

For: FSA Employees and Contractors

Lifting the General Records Freeze and Disposal of Farm Loan Program (FLP) Records

Approved by: Administrator



1 Overview

A Background

In December 1999, FSA was informed that all FSA program and administrative official records and non-record documentary material (referred to collectively as “records”) were subject to a general records freeze and regardless of whether or not the records were beyond their normal retention period, FSA was prohibited from destroying any records.

Notice AS-2293, Lifting the General Records Freeze and Disposal of FSA Records (which was made obsolete on Feb. 1, 2017), indicated the freeze had been rescinded. FSA returned to recordkeeping practices for retention and disposal of records according to established records disposition schedules and active litigation holds.

Notice AS-2301, Disposal of FSA Records with the Exception of Farm Loan Records (which was made obsolete on March 1, 2017), indicated that offices were authorized to continue the destruction of all records except for FLP records.

The agency incurs a financial cost for each record stored at an FRC. Additionally, there is a cost to destroy the records kept at the FRC. To process an SF-135, Records Transmittal and Receipt, is \$45 per box. To shelve a box is \$3.75 per box and to store a box is \$0.23 a box per month.

B Purpose

This notice informs National, State and County Offices that effective immediately:

- the general records freeze on all FLP records has been lifted
- State Offices are authorized to begin the destruction of records
- State and County Offices are responsible for shredding documents stored in their facility
- National Office will cover the cost for the destruction of the records stored at an FRC
- FSA must no longer send FLP records that are past their disposition date to FRC.

Disposal Date	Distribution
May 1, 2020	FSA employees and contractors; State Offices relay to County Offices

Notice AS-2328

1 Overview (Continued)

C Contact

For questions about this notice contact the Farm Production and Conservation, Management Services Division (MSD), Directives, Records and Forms Management Branch using the myFPAC ServiceNow portal at <https://usdafpacbc.service-now.com/fpac>. CLICK “Our Departments” from the top menu and SELECT “Management Services”, SELECT “Records Management” as the “Request Type” when completing the intake form.

2 Definitions

A Records

A Federal record is an information resource, in any format, that is:

- created in the course of business
- received for action
- needed to document agency activities.

Note: In general the term ‘**records**’ includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes; or duplicate copies of records preserved only for convenience. For the purposes of this paragraph the term “recorded information” includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form. [44 U.S.C. 3301]

2 Definitions (Continued)

B Active Records

Active records (electronic and paper) are those official records used to conduct current agency business. Active FLP records are maintained onsite and are identified in 32-AS, subparagraph 169 C.

Note: Essential FLP records are originals of any documents or records that provide evidence of indebtedness or obligation to FSA that include, but are **not** limited to, the following items:

- original promissory notes
- assumption agreements
- stock certificates
- charged-off notes
- valuable documents.

Note: Examples include:

- checks
- cost voucher documents
- shared appreciation agreements
- recapture agreements
- security agreements.

C Inactive Records

Inactive FLP records (electronic and paper) are those official records that are no longer needed to conduct agency business. Inactive records are eligible to be retired to onsite storage, retired to offsite storage, destruction (consistent with the established records disposition schedule), or transferred to an FRC.

Note: A direct loan case file will be considered closed provided that all FLP debt has been satisfied by payment-in-full, payment of approved settlement offer, or other means.

2 Definitions (Continued)

C Inactive Records (Continued)

A guaranteed borrower’s case file will be considered closed according to the following table.

IF a guaranteed loss claim...	THEN the file will be considered closed provided...
has not been paid	<ul style="list-style-type: none"> • all loan guarantees have been paid in full or terminated on written notice from the lender • there is no unresolved legal action pending • no active direct loan.
has been paid	<ul style="list-style-type: none"> • all collection activity has been terminated • there is not an outstanding shared appreciation agreement • the Federal debt established by the payment of a final loss claim has been satisfied by payment-in-full, payment of an approved settlement offer, or other means • there is no unresolved legal action pending • no active direct loan.

D Non-records

Non-record documentary material (electronic and paper) is federal government-owned documentary material that does not meet the legal or statutory definition of an official record or that are excluded from the coverage (defined as “non-record materials” by NARA regulations). Documentary material excluded from the definition of a record includes the following:

- extra copies of documents that are retained only for convenience of reference
- library and museum materials intended solely for reference or exhibition purposes
- stock of publications and processed documents.

A non-record is:

- documentary material that requires no official action on the part of USDA and upon which no official action is taken on the part of USDA
- a duplicate copy/duplicate print out of an official record or an exact copy of official record where upon which no additional operational or administrative notation (electronic or handwritten) action has been recorded.

2 Definitions (Continued)

E Personal Papers

Personal papers (electronic and paper) are non-records. NARA regulations define documentary materials not owned by the federal government as personal papers. Personal papers are documentary materials of a private or nonpublic character that do not relate to, or have an effect upon, the conduct of USDA business.

F Permanent Records

Permanent records are records determined by NARA that have sufficient historical or other value to warrant continued preservation by the federal government beyond the time they are needed for administrative, legal, or fiscal purposes. Permanent records will eventually be transferred (accessioned), legally and physically to NARA; for headquarters: (<http://www.archives.gov/dc-metro/college-park>) and for State Offices (<http://www.archives.gov/locations>) , records may be sent to the nearest location.

G Temporary Records

Temporary records are records approved by NARA for disposal by either destruction or donation immediately or after a specified time. The majority of federal records are temporary. If temporary records are kept for 30 years, they will eventually be destroyed. Temporary records can be program or administrative in nature and exist in all formats.

3 E-Mail and E-Mail Systems

A E-Mail Records

E-mails that are **created or received for action** are official records, if they meet the criteria in the statutory definition of records; that is, the e-mail documents the FSA mission or provides evidence of FSA business transactions.

B Deleting E-Mails

E-mails that are **not** official records may be deleted when no longer needed or according to agency policy.

4 Guidance for Disposal of Official Records

A Coordination with State Records Management Personnel

To ensure compliance with all current and future litigation holds, FSA offices must not destroy any records (includes official record and non-record documentary material) until the disposal activity has been coordinated with the State records management personnel.

4 **Guidance for Disposal of Official Records (Continued)**

B Determining the Status of FSA Official Records

Before taking any action to dispose of (destroy) official FSA records, the National, State and County Offices **must** determine the status of those records. Offices must confirm that the records are:

- in their entirety eligible for destruction (that is, beyond the established retention date)
- not subject to an active litigation hold
- not subject to an open civil rights complaint.

A list of all active litigation holds is available on the records management SharePoint site at <https://sharepoint.fsa.usda.net/mgr/DAM/FSA-FAS-RecordsManagement/File%20Maintenance%20and%20Disposition%20Plans/Forms/AllItems.aspx>. Under “Libraries” on the left-side of the page, CLICK “Documents” and access the file “Active Litigation Holds”.

To determine if there is an open civil rights complaint, send a list of names to OCR by e-mail to Jonathan Howard at jonathan.howard@usda.gov with a CC to Tiffany Wallace at tiffany.y.wallace@usda.gov.

FLP records related to the class action lawsuits against USDA can be destroyed 10 years after the date of settlement. Records for these lawsuits can be destroyed based on the dates in the following table.

Class Action Lawsuit	Settlement Date	Records Destroyed
Pigford I	April 14, 1999	Immediately
Pigford II	May 13, 2011	May 14, 2021
Keepseagle	November 1, 2010	November 2, 2020
Hispanic (Garcia) and Women (Love) Farmers and Ranchers	None	January 10, 2020

Note: Garcia and Love were never certified as classes. The Supreme Court declined to hear those cases on January 10, 2010, which effectively ended the class action.

4 Guidance for Disposal of Official Records (Continued)

C Disposition Instructions

The File Maintenance and Disposition Manual is available on the records management SharePoint site (see subparagraph B).

Refer to the File Maintenance and Disposition Manual for Records Group 145, Farm Service Agency about file codes, dispositions, and newly revised records schedules. The retention periods specified are:

- mandatory
- not to be exceeded, **unless a specific operational or legal requirement makes it necessary to keep the records past the designated retention period.**

Never destroy any records unless the retention period has passed.

If records maintained are **not** covered by the File Maintenance and Disposition Manual, contact the MSD records staff through the myFPAC ServiceNow portal according to subparagraph 1 C. The records must be maintained as permanent records until a disposition schedule for them has been approved.

Note: National, State and County Offices will only send records to an FRC if they do not have adequate storage space and are within the retention period.

If records are past their retention, prepare and send KC-703, Request for Destruction of Records, to the state records liaison (SRL) for approval. The SRL will certify the destruction of records and return the approved KC-703 to the records custodian (RC) in the County Office. A copy of the KC-703 should be maintained in the County Office after the actual destruction date.

Note: County Offices may bundle multiple request when submitting KC-703's.

D Assistance

MSD records management personnel will provide assistance in determining the status of FSA records through the appropriate RC or SRL.

SRL's and contractors may contact MSD according to subparagraph 1 C when there is a need to determine the status of FSA held electronic and/or paper records.

4 Guidance for Disposal of Official Records (Continued)

E Records in the FRC's

MSD is working with NARA to develop a plan for NARA to dispose of FSA records currently being stored in FRC's that are:

- beyond the established retention date
- not subject to an active litigation hold.

Unless notified otherwise, FSA offices must not recall records currently being stored in an FRC solely for the purpose of disposing of (destroying) the records.

5 Purchasing and Using Shredders

A Definition of Shredding

Shredding means a destruction process that is used to dispose of certain documents to prevent certain documents from being reconstructed.

Pulping a technique of destroying paper records by soaking them in water and grinding them into pulp.

B Policy on Using Shredders

All of FSA records are considered "restricted". Destruction of "restricted" records must be done by:

- shredding
- pulping.

For office shredder destruction of records - Because of the potential for the records to contain protected data (to include PII), for records destruction FSA offices will use a shredder that has a maximum shred size (refuse/output) that is no larger than 3/32" x 19/32" (2.4 mm x 15 mm) micro-cut particles. The established micro-cut standard meets the NIST Special Publication 800-88 - Guidelines for Media Sanitization requirement that the size of the refuse/output be small enough that there is reasonable assurance, in proportion to the level of data confidentiality, that the protected data cannot be reconstructed.

5 Purchasing and Using Shredders (Continued)

C Requesting Shredders

The privacy officer can provide guidance concerning the purchase of PII compliant shredders that meet/exceed the baseline FSA policy of producing a maximum shred size output of no larger than 3/32" x 19/32" (2.4 mm x 15 mm) micro-cut particles.

Note: States may request shredders from MSD by sending a request through the myFPAC ServiceNow portal according to subparagraph 1 C.

D Bulk Shredding

For bulk shredding of records (onsite shredding or transport to a shredding facility):

Because of the potential for the records to contain protected data (to include PII), for bulk (large scale) records destruction FSA offices will have the destruction performed by a vendor that is National Association for Information Destruction (NAID) certified. NAID certified commercial vendors can be located on the NAID website at <http://directory.naidonline.org/>.

The privacy officer can provide guidance concerning the NAID certified vendors that service a local area.

6 Destroying Records Containing Protected Data

A Paper and Electronic Media

Paper and electronic media containing protected data shall be destroyed (that is, disintegrated, incinerated, melted, pulverized, and/or shredded) to the point where there is reasonable assurance in proportion to the data confidentiality that the data cannot be reconstructed. FSA offices may use any method of destroying paper and/or electronic media containing protected data provided that the selected method and the vendor used meets the "reasonable assurance" requirement.

Where available, FSA offices can have the destruction of paper and/or electronic media containing PII performed by a qualified Federal or State government agency that has a proven capability to properly destroy protected data; for example, Federal or State government agency operating an approved hi-temp burn barrel.

Note: The Federal or State government agencies do not need to be NAID certified. When a qualified Federal or State government agency is used for the destruction of paper and/or electronic media containing protected data, an FSA employee must witness the destruction of the material. The witnessing FSA employee must also create/retain a written/signed memorandum for record detailing the confirmed destruction of any paper and/or electronic media that contained protected data.

Questions about obtaining PII compliant office shredders/PII compliant bulk shredding can be referred to MSD through the myFPAC ServiceNow portal according to subparagraph 1 C.

6 Destroying Records Containing Protected Data (Continued)

B Electronic /records

Electronic record, as defined in **36 CFR 1220.18**, means any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record under the Federal Records Act. The term includes both record content and associated metadata that the agency determines is required to meet agency business need.

C Examples of Electronic Records

The following are examples of electronic records:

- graphic images created or maintained only in electronic form and never reproduced in hard copy form
- e-mail that contains statements of policy, rationale for a decision, sense of direction, or guidance above and beyond that documented in official files

Note: E-mails need to be stored in a medium that adequately provides for the security, safety, and retrievability of the record until its disposition date.

- output of electronic information systems that support agency management functions, such as statistical survey program, procurement programs, and correspondence tracking system, regardless of whether all or a portion of the information is also maintained in hard copy.

D Electronic Records Destruction

Electronic records can be destroyed (deleted) using the same guidance as indicated in paragraph 4.

7 Additional Actions

A FSA Records Officer

The records officer will be responsible for providing an NA Form 13001, Notice of Eligibility for Disposal, to FSA program areas and each SRL which identifies records being stored at FRC's that are past their retention dates, and notifying NARA of:

- accessions that are authorized for disposal
- active litigation holds and the records subject to the active litigation hold.

B FSA Program Areas and SRL's

FSA program areas and SRL's are responsible for:

- reviewing the litigation hold spreadsheet or NA Form 13001 and, as needed, contact MSD records management personnel for assistance to determine the records eligibility for disposal
- working with MSD records management personnel to complete all actions and documentation required for FSA to properly dispose of (destroy) FSA held electronic and/or paper records.