

For: State and County Offices

Equitable Relief

Approved by: Deputy Administrator, Farm Programs



1 Overview

A

Background

Statutory authority for relief based on incorrect action or information of FSA personnel was provided in Section 326 of the Food and Agricultural Act of 1962, as amended (1962 Act). The Farm Security and Rural Investment Act of 2002 (2002 Act), repealed Section 326 of the 1962 Act and provides new authority for equitable relief. The 2002 Act authorizes certain types of relief if a participant is determined to **not** be in compliance with the requirements of a covered program, and therefore, ineligible for a loan, payment, or other benefit under the covered program.

The 2002 Act also provides special equitable relief authority to SED, with certain restrictions.

B

Purpose

This notice informs State and County Offices of:

- revised equitable relief provisions
- relief authorities
- documentation and report requirements.

Notes: 7-CP is being amended to incorporate the provisions of this notice. In the interim, use the provisions in 7-CP as amended by the provisions of this notice.

Disposal Date	Distribution
October 1, 2003	State Offices, State Office relay to County Offices

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2 Equitable Relief Provisions

A

Date of Applicability

The statutory authority for equitable relief was revised on May 13, 2002. Therefore, the revised relief provisions provided by this notice are applicable only to cases in which the basis for relief occurred on or after May 13, 2002.

Federal regulations covering equitable relief are in 7 CFR Part 718 subpart D, published October 31, 2002.

Use the provisions of 7-CP if the basis for the relief occurred before May 13, 2002.

B

Covered Programs

The general relief authority provided in this notice is applicable to:

- any program administered by FSA in which price or income support, or production or market loss assistance, is provided to producers of agricultural commodities
- conservation programs administered by FSA.

Note: This authority does not apply to agricultural credit programs carried out under the Consolidated Farm and Rural Development Act.

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2 Equitable Relief Provisions (Continued)

C

Basis for Relief

Relief may be authorized for a participant who, acting in good faith, either:

- relied on the action of, or information provided by, FSA personnel to the detriment of the participant

Note: This authority does not extend to cases when either of the following apply:

- the participant had clear and sufficient reason to know that the action or information on which they relied was improper or erroneous
 - the participant acted on his or her own misunderstanding or misinterpretation of program advice, notice, or hearsay.
- failed to comply fully with the requirements of a covered program, but rendered substantial performance.
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D

Forms of Relief

Relief may be authorized according to the provisions of this notice to allow a participant in a covered program to:

- retain commodity loans, payments, or other benefits received under the covered program
- continue to receive loans, payments and other benefits under the covered program
- continue to participate, in whole or in part, under any contract executed under the covered program
- in the case of a conservation program, re-enroll all or part of the land covered by the program
- receive other equitable relief as determined to be appropriate.

Note: The participant may be required to take actions designed to remedy the failure to fully comply situation as a condition of receiving relief.

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2 Equitable Relief Provisions (Continued)

E

Special SED Authority

In addition to the approval authorities currently provided in 7-CP, SED may approve relief for cases involving either incorrect action or information of FSA personnel or failure to fully comply by the participant, subject to all of the following:

- total amount of relief being provided to the participant under this special authority does **not** exceed \$20,000 per case
- total amount of relief previously provided to the participant under this special authority is **not** more than \$5,000 during the calendar year
- total amount of relief provided during the calendar year to similarly situated participants by SED or SED's predecessor under this special authority for the current year or any other year is **not** more than \$1 million
- SED has received written opinion or written acknowledgment from OGC that:
 - grounds exist for determination that the participant has, in good faith, detrimentally relied on the guidance or actions of an authorized FSA representative, or that the participant otherwise failed, in good faith, to fully comply with the requirements of the program
 - granting of the relief is within the lawful authority of SED
- SED reports the exercise of this special authority to DAFP, attention: PECD.

Notes: This special authority does not extend to administration of:

- payment limitation and payment eligibility provisions
- highly erodible land conservation and wetland conservation provisions.

Cases outside this special approval authority may be submitted to DAFP for consideration.

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3 Documentation and Reports

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Using FSA-321

FSA-321 will be revised at a future date. Use of an automated version of FSA-321 is not required because the information will **not** be uploaded at this point. However, State and County Offices shall continue to document cases using the current version of FSA-321 until it is revised.

B

Report Requirement

The 2002 Act requires an annual report of the number of requests for equitable relief and the disposition of the requests. Each State Office shall submit a report using the format in Exhibit 1. Submit the report to PECD by FAX to 202-720-4941 by January 15. Negative reports are required.

The report shall cover all cases for which relief was requested according to the provisions of this notice through December 31, 2002. This includes any case for which relief was approved by any approving authority if the basis for relief occurred after May 13, 2002, even if the relief was approved before receiving this notice.

Sample Equitable Relief Annual Report Format

The following is a sample of an Equitable Relief Annual Report Format.

State - <u>Vermont</u> Report Date - <u>January 10, 2003</u>						
County	Payment Type	Number of Cases	Amount of Relief Requested	Amount of Relief Approved	Basis for Relief	Approval Authority
Addison	LDP	1	\$5,000	\$3,500	Failure to fully comply	SED
Addison	NAP	3	\$95,000	\$95,000	Incorrect information	DAFP
Addison	Commodity Loan	1	\$4,500	\$4,500	Incorrect information	STC
Bennington	CRP	1	\$25,000	\$20,000	Incorrect action	SED
Caledonia	LDP	3	\$12,000	\$9,000	Failure to fully comply	SED
Caledonia	LDP	1	\$3,500	\$3,500	Incorrect information	STC
Negative reports for all other counties						