

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Finality Rule and Equitable Relief
7-CP (Revision 4)**

Amendment 6

Approved by: Acting Deputy Administrator, Farm Programs

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Amendment Transmittal

A Reasons for Amendment

Subparagraph 3 A has been amended to clarify that finality applies to payments resulting from decisions of STC's and COC's and to reinforce that incorrect decisions will be corrected when found without regard to the application finality.

Subparagraph 4 B has been amended to provide instructions for obtaining an encryption password.

Subparagraph 16:

- A has been amended to clarify that finality applies to payments; errors will be corrected regardless of whether unearned payments can be retained or are not recoverable; and that finality applies only to payments that may be retained as a result of the passage of time and there being no exceptions to finality's application
- C has been amended to include guidance on when a producer might seek review of finality as it relates to an adverse decision or debt notification letter.

Subparagraph 17:

- A has been amended to specify that finality applies only to payments issued and overpayments resulting from COC or STC determinations (or decisions of COC or STC employees)
- B has been amended to include an additional instance where finality does not apply
- C has been amended to specify that payments issued incidental to an erroneous decision are covered by finality
- D has been amended to specify that notifications of error will be in writing and documented.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 19 A has been amended to:

- clarify that when discovered, any and all erroneous program decisions will be corrected according to applicable handbook procedure and that corrections are not impacted by the application of finality
- clarify in Step 2, if not already corrected, immediately correct error
- specify in Step 6, that FSA’s inability to demand refund of unearned payments as a result of an erroneous decision will remain in effect for the year the error is communicated to the participant and that finality for unearned payments will not apply for any other year.

Page Control Chart		
TC	Text	Exhibit
	1-5 through 1-8 2-1, 2-2 2-2.5, 2-2.6 (add) 2-3, 2-4 2-7, 2-8	

3 Equitable Relief and Finality Rule (Continued)

A Overview (Continued)

Provision	Summary of Provisions
Programmatic Relief	<p>At FSA’s discretion, applies where individual program regulations authorize FSA to waive or modify nonstatutory deadlines or other program requirements as specifically mentioned in individual program regulations or other provisions, in either single cases or group instances, where DAFP determines it appropriate.</p> <p>See paragraph 43.</p>
SED Equitable Relief	<p>Subject to specific conditions and OGC written concurrence, SED’s may grant relief under the misaction/misinformation or failure to fully comply provisions, if the:</p> <ul style="list-style-type: none"> • program matter with respect to which the relief is sought is in a covered program that is operated within the State under the control of SED • total amount of relief that will be provided to the individual or entity that applies for the relief by that SED under this special authority for errors during that year is less than \$20,000, including in that calculation any loan amount or other benefit of any kind payable for that year and any other year • total amount of this relief that has been previously provided to the participant using this special authority for errors in that year, as calculated in this table, is not more than \$5,000 • total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by SED (or SED’s predecessor) for errors for any year under this authority, as calculated in this table, is not more than \$1 million. <p>See 7 CFR 718.307 and paragraph 48.</p>

3 Equitable Relief and Finality Rule (Continued)

A Overview (Continued)

Provision	Summary of Provisions
Finality Rule	<p>Under the finality rule, a participant may be allowed to keep payments that were disbursed in error, through no fault of the participant.</p> <p>Finality cannot apply if the error in payment is in anyway because of an erroneous misrepresentation of the participant even if the misrepresentation was unintentional.</p> <p>The participant cannot have had any reason to know or suspect the decision to approve or pay the application was in error.</p> <p>*--Applies only to payments that resulted from decisions of STC's and COC's (and STC and COC employees).</p> <p>Does not apply to payments resulting from decisions of National Office employees, decisions of RMA or reinsured companies, or decisions of SED's.</p> <p>Incorrect decisions can and will be corrected or modified without regard to timing. FSA's inability to recover or demand refunds of unearned amounts will only be effective through the year in which the error was found and communicated to the participant.--*</p> <p>See 7 CFR 718.306 and paragraph 16.</p>

3 Equitable Relief and Finality Rule (Continued)

B Relief and Finality Authority Overview

The following provides a summary of finality rule and equitable relief authority.

Summary of Finality Rule and Equitable Relief Authority - Not Programmatic Relief		
Finality Rule	SED	Up to \$25,000 per case.
	DAFP	Cases exceeding SED authority. <u>1/</u>
Misaction/Misinformation and Failure to Fully Comply	STC	Up to \$5,000 per case.
	SED	Less than \$20,000 per participant per calendar year. <u>2/</u>
	DAFP	Cases exceeding STC or SED authority. <u>1/</u>
<p>Note: Relief for a participant cannot be combined among the various granting authorities. Relief may be granted by STC, SED, or DAFP.</p> <p>Example 1: A participant is requesting \$24,000 in equitable relief resulting from misaction by FSA. SED cannot grant relief of \$19,000 in addition to STC relief of \$5,000, bringing the total to the requested \$24,000.</p> <p>Example 2: A participant is requesting \$30,000 in equitable relief in a failure to fully comply case. If SED grants \$19,999 in relief to this participant, the additional amount of relief is not available.</p>		

1/ If STC or SED has authority to act or grant relief on a case that is similar to another case that requires a decision by a higher authority, no action will be taken on the case until a determination on the other case has been made by the higher authority.

2/ Providing any previous relief granted by SED in the same calendar year to that participant did **not** exceed \$5,000 and relief provided to similarly situated participants is **not** greater than \$1 million. SED authority granted according to paragraph 48.

Note: Unless otherwise specifically delegated by DAFP, only DAFP has authority to grant programmatic relief. See paragraph 43.

4 Submitting Requests to the Washington, DC, National Office

A Overview

DAFP has developed procedure for electronically submitting requests for equitable relief or applications of the finality rule. Where this handbook provides that a matter or issue be sent to DAFP or any of the respective divisions of DAFP, including CEPD, PECD, or PSD, State Offices will submit the file according to this paragraph.

B Electronically Submitting Requests

All requests for equitable relief or finality seeking written decision, approval, or concurrence by DAFP, CEPD, PECD, or PSD must be submitted by internal FSA e-mail from State Offices to **RA.FSA.DCWA2.DAFP**, according to the format in subparagraph C.

Requests submitted according to this paragraph **must** be sent to DAFP by e-mail with an encrypted PDF attachment. Include a point of contact in the text of the e-mail, but nothing else of substance. Encrypt the attachment with the password that DAFP will provide to the field under separate cover.

--To obtain the password, send a request to the e-mail address in this subparagraph.--

C Format for Requests, Subject Line of E-Mails, and Required Attachments

The e-mail subject line **must** be formatted as follows:

- State abbreviation (for example, “AZ” for Arizona)
- responding division (for example, “PECD”)
- type of action requested, as follows:
 - “FN” for finality rule
 - “MM” for misaction/misinformation
 - “FFC” for failure to fully comply
 - “PR” for programmatic relief
 - “OTH” for combinations of equitable relief or finality
- participant’s name
- date of request (for example, “01-10-2013” for January 10, 2013).

Example: “AZ/PECD/FFC/JohnDoe/01-10-2013”

Part 2 Finality Rule

16 Finality Rule General Information

A Overview

*--The finality rule provisions, including exceptions, apply to COC and STC decisions and payments resulting from applications filed by participants. Finality may occur when, because of some error, an incorrect or improper payment was inadvertently issued to a participant. Provided criteria in paragraph 17 apply, the recipient of the unintended or erroneous payment may be able to retain or keep the amount disbursed in error. The error will be corrected regardless of whether unearned payments can be returned, or are **not** recoverable.--*

Sometimes, innocent mistakes result in overpayments. If the FSA decision or program payment was in any way the result of erroneous information provided by the participant, even innocently provided erroneous information, the participant is likely not entitled to retain unearned payments.

A decision on applicability of the finality rule in no way is a decision assigning responsibility *--for error or deciding “fault”. Finality applies only to payments that may be retained as a--* result of the passage of time and only if there are **no** exceptions to its application. See subparagraph B.

B Regulatory Language

[7 CFR 718.306] Finality.

- (a) A determination by an FSA State or county committee (or employee of such committee) becomes final on an application for benefits and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless any of the following exceptions exist:**
- (1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;**
 - (2) The determination was in any way based on erroneous, innocent, or purposeful misrepresentation; false statement; fraud; or willful misconduct by or on behalf of the participant;**
 - (3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under Chapter XIV of this title, the Executive Vice President, CCC; or**
 - (4) The participant knew or had reason to know that the determination was erroneous.**
- (b) Should an erroneous determination become final under the provisions of this section, the erroneous decision will be corrected according to paragraph (c) of this section.**

16 Finality Rule General Information (Continued)**B Regulatory Language (Continued)**

- (1) If, as a result of the erroneous decision, payment was issued, no action will be taken by FSA, CCC, or a State or county committee to recover unearned payment amounts unless one or more of the exceptions in paragraph (a) of this section applies;**
- (2) If payment was not issued before the error was discovered, the payment will not be issued. FSA and CCC are under no obligation to issue payments or render decisions that are contrary to law or regulation.**
- (c) FSA and CCC will modify and correct determinations when errors are discovered. As specified in paragraph (b) of this section, FSA or CCC may be precluded from recovering unearned payments that issued as a result of the erroneous decision. FSA or CCC's inability to recover or demand refunds of unearned amounts as specified in paragraph (b) will only be effective through the year in which the error was found and communicated to the participant.**

C Relation to Other Requirements

The finality rule does **not** supersede other requirements or preclude adverse decisions based on compliance determinations or activities.

Example: A NAP participant was issued a payment based on an application for payment that was later pulled for a compliance review. On review, FSA learned the participant overstated acreage. The participant cannot retain unearned payments that are the result of incorrect or inaccurate representation later discovered to be inaccurate by FSA.

16 Finality Rule General Information (Continued)**C Relation to Other Requirements (Continued)**

Even if finality applies, the County Office must follow established procedure for correcting *--errors. If the correction is adverse, it may be appealed. However, finality is never an impediment to making a correction. Finality only applies to payments that might be allowed to stand despite the correction. Decisions can and will be corrected as required and necessary not withstanding finality.

Sometimes FSA issues a decision to correct a previous determination and that decision is adverse. That new adverse decision may or may not address finality. If the new determination is adverse to the participant, and:

- addresses the matter of finality and specifies that it either does not apply or that there is an exception to its application, the appellant can appeal all of the issues contained in FSA's decision including the application of finality
- the new determination is silent on the matter of finality, but references an overpayment, the appellant can still raise issues related to finality and its application to any overpayment together with appealing other issues in the adverse decision.

If not previously decided in an appeal of the adverse decision, issues related to the application of finality can be raised in an appeal of any debt notification letter. However, if the matter of finality was previously addressed and appealed along with the adverse decision giving rise to the debt and debt notification letter, it is not appealable again.

Note: Follow 1-APP for guidance relative to appeals and the right to contest adverse decisions.--*

16 Finality Rule General Information (Continued)**D Approval Authority**

SED has final authority to:

- disapprove all cases

Note: The producer will be given appeal rights according to 1-APP, if SED does **not** approve FSA-321.

- approve cases for which the actual or projected dollar amounts considered to be in error do **not** exceed \$25,000.

Cases exceeding SED authority must be submitted to DAFP if approval is recommended by SED.

Notes: If SED has authority to grant relief on a particular case that is similar to another case that is also currently being contemplated or considered but require a decision by DAFP (cases exceeding \$25,000), SED will take no action on the case under their authority until DAFP makes a determination.

If the finality rule applies to a case, that case must be approved for the full amount, subject to the program's payment limitation. Partial approval is **not** available under the finality rule.

17 When Finality Rule Applies

A COC and STC Determinations

--The finality rule applies only to payments issued and overpayments resulting from-- determinations for covered programs made by COC's, STC's, or their representatives. This includes, but is not limited to, the following:

- decisions about program payments containing overpayments or incorrect amounts
- documented decisions by COC, STC, or their employees
- calculation errors that are subsequently approved.

Notes: See subparagraph 16 B for exceptions to finality.

See paragraphs 20 through 22 for guidance about specific programs.

B Application for Benefits

The finality rule applies only to payments and overpayments resulting from a COC or STC (or COC or STC representative) decision that is related to an application for benefits. The finality rule does **not** apply to the following:

- contract or loan provisions or ramifications
- information or advice of FSA representatives that is **not** a program decision
- mediation agreements
- decisions of FSA National Office officials and SED's
- decisions of RMA or reinsured companies, NRCS, FS, CMA's, DMA/LSA, or any technical service provider
- contract LA findings or conclusions
- *--whether a decision that may be in error can or will be corrected--*
- functions performed under the Consolidated Farm and Rural Development Act, Section 376, as amended, for FLP's
- payments that were not issued before the error was discovered (subparagraph 16 B).

17 **When Finality Rule Applies (Continued)****C Subsequent Year Determination**

Should a determination have multi-year consequences, such as multi-year applications or base acres, the finality rule only applies to overpayments incidental or through the year in which the error was found and communicated to the participant.

Example: An error in establishing base acres on a farm is discovered more than 90-calendar days after CCC-861 is approved. The participant is determined to not have any reason to suspect or know of the error. The base acres are corrected effective immediately and the participant is afforded the opportunity to re-enroll. Payments *--that had been issued in error for the year that the error was discovered prior to the error's discovery may be retained by the participant. If payments had not yet--* issued before the error was discovered, FSA will **not** issue the incorrect payments; further, subsequent year benefits, and any other program benefit that could arise following communication of the error to the participant, will be limited to correct base acres.

D Notification of Error

Employees and offices must **not** delay notifying participants of errors in applications or decisions for a determination on the possible application of **either** of the following:

- equitable relief, under any available relief authority
- finality.

As soon as an error is discovered that has resulted or could potentially result in an overpayment, FSA offices will do the following:

- immediately provide the participant with written notification of the error or mistake and advise that overpayments have been or could be determined, as applicable

*--**Note:** The notification of error will be in writing and documented. The notice will--* document:

- what was conveyed
 - to whom notification was provided
 - when and how it was provided.
- advise the participant that FSA will provide the participant with a written decision about the results of any determination made relative to the error or mistake.

19 Finality Rule Required Action

A Action When Payment Has Been Disbursed

*--When errors are discovered, correct any and all erroneous program decisions according to applicable handbook procedure. If 90 calendar days have **not** passed since the date of--* application, ensure that the participant is immediately notified of the overpayment and error.

The following table provides instructions in situations when a benefit or payment resulting from an erroneous determination has been disbursed and more than 90 calendar days have passed since the date of application.

Step	Action
1	<p>COC or STC will review whether the case meets the requirements of paragraph 17 to determine whether the finality rule may apply.</p> <p>If:</p> <ul style="list-style-type: none"> • yes, go to step 2 • no, go to step 3.
2	<p>COC or STC will determine whether an exception to the finality rule under paragraph 18 applies.</p> <p>If:</p> <ul style="list-style-type: none"> • yes, go to step 3 •*--no, if not already corrected, immediately correct the error according to the--* applicable program instructions and issue a letter to the participant notifying them of the error according to paragraph 16. Then, go to step 4.
3	<p>Do the following:</p> <ul style="list-style-type: none"> • if not already done, immediately notify the participant, by letter, of the error, according to paragraph 16. • correct the error according to the applicable program instructions or 58-FI • record, on the County Office copy of the letter, the reason the finality rule does not apply, and file in the applicable program folder • document the decision in COC or STC minutes, as applicable. <p>Note: If the finality rule does not apply, equitable relief may still be considered under Part 3 if it can be determined that the participant is not in compliance with the requirements of a covered program.</p>

19 Finality Rule Required Action (Continued)

A Action When Payment Has Been Disbursed (Continued)

Step	Action
4	Document each case in COC or STC minutes, as applicable, and on FSA-321. See Exhibit 5.
5	<p>Sign FSA-321 and forward to SED or DAFP for final approval or disapproval, or to recommend approval to DAFP if amount exceeds \$25,000. See subparagraph 71 D.</p> <p>If SED or DAFP:</p> <ul style="list-style-type: none"> • disapproves, return to step 3 • approves, go to step 6.
6	<p>Provide written notice of the error to the participant. Written notice must provide that:</p> <ul style="list-style-type: none"> • refund of any overdisbursement associated with the erroneous decision is not required •*--FSA’s inability to demand refund of unearned payments as a result of the erroneous decision will remain in effect for the year the error is communicated to the participant • finality for unearned payments will not apply for any other year.--* <p>Note: See Exhibit 6 for an example finality rule approval letter.</p>
7	<p>The State Office will provide documentation of cases to DAFP on PA-129R, according to subparagraph 72 C.</p> <p>Note: One report containing all finality rule approvals will be submitted for each State by the deadline each year.</p>