

For: Tobacco State and County Offices

**Loanmaking and Servicing Actions for Applicants/Borrowers
Whose Loans May Be Affected by the Tobacco Buyout Program**

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

The Fair and Equitable Tobacco Reform Act of 2004 (the Act), commonly referred to as the “Tobacco Buyout” was signed by the President on October 22, 2004. Under the Act, payments are to be made to tobacco quota holders and producers. This will effectively end all aspects of USDA’s tobacco marketing quota, price support, and tobacco loan programs, beginning in FY 2005 and subsequent crops of tobacco.

Announcement of the Tobacco Transition Payment Program was made by FSA on October 25, 2004. Notice TB-1111 provided Tobacco State and County Offices with the preliminary provisions of the Tobacco Transition Payment Program.

B Purpose

While program, procedures, and policy are being developed, this notice will provide Tobacco State and County Offices with guidelines for:

- processing loan applications for tobacco producers for the 2005 crop
- processing 1951-S loan servicing requests for delinquent or financially distressed borrowers
- consideration of tobacco quota buyout payments and FSA obtaining/filing assignments on these payments.

Disposal Date	Distribution
October 1, 2005	Tobacco State Offices; State Offices relay to applicable County Offices

Notice FLP-378

1 Overview (Continued)

C Contact

County Offices shall contact the State Office with any questions. State Office shall contact:

- Jonathan Howard, LMD, at 202-720-0588, for questions about loanmaking issues
- James Rowe, LSPMD, at 202-720-6834, for questions about loan servicing issues.

D Obsolete Notice

Notice FLP-377 is obsolete.

2 Action

A Processing Loanmaking and Loan Servicing Applications

FmHA Instruction 1924-B:

- Section 1924.55 requires that a loan assessment be completed for all direct loan applicants
- Section 1924.55(e) requires annual review of the loan assessment.

Under the Act, tobacco production will no longer be limited by USDA. Therefore, if an applicant/borrower plans to begin raising tobacco or increase tobacco acreage, a loan assessment or assessment update shall be completed to ensure that the applicant/borrower has adequate resources, such as suitable land, capital, equipment, storage, and a firm marketing plan before future tobacco production. The farm business plan shall include the costs associated with the changes in these resources.

In addition, FmHA Instruction 1924-B:

- Section 1924.56(b) provides that “Farm business plans will be based only on accurate, verifiable information.”
- Section 1924.56(b)(1) provides that “Historical information will be used as a guide to evaluate the feasibility of projected farm business plans.”

2 Action (Continued)

A Processing Loanmaking and Loan Servicing Applications (Continued)

As a result of the Act, the marketing of tobacco will completely change from the past and the price received will no longer be guaranteed beginning with the 2005 crop. Since accurate and verifiable historical data is not available, applicants/borrowers should pursue a sales contract from a tobacco company to support planned production and prices reflected on any farm business plan used in evaluating a loan or servicing application. If the applicant cannot provide the sales contract at the time of the loan or servicing application, the loan official will document the applicant's attempt to obtain a contract and process the application. Approving the loan or servicing request shall be contingent upon a contract being provided before loan closing or restructuring that supports the farm business plan relied on. Such contingency will make clear that if the contract is provided after approval, the farm business plan shall be updated to accurately reflect the price and sales quantity identified in the contract.

This guidance also applies to developing a feasible plan for loan servicing. Loan servicing requests shall be processed within the appropriate timeframe established according to FmHA Instruction 1951-S.

B Consideration of Tobacco Quota Buyout Payments

Quota holders and producers will receive buyout payments for tobacco quotas.

For quota holders, payments will be based on the amount of the tobacco marketing quota that was assigned to the holder for the 2002 marketing year. The projected payment for quota holders, who no longer produce tobacco, will be \$7.00 per pound of quota owned in FY 2002. Payments will be made in equal installments for the next 10 years. Therefore, the 2005 payment a quota holder is eligible to receive is \$.70 per pound of tobacco.

Notes: The projected payments may change on a case-by-case basis as program regulations are still being developed.

An eligible tobacco quota holder is a person who as of October 22, 2004, owned a farm that was assigned a permanent tobacco marketing quota.

For producers, payments will be \$3.00 per pound, based on the FY 2002 effective quota on the farm and the producer's share of production risk for FY's 2002, 2003, or 2004. Payments will be made in equal installments for the next 10 years. Therefore, the 2005 payment a quota producer is eligible to receive is \$.30 per pound. FLP personnel should work closely with Farm Program (FP) personnel to ensure that yields, acreage, shares, production, etc., are consistent with agency records.

Note: Until regulations have been developed, or further guidance provided, this is the only method to calculate a producer's projected payment.

The FY 2005 payment for producers who are both quota holders and producers will be estimated using the total of both the \$.70 and the \$.30 payments.

Notice FLP-378

2 Action (Continued)

C Filing Assignments on Quota Payments

Until appropriate regulations have been published, the agency cannot request or require a borrower to sign an assignment of the tobacco buyout payments. Notice TB-1113 provided that CCC-36 and CCC-37 shall not be accepted for this program pending publication of final regulations. Indications are that a new form will be issued for this program.

Future guidelines and notices will be forthcoming as the program develops.