

For: State and County Offices

COC Review of ERP 2022 Track 1 Applications with Shares Designated for SBI(s)

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

ERP 2022 Track 1 applications for producers who received crop insurance indemnities require review when the primary policy holder certifies to the designation of shares to SBI(s). The COC review process ensures the accuracy of the shares designated on the FSA-523 for SBI according to the guidance provided in this notice.

B Purpose

This notice informs State and County Offices of:

- the COC review process for all ERP 2022 Track 1 applications with a share designated to SBI(s), including applications which have already been acted upon and possibly paid
- the instructions for completing the COC review process and requesting supportive documentation, such as documentation listed in subparagraph 2 F
- guidance for reviewing ERP 2022 Track 1 applications.

Disposal Date	Distribution
October 1, 2024 12-5-23	State Offices; State Offices relay to County Offices

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process

A ERP 2022 Track 1 Applications for COC Review

RMA has exemptions that allow a person to insure another person's interest in the crop, as the reinsured crop insurance subsidy is the benefit subject to conservation compliance provisions. These exemptions (SBIs) are referenced in 6-CP (Rev. 4).

COC is required to review ERP 2022 Track 1 applications (FSA-523) where the primary policy holder certified to the designation of shares to SBI(s). The COC review process will ensure SBI meets the definition of eligible producer and the accuracy of the shares designated by the primary policy holder on the FSA-523 for the SBI(s).

This requirement will be **retroactive** to ensure all FSA-523's with shares designated to SBIs are reviewed for accuracy. See additional information in subparagraph B.

For ERP 2022, FSA's definition of an "**eligible producer**" means an individual or legal entity that is at **risk in the crop and is entitled to an ownership share** in the crop or would have shared had the crop been produced, in addition to meeting other eligibility requirements. Landowners, landlords, tenants, contract growers, or anyone else not having both a share of the risk and a valid claim of share ownership of a crop are ineligible for ERP 2022 assistance for that crop.

SBIs must meet the definition of an eligible producer to be eligible for payment. If one or more producers with an SBI had a share in a crop, the primary policy holder must update the FSA-523 to show the share in the crop for each of those producers, in addition to the primary policy holder.

ERP 2022 Track 1 payments are available to **eligible producers** that:

- suffered a crop production loss or tree loss due in whole or in part to qualifying disaster events or related conditions in calendar year 2022, and
- received a crop insurance indemnity or NAP payment for those losses.

Eligible producers identified by RMA on the FSA-523, include producers with a CCID:

- that are primary policy holders of an FCIC reinsured policy
- with SBI to a primary policy holder.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

B Conducting the COC Review

The COC review process will be completed for all ERP 2022 Track 1 applications with a share designated to SBI’s, including applications that have already been acted upon and possibly paid.

A report is available to aid in the review of applications that were processed prior to this notice. County Offices will run the “Complete Data Report” found in the ERP 2022 Track 1 software according to 2-ERP, paragraph 71. The report can then be sorted in column header “RMA-Primary Policyholder or SBI” by the SBI to see if a share was designated. The County Office will then access the files that show a share designated to an SBI. The County Office will complete the review process using the steps in the table below for the applicable applications found on the report.

Many FSA programs require the filing of an FSA-578 for eligibility of payment. An FSA--578 is not required to participate in ERP 2022; however, it is a valuable tool for verifying risk in a crop and entitlement to an ownership share in a crop and maintaining integrity in various FSA programs. Documentation submitted for other FSA programs **may** also be used in the review if it provides relevant information. The COC review will be conducted as follows for applications with shares designated to SBI’s.

Step	Action		
	COC...	If COC determines the certification of shares is verified...	If COC determines the certification is not verifiable...
1	will review the shares designated to an SBI on the FSA-523 as well as the certified data on the FSA-578 for verification of shares.	the COC review is complete, and COC will document the findings in the COC minutes. No further action is required.	<ul style="list-style-type: none"> • COC will request additional supportive documentation from SBI or primary policy holder by issuing the “ERP 2022 SBI Applicant Letter” (Exhibit 1) • provide 30 calendar days from the date of receipt of the letter for the submission of the requested documents.
	concludes no FSA-578 was filed to aid with verification of shares.	N/A	
2	will review the submitted supportive documentation, if provided timely.	through the review of the timely submitted supportive documentation, COC will document the results in the COC minutes. No further action is required.	based on the review of the supportive documentation provided <p align="center">or</p> if the documentation was not provided, or was not provided timely, see subparagraph F for COC action.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

B Conducting the COC Review (Continued)

The supportive documentation provided must demonstrate eligibility to participate in ERP 2022, and establish:

- that eligible producer requirements have been met for SBI's that have requested a share of an ERP 2022 benefit
- accuracy of the shares designated on the FSA-523.

Note: An enterprise unit (EU) is an insurance unit structure that consists of all insurable acreage of the same insured crop in the county in which a producer has a share on the date coverage begins for the crop year. EU's are available for crops and counties where the actuarial documents specify availability. When specified in the actuarial documents, a producer may elect separate EU's by practice or type using one of the following methods:

- irrigation practice: irrigated and non-irrigated practices
- cropping practice: as allowed by the crop provisions
- type: as allowed by the crop provisions.

COC needs to be mindful of EU's when reviewing the FSA-578; additional supportive documentation may be necessary for the verification of shares on the FSA-523.

C Examples

Example 1:

RMA – Jack, the primary policy holder has a crop insurance policy with Chrissy and Janet listed with SBI to the primary policy holder. Jack has a 30 percent share of the crop, while his spouse Chrissy has a 20 percent share. Janet, their landlord, has a 50 percent share.

FSA-578 – Jack has a 30 percent share of the crop on FSA-578, while his spouse Chrissy has a 20 percent share. Janet, their landlord, has a 50 percent share.

FSA-523 – Jack, the primary policy holder, designates 30 percent to himself, 20 percent to Chrissy, and 50 percent to Janet for shares for the unit and crops that suffered a qualifying loss on the FSA-523. The COC review finds no discrepancies in the certification on the FSA-523 and the review is complete.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

C Examples (Continued)

Example 2:

RMA – Producer Z, the primary policy holder, crop shares with a landowner, 75 percent share to Producer Z and 25 percent to the landowner. Producer Z insured the landowner's share under his policy. Producer Z insures with EU structure.

FSA-578 – Producer Z certifies 1,000 acres of wheat at 100 percent share and 500 acres at 75-25 percent with his landlord on the FSA-578. COC requests supportive documentation for verification of shares.

FSA-523 – Due to the EU structure, the ERP 2022 payment is calculated on the entire 1,500 acres. Based on a review of the supportive documentation, COC determinations such as these, could all be determined verifiable for this example:

- Shares certified on the FSA-523 were 91.67 percent to the Producer Z and 08.33 percent to the landowner
- Shares certified 100 percent to Producer Z on the FSA-523, as there was no production loss on the 500 acres, Producer Z and the landowner are in agreement.
- Shares certified on the FSA-523 were 92 percent to Producer Z and 8 percent to the SBI landlord.

The COC review finds no discrepancies in the certification on the FSA-523 and the review is complete.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

C Examples (Continued)

Example 3:

RMA – Corporation A is the primary policy holder, Diane Producer and Jack Producer are listed as SBI's on the policy and are the 50-50 percent members of the corporation.

FSA-578 – Corporation A, the producer of record at FSA, has a current FSA-578 on file for 2022, indicating a 100 percent share to the corporation for all crops certified.

FSA-523 – Corporation A is the primary policy holder, and Jack and Diane Producer show on each line item as SBI's. Corporation A completes the FSA-523 and enters a share of 100 percent for Diane. COC determines the certification is not verifiable and requests additional information for review. Subsequently, COC must review the submitted documentation for the verification of shares listed on the FSA-523.

Example 4:

RMA – General Partnership B is the primary policy holder with a tax ID, and Brother A and Sister B are listed as SBI's on the policy and are the 50-50 percent members of the general partnership.

FSA-578 – General Partnership B, the producer of record at FSA, has a current FSA-578 on file for 2022, with 100 percent share certified to the partnership for all crops.

FSA-523 – General Partnership B is the primary policy holder, and Brother A and Sister B show on each line item as SBI's. General Partnership B completes the FSA-523 and enters shares of 75 percent to Sister B and 25 percent to Brother A. COC determines the certification is not verifiable and requests additional information for review. Subsequently, COC must review the submitted documentation for the verification of shares listed on the FSA-523.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

D Review of Spousal Policies

COC is **not** required to request supportive documentation for ERP 2022 Track 1 applications (FSA-523's) based on indemnities under husband and wife policies if they designated the same share, such as 50-50 percent, for the units for which they are requesting payments on the FSA-523 if there is no FSA-578 or other documentation on file, such as a CCC-902 for 2022, that contradicts the claimed shares on the FSA-523. In this situation, the review is considered complete.

Example 1:

Husband is the primary policy holder and wife is listed as the SBI on the policy. The FSA producer of record is an informal joint venture, and the members are the husband and wife with 50-50 percent shares. There is no 2022 FSA-578 on file at FSA. The husband files an FSA-523 for ERP 2022 and certifies to 50-50 percent shares for himself and his wife as the SBI for each line item. No further review is required.

Example 2:

Husband is the primary policy holder and wife is listed as the SBI on the policy. The FSA producer of record is an informal joint venture, and the members are the husband and wife who have participated in past programs and have a prior year CCC-902 on file where the shares are 50-50 percent within the operation. The members have not filed a new CCC-902 for 2022 to update shares within the joint operation, but the certified shares on the FSA-523 are 95 percent to the wife as the SBI and 5 percent to the husband who is the primary policy holder. There is no FSA-578 on file for 2022, however the existing CCC-902 appears to contradict the claimed shares on the FSA-523. Subsequently, the COC must review the submitted documentation for the verification of shares listed on the FSA-523.

E Revising Shares

In many cases, ERP 2022 shares on the FSA-523 should be shares for other applicable programs that rely on similar data. There are legitimate situations where shares can differ for programs; however, ties to crop shares for the same crop grown in the applicable year should not change when participating in multiple USDA programs that have varying eligibility rules. Revisions to shares may adversely impact eligibility in other programs and shares may need to be revised on the FSA-578. County Offices will follow 2-CP (Rev. 16) for share revisions on FSA-578s.

Note: Revisions to shares may have payment implications for programs that rely on FSA-578 shares. Discrepancies could result in program refunds and referrals of FSA data to other agencies including RMA or NRCS.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

E Revising Shares (Continued)

Example: Primary policy holder submits an FSA-523 with shares designated 75 percent to himself and 25 percent to a landowner. An acreage report is on file with shares certified 50-50 percent. Upon receipt, COC reviews the supportive documentation and determines the shares on the existing acreage report are erroneous. The acreage report is revised according to 2-CP, to reflect a 75-25 percent split. The primary policy holder now has a conflict with an existing ARC/PLC contract. The County Office must refer to 1-ARCPLC (Rev. 1) for corrective action planned as well as reviewing any implications in subsequent years.

F COC Action

COC has the authority to request documentation from a producer to verify producer eligibility and take whatever action is necessary to ensure that payments are proper and are for the person or legal entity determined to be the producer suffering the claimed crop loss. The person or legal entity claiming to be the producer must be able to show, with acceptable evidence, the person or legal entity had a valid commodity ownership share interest and an interest in the crop acreage on which the commodity was grown at the time of this disaster.

COC's will send the letter in Exhibit 1 to the SBI applicant, requesting supportive documentation be submitted within 30 calendar days in support of the certification of their share designated on the FSA-523. A carbon copy of the letter will also be sent to the primary policy holder.

The following are examples of supporting documentation generated during the ordinary course of business that may be used for verifying risk and ownership share.

Copies of signed written leases	Rental agreements with landowner or landlord
Copies of legal documents showing land ownership or control of rented acreage	Input records
Statements or FSA or CCC forms signed by landowner, farm operator, or landlord that indicate the person or legal entity claiming to be a producer had control of the acreage	Copies of grower contracts or the Community Supported Agriculture consumer agreements
Sales contracts or purchase agreements	Assembly sheets
Settlement sheets	Sales receipts or other sales documents indicating when a commodity was sold
Ledgers of income	Income statements of deposit slips
Crop insurance or NAP documentation	IRS Schedule F, accompanied by documentation, when applicable, that supports the certification

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

F COC Action (Continued)

COC will refer to draft handbook 5-ERP, paragraph 66, for additional policy on COC actions, requesting additional documentation, and determinations about eligible producer requirements.

If FSA determines that the producer **intentionally** misrepresented information used to determine the producer's ERP 2022 payment amount, the application will be disapproved, and the producer must refund the full payment to FSA with interest from the date of disbursement.

COC may disapprove a crop/unit or an entire application for any reasons in draft handbook 5-ERP, paragraph 66, including when COC has knowledge that designated shares to SBI's are incorrect.

If COC disapproves a crop/unit or application, COC must:

- thoroughly document the reason for the disapproval in COC minutes
- notify the producer of the disapproval in writing
- provide appeal rights according to 1-APP.

G Updating FSA-523 Because of Discrepancies Found During Review

If changes to COC determinations or corrections to shares on the FSA-523 are necessary because of discrepancies found during the COC review, recording County Offices will record updates in the ERP 2022 Track 1 application software and navigate follow-up activities:

- COC will disapprove the applicable crop/unit(s); this will require a new COC signature and date in FSA-523, part F
- the County Office will record the revised COC determination in the system with the new COC determination date
- for FSA-523's with a minimum of 1 crop/unit, but not all crop/units, impacted by a revised COC determination the County Office will reload the original producer signature date to avoid creating overpayments for previously approved crop/unit(s) that were not impacted by the revised COC determination.

Notice ERP-15

2 ERP 2022 Track 1 Applications COC Review Process (Continued)

G Updating FSA-523 Because of Discrepancies Found During Review (Continued)

- the County Office will notify the primary, SBI, or all impacted producers and provide applicable appeal rights
- process any overpayments resulting from this notice according to 6-ERP; a template letter titled “ERP 2022 SBI or Primary Refund Letter” (Exhibit 2) must be sent to the producer, and is available at <https://inside.fsa.usda.gov/program-areas/dafp/dap/erp-2022/index>
- all COC actions must be thoroughly recorded in the COC minutes
- the County Office will ensure the file is complete – upload all manual and electronic documents to show all actions and revisions of producers and COC are retained in the electronic file
- according to 7-CP, subparagraph 16 B, there is an exception to the Finality Rule as the applicant either innocently or purposefully misrepresented either the percent of shares to the SBI or that the SBI met the definition of eligible producer.

Note: Eligible producers (primary policy holders and SBI’s) may file a revised FSA-523 at any time during signup.

3 Action

A State Office Action

State Offices will:

- ensure that County Offices are aware of the contents of this notice
- ensure County Offices complete all actions outlined in this notice
- contact the Safety Net Division with questions about this notice.

B County Office Action

County Offices will:

- complete all actions outlined in this notice
- contact their State Office with questions about this notice
- complete AD-2007 according to 4-RM for any suspected inaccurate RMA records.

Notice ERP-15

ERP 2022 SBI Applicant Letter Template

Exhibit 1

This is an example of the notification letter requesting supportive documentation for the COC review.



Farm
Production
and
Conservation

Farm
Service
Agency

[UPDATE] County Office
County Office Street Address
City, State Zip Code
(XXX) XXX-XXXX, ext. XXX

Month [UPDATE], 202X

[UPDATE] Producer Name
Producer Street Address
City, State Zip Code

ERP 2022, Track 1 Application Number: [UPDATE]

Dear [UPDATE - Enter name of FSA-523 SBI Producer]:

This letter is in reference to an Emergency Relief Program (ERP) 2022 Track 1 application you filed with the Farm Service Agency (FSA).

Your application has been selected for review, as shares were designated to person(s) identified as having a Substantial Beneficial Interest (SBI) to a primary policy holder. SBIs requesting a share of an ERP 2022 benefit must meet the definition of eligible producer and their shares must be reviewed for accuracy.

For ERP 2022, “**eligible producer**” means an individual or legal entity that is at **risk in the crop and is entitled to an ownership share** in the crop or would have shared had the crop been produced, in addition to meeting other eligibility requirements. Landowners, landlords, tenants, contract growers, or anyone else not having both a share of the risk and a valid claim of share ownership of a crop are ineligible for ERP 2022 assistance for that crop.

If one or more producers with an SBI had a share in a crop, the primary policy holder must update the FSA-523 to show the share in the crop for each of those producers, in addition to the primary policy holder.

As a condition of program eligibility, at time of application you agreed to retain documentation in support of your application that, if requested by FSA, can be used to determine your eligibility to participate in ERP 2022 and provide evidence that your certifications are correct.

The documentation you provide must demonstrate your eligibility to participate in ERP 2022, and establish:

- that eligible producer requirements have been met, as you have requested a share of an ERP 2022 benefit as an SBI
- accuracy of the designated shares on the FSA-523.

Notice ERP-15

ERP 2022 SBI Applicant Letter Template (Continued)

Exhibit 1

The documentation you provide must demonstrate your eligibility to participate in ERP 2022, and establish:

- that eligible producer requirements have been met, as you have requested a share of an ERP 2022 benefit as an SBI
- accuracy of the designated shares on the FSA-523.

The following are examples of supporting documentation generated during the ordinary course of business that may support your certifications and allow us to verify risk and ownership share:

Copies of signed written leases	Rental agreements with landowner or landlord
Copies of legal documents showing land ownership or control of rented acreage	Input records
Statements or FSA or CCC forms signed by landowner, farm operator, or landlord that the person or legal entity claiming to be a producer had control of the acreage	Copies of grower contracts or Community Supported Agriculture consumer agreements
Sales contracts or purchase agreements	Assembly sheets
Settlement sheets	Sales receipts or other sales documents indicating when a commodity was sold
Ledgers of income	Income statements of deposit slips
Crop insurance, NAP documentation	IRS Schedule F, accompanied by documentation, when applicable, that supports the certification

Documentation that you submit must be summarized and provide a narrative supporting the certifications that you made on your FSA-523.

Submit your documentation to the office and address shown above. Documentation must be provided within 30 calendar days from the date of receipt of this letter.

You must respond to this request for documentation timely. **If you do not submit the requested documentation, FSA will disapprove your ERP 2022 application, and you will be required to refund your ERP 2022 payment, plus applicable interest.**

If you have any questions or need a copy of your FSA-523 for reference, please contact our office at *[UPDATE - enter office phone number]*.

Sincerely,

/s/ *[UPDATE]* County Executive Director

Cc: Primary Policy holder

Notice ERP-15

ERP 2022 SBI or Primary Refund Letter Template

Exhibit 2

This is an example of the notification letter informing the applicant of a payment adjustment.



Farm
Production
and
Conservation

Farm
Service
Agency

[UPDATE] County Office
County Office Street Address
City, State Zip Code
(XXX) XXX-XXXX, ext. XXX

Month [UPDATE], 202X

[UPDATE] Producer Name
Producer Street Address
City, State Zip Code

ERP 2022, Track 1 Application Number: [UPDATE]

Dear [UPDATE - Enter name of FSA-523 Producer]:

This letter is in reference to an Emergency Relief Program (ERP) 2022 Track 1 application (FSA-523) you filed with the Farm Service Agency (FSA).

Your application was selected for review, as shares were designated to person(s) identified as having a Substantial Beneficial Interest (SBI) to a primary policy holder. SBIs requesting a share of an ERP 2022 benefit must meet the definition of eligible producer and their shares must be reviewed for accuracy.

As a condition of program eligibility, at time of application you agreed to retain documentation in support of your application that, if requested by FSA, could be used to determine your eligibility to participate in ERP 2022 and provide evidence that your certifications are correct.

FSA has reviewed the documentation you submitted and has determined those records do not support the shares certified on the FSA-523.

As a result, your ERP 2022 Track 1 application has been adjusted and your payment for unit (*INSERT unit number*) has been disapproved. You will be notified by separate communication of any resulting amount owed.

The [UPDATE] County Committee has also determined that one or more exceptions to application of the finality rule (7 CFR 718.306) apply, as you have either intentionally or unintentionally misrepresented facts concerning your eligibility, or you had reason to know that FSA erred in determining your payment eligibility.

If you believe the facts of this decision are not correct or believe the rules governing ERP 2022, Track 1 were not properly applied to your application, you may file a written appeal of this determination with the [UPDATE] County Committee within 30 days of receipt of this decision.

To file an appeal of this decision, [UPDATE - insert appropriate language from 1-APP and address]

Sincerely,

(insert CED signature)

(insert CED Name)
County Executive Director