(A) Shared Appreciation for #1

(1) Market value of the property being sold	=	\$150,000
(2) Market value of property at time of agreement	=	<u>- 90,000</u>
(3) Amount of Appreciation (1) - (2)	=	\$ 60,000
(4) Appreciation Period (2/1/01 - 8/1/05 = 4 years and 6 months)		<u>X .50</u>
(5) Shared Appreciation due FSA on Agreement #1	=	\$ 30,000

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Calculation of Shared Appreciation Recapture (Continued)

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(B) Shared Appreciation for #2

(1) Market value of the property being sold	=	\$150,000
(2) Market value of property at time of agreement	=	<u>- 125,000</u>
(3) Amount of Appreciation (1) - (2)	=	\$ 25,000
(4) Appreciation Period (2/1/03 - 8/1/05 = 1 year and 6 months)	=	<u>X .75</u>
(5) Shared Appreciation due FSA on Agreement #2	=	\$ 18,750

In this case, Agreement #1 has a greater appreciation, therefore step 6 must be completed to determine the additional 25 percent to collect towards Agreement #2.

(C) Total Shared Appreciation Due:

(1) Value of Appreciation from Agreement #2 (B3)	=	\$ 25,000
(2) 25% Difference in percentages due	=	<u>X.25</u>
(3) Amount of Shared Appreciation due on Agreement #2	=	6,250
(4) Shared Appreciation due on Agreement #1 (A5)	=	<u>\$+30,000</u>
(5) Total Shared Appreciation due FSA	=	\$ 36,250

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