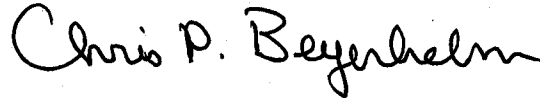


For: State and County Offices

Servicing Borrowers With Both Rural Development (RD) and FSA FLP Loans

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

A Purpose

This notice provides information about handling the following servicing actions for borrowers with both RD and FSA FLP loans:

- general servicing procedures, such as graduation, partial releases, releases, and determining lien positions
- servicing delinquent and financially distressed accounts
- foreclosures and conveyances.

B Contact

If there are questions about this notice:

- County Offices shall contact the State Office
- State Offices shall contact Marilyn McMullen, LSPMD, at 202-720-0900.

2 General Servicing Procedures

A Payoff Requests

If a borrower with FSA and RD loans requests payoff information from FSA, offices shall:

- provide payoff information
- remind borrower of the existence of RD loans
- provide information about requesting payoff information from RD.

| | |
|-----------------------------|--|
| Disposal Date | Distribution |
| January 1, 2008 11-21-06 | State Offices; State Offices relay to County Offices |

Notice FLP-442

2 General Servicing Procedures (Continued)

B Graduation and Classification

Graduation of the farm loan will be handled according to RD Instruction 1951-F. Classification of the farm loan account will be handled according to processes established by the Farm Business Plan and 1-FLP, Exhibit 17. Copies of financial statements, cash flows, and other related documents may be shared by the agencies.

C Partial Releases, Subordinations, and Consents for Joint Security Instruments

Borrower requests for partial releases, subordinations, and consents against security instruments that describe both the RD and FSA loan must be approved by both agencies. Only 1 RD 465-1 is needed from the borrower for each request. The agency receiving RD 465-1 shall take the lead in processing the request and obtaining the required approvals from the other agency. The lead agency will obtain any appraisals needed. Appraisals for farm tracts must meet FSA requirements, and appraisals for nonfarm tracts must meet RD requirements. Authority to execute these actions will be based on the established policies and procedures of each agency.

Responses to the borrower's request should be issued by the lead agency.

If **both** agencies cannot approve the request, the request will be denied and appeal rights provided. The denial will be issued by the lead agency if both agencies have reason for the denial. If only 1 agency **cannot** approve the request, that agency will send the denial letters with appeal rights.

D Releasing of Joint Security Instruments

FSA and RD State Office approval is required to release security instruments that describe both an RD and FSA loan. If all the security **cannot** be released because of outstanding obligations by the other agency, then do the following.

- If FSA's debt is paid in full or satisfied first, then FSA will forward the original joint security instruments to the RD State Office with a letter indicating satisfaction of the debt.
- If RD's debt is paid in full or satisfied first, then RD will send the FSA State Office a letter indicating satisfaction of the debt.

Notice FLP-442

2 General Services Procedures (Continued)

D Releasing of Joint Security Instruments (Continued)

- Return the promissory notes according to applicable agency procedures.
- Attach a copy of the releasing agency's letter, if applicable, to the original security instruments in the borrower's case file with the other agency.
- The remaining agency will release the security instruments when appropriate.

E Determining Lien Position When Both RD and FSA Loans Were Made at the Same Time

The lien position is shared by both RD and FSA when the RD and FSA FLP loans were made at the same time, or the security was taken at the same time, and included on the same mortgage or deed of trust. The amount is proportionate to the total amount of debt outstanding on these loans.

- See subparagraph 3 C for determining the amount to enter in DALR\$ if the borrower is being serviced under FmHA Instruction 1951-S.
- See Exhibit 1 for sales by borrower, foreclosures, deeds in lieu of foreclosure (voluntary conveyances), or losses covered by insurance.

F Losses Covered by Insurance

If insurance proceeds will be used to repair or replace joint security property, then both agencies must decide which will oversee and approve the repairs and replacements and make all required inspections.

Note: Normally, the agency holding a prior lien will be responsible for seeing that any repairs or replacements are completed. However, these duties may be shared by both agencies to the extent that FSA may handle all farm property and RD may handle Single Family Housing (SFH) property.

Copies of development plans, inspections, etc., shall be shared with the other agency. Proceeds to be applied against the debt will be applied based on lien priority. Both agencies must approve any release of insurance proceeds of joint security property.

G Labor Housing (LH) Loans

If the security is the same for both the FLP and LH loan, releases and liquidations will be handled according to this notice.

Notice FLP-442

3 Servicing Delinquent and Financially Distressed Accounts

A Debt Servicing Responsibilities

Each agency shall be responsible for servicing its own loans. However, in cases where loans are cross-collateralized, it will be necessary for both agencies to work together to protect the Government's security interest.

Note: Loans are cross-collateralized when property is used to secure both the RD and FSA loans. The extent of cooperation needed between the agencies will depend on whether both loans are described on the same security instruments.

When security is **not** cross-collateralized, FSA will service FLP loans according to FLP procedures.

When the security is cross-collateralized and the RD and FSA loans are described on separate security instruments handle:

- normal debt servicing for FLP loans according to FLP procedures
- foreclosures and conveyances according to paragraph 4.

B Security Is Cross-Collateralized and RD and FSA Loans Are Described on Same Security Instruments

Applicable agency procedures and the instructions in this paragraph must be followed when the security is cross-collateralized and RD and FSA loans are described on the same security instruments.

Default on any 1 loan, whether RD or FSA loan, constitutes default against the security instruments. Therefore, even if only 1 agency's loan is in default, the borrower is in nonmonetary default with the other agency.

The following describes each agency's responsibility for notifying the other when their loan is in default.

- If the FSA loan is in default for reasons other than the RD loan is in default:
 - FSA shall notify the RD Field Office when the borrower is sent the notices required under FmHA Instruction 1951-S
 - RD will consider the borrower for moratorium and payment assistance.

Notice FLP-442

3 Servicing Delinquent and Financially Distressed Accounts (Continued)

B Security Is Cross-Collateralized and RD and FSA Loans Are Described on Same Security Instruments (Continued)

- If the RD loan is delinquent or in default for reasons other than the FSA loan is in default:
 - RD will service the RD loan according to RD procedures up through acceleration
 - once the loan account is accelerated, RD will notify FSA and send FSA a copy of the acceleration notice
- Note:** RD will not proceed with foreclosure action until **after** FSA has completed its servicing process.
- after FSA is notified of the RD acceleration, FSA will send the borrower FmHA Instruction 1951-S, Exhibit A, Attachments 1, 3, and 4 for reason of nonmonetary default and service the loan accordingly.

The following are general rules that apply in all instances.

- Each agency will keep the other up-to-date on the status of the default and the servicing progress.
 - If it is determined necessary to bring the RD account current or find a feasible farm plan, the RD loan may be reamortized by RD when the FSA loans are restructured.
- Note:** Reamortization of the RD loan must be closed **before** or simultaneously with the FLP loans. Any new security instruments taken will be separate for each agency's loans.
- RD will accelerate the account when notified by FSA that the borrower was notified of FSA's **intent** to accelerate according to FmHA Instruction 1951-S.
 - Acceleration notices must describe the reasons for acceleration, such as monetary or nonmonetary default, or both. Caution should be given when accepting an offer by the borrower that would deaccelerate the account as this could affect liquidation by the other agency.
 - Each Agency shall send the other a copy of the acceleration notice.
 - Any appeals will be held separately since they are 2 separate adverse actions. FSA will not accelerate the borrower's loans until all administrative appeals for FSA servicing actions are concluded.

Notice FLP-442

3 Servicing Delinquent and Financially Distressed Accounts (Continued)

B Security Is Cross-Collateralized and RD and FSA Loans Are Described on Same Security Instruments (Continued)

- RD will continue to flag the account for foreclosure action pending, when the RD account is accelerated, so that payments will not be credited to the RD account.
- If payments are received on the FLP account before FLP loans are accelerated, Field Offices should indicate in the “Free Form Special Data” field of System 36 banking screens, that the payment should be applied since only the RD account is accelerated. See 3-FI, paragraph 68.
- FSA will flag the account according to FmHA Instruction 1951-S, Exhibit O.
- If the borrower is offered a current market value buyout, and the RD loan is delinquent, the RD loan must be paid off at the same time the buyout is completed. The DALR\$ Report must be modified to identify the RD debt to be paid. If the RD loan is **not** paid in full, the security instrument **cannot** be released. See subparagraph 2 D for handling releases of joint security instruments.

C Special Instructions for DALR\$

RD loans will **not** be entered in the DALR\$ Existing Loan Screen. The loans will be entered as another lender’s debt. The RD loans will be entered as follows.

- **When the RD loan has the same filing date as an FSA loan** secured by the same property, the RD loan is entered as a prior lien holder.
- Enter the date on the FSA Loans Secured by Property Pop-up Screen which is accessible from the FSA Loans field in the Net Recovery Property Screen.
- In the secured section of the Prior Lien Holders Pop-up Screen, enter the:
 - creditor’s name as RD
 - total amount of principal and interest that is outstanding on the RD loan
 - prior lien code (enter an “R” to indicate that the prior lien holder is RD and has the same filing date as another FSA loan)
 - date the lien was filed.

Note: The date the lien was filed will need to match at least 1 of the filing dates of an FSA loan secured by the same property.

Notice FLP-442

3 Servicing Delinquent and Financially Distressed Accounts (Continued)

C Special Instructions for DALR\$ (Continued)

The FSA loans section of the pop-up screen provides a listing of FSA loans secured by the property and the filing dates of FSA security instruments. There should be no entry in the “Lien Ranking” field.

RD loan is junior to at least 1 FSA loan and is prior to other FSA loans. The RD loan is entered as just a prior lien holder if the RD loan:

- is junior to at least 1 FSA loan
- does **not** have the same filing date as any of the FSA loans
- is prior to at least 1 FSA loan
- is secured by the same property.

There can be multiple RD loans entered into the Loan Secured pop-up Screen. Each RD loan is entered individually.

CLICK “Next Page” from the Net Recovery Property Screen to run HML calculations. The “HML Calculation” option will calculate the amount of RD debt as follows.

- The proportionate debt amount of the RD loan, if it is secured by the same property with the same filing date as an FSA loan.
- The amount of the RD debt deducted from net recovery property(ies) if the RD loan is junior to any of the FSA loans and prior to other FSA loans.
- Information on the proportionate share of the RD debt is provided in the detailed section of the DALR\$ Analysis Report, section III 3 A, Notes, item 2.
- If the RD loan will be reamortized, enter the reamortized RD payment in the Farm Business Plan.
- If the RD loan is to be paid in full at the time of buyout according to subparagraph B, add the following statement to the DALR\$ Report below the certification and authorization section:

“If you choose to buyout your FLP loans, you must also payoff your RD loan(s). The unpaid balance of the RD loan(s) as of _____ is \$_____.”

D Bankruptcy Filings Involving Joint Security Instruments

Each agency will handle bankruptcies separately according to their agency regulations. RD 1965-14, or similar formats suggested by OGC, will be completed by each agency. Any necessary legal coordination will be handled by OGC.

4 Handling Foreclosures and Voluntary Conveyances Against Joint Security for Loans on Separate Security Instruments

A Loans Described on Separate Security Instruments

The procedures in this paragraph will be followed for voluntary conveyances, foreclosures by RD and FSA, and third party foreclosures of cross-collateralized property when RD and FSA loans are described on separate security instruments.

B Voluntary Conveyance

If 1 agency is proposing to accept a voluntary conveyance (deed in lieu of foreclosure), the initiating agency will obtain a current appraisal and a title opinion indicating lien position and send copies of both to the other agency with a request for release.

- If the lien is valueless, that agency will prepare and send the initiating agency a release.
- If the other agency holds a prior lien, the initiating agency will pay off that agency's lien before accepting the conveyance.
- If the other agency holds a junior lien, the initiating agency will pay that agency's lien up to the current market value of the security property, less prior liens including the initiating agency's prior lien.

C Foreclosures

If 1 agency is initiating foreclosure, a determination must be made to do 1 of the following:

- payoff the other agency's prior lien up to the current market value, less other prior liens
- obtain a release from the other agency if its lien is valueless
- obtain the other agency's agreement to be named in the foreclosure suit, or given notice of the foreclosure.

Note: All efforts should be made to eliminate involving the other agency in the foreclosure.

D Third Party Foreclosures

Third party foreclosures initiated by other than RD and FSA will be handled separately by each agency based on their regulations for handling third party actions.

Notice FLP-442

5 Handling Foreclosures and Voluntary Conveyances Against Joint Security for Loans on the Same Security Instrument

A Loans Described on the Same Security Instruments

The procedures in this paragraph will be followed for voluntary conveyances, foreclosures by RD or FSA, and third party foreclosures of cross-collateralized property when both RD and FSA loans are described on the same security instruments or a combination of separate and same security instruments.

B Voluntary Conveyance

If 1 agency is proposing to accept a voluntary conveyance, the initiating agency will obtain a current appraisal and a title opinion indicating lien position and send copies of both to the other agency with a request for release.

- If the lien is valueless, the other agency will prepare and send the initiating agency a letter of release as described in subparagraph 2 D and the original note (if required by State law to issue releases) and mortgage or deed of trust, if in that agency's possession.
- If the other agency holds a prior lien, the initiating agency will pay off the other agency's lien **before** accepting the conveyance.
- If the other agency holds a junior lien, the initiating agency will pay the other agency's lien up to the current market value of the security property, less prior liens, including the initiating agency's prior lien.
- If the releasing agency is partially secured with the acquiring agency, the acquiring agency will pay the releasing agency its share of the amount of their debt up to the current market value, less prior liens. See Exhibit 1 for determining the amount of credit to each loan when the RD and FLP loans were made and secured with the same property at the same time and described on the same mortgage or deed of trust.

C Foreclosure

When foreclosure action is initiated by FSA, RD, or a third party, the following procedures will be followed.

- If 1 agency holds a separate security instrument filed before any joint security instruments, a decision must be made between the 2 agencies about which 1 will bid to protect their security interest or foreclose.
- If a separate security instrument was not filed before the joint security instruments and both agencies share in lien priority, FSA will bid or initiate the foreclosure action.

Notice FLP-442

5 Handling Foreclosures and Voluntary Conveyances Against Joint Security for Loans on the Same Security Instrument (Continued)

C Foreclosure (Continued)

- The agency that determined not to bid or foreclose will assign its note or assumption agreement and security instrument to the foreclosing or bidding agency. The foreclosure complaint will identify all FSA and RD loans.
- State Offices shall request advice from their Regional OGC on preparing an assignment. The assignment shall contain language pertaining to the application of sale proceeds and cancellation of the assignment in the event foreclosure is canceled or the account is deaccelerated or reinstated for any reason, including bankruptcy. The assignment shall be recorded in the county records.
- The accounting system will not be revised to account for the assignment. The Agency that assigned its note and security instruments will wait to settle the borrower's debt until after the foreclosure is completed and all proceeds or credits are applied.
- Proceeds from the sale of property or credit for acquisitions will be applied to the loans in the order of lien priority. See Exhibit 1 for determining the amount to be applied or credited to each loan when the RD and FSA loans were made or secured with the same property at the same time and described on the same mortgage or deed of trust.
- If the foreclosure is canceled and the accounts deaccelerated or reinstated, each agency will resume servicing of their loan(s).

6 Property ID Numbers

A Assigning Property ID Numbers

Inventory property ID's cannot be duplicated. To avoid any duplication, Field Offices should use their State and county codes along with 5 additional digits. The last 5 digits must be consecutively numbered within the range of 00001-00499.

Note: The State and county codes are the non-FIPS numbers used for all St. Louis Finance Office purposes, not the FIPS State and county codes used in former ASCS coding.

Since the property ID numbers include the State and county codes, the same last 5 digits in the number can be used by all counties within the State without fear of duplication.

Although RD has established a different numbering system for their inventory properties than those established by previous notices, FSA will still continue to use only the numbers 00001-00499 to avoid any possible duplication.

Notice FLP-442

7 ADPS 3E Transactions

A Processing ADPS 3E Transaction for Acquisitions

The ADPS 3E transaction for acquiring property is a combined transaction that affects both a borrower's FLP and RD account. Therefore, anytime property is acquired by FSA or RD from a borrower that has both an RD and FLP loan, the St. Louis Finance Office must process the 3E transaction. This is the case even if the property is not cross-collateralized. Under no circumstances can a property be acquired jointly.

When property is acquired by FSA or RD from a borrower who has both an RD and FLP loan, the acquiring Agency shall:

- complete Exhibit 1 only if the 2 agencies share the lien position (see subparagraph 2 E)
- complete Exhibit 2
- FAX a copy of the following to Janet Marxkors, St. Louis Finance Office, at 314-539-6447:
 - Exhibit 1, if applicable
 - Exhibit 2.

Note: If the security is cross-collateralized, a copy of Exhibits 1 and 2 shall also be sent to the nonacquiring Agency.

Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages

The proportionate share is based on the market value less prior liens and selling costs.

Calculation of FSA Share:

| | | | | | | | | | |
|--------|-----------------------|------------|-------------------------------------|---|---------------------------|---------------|--|---|---|
| Step 1 | \$ _____ | Divided by | \$ _____ | = | _____ % | Multiplied by | \$ _____ | = | \$ _____ |
| | FSA Debt <u>1/</u> | | Total RD & FSA Debt <u>2/</u> | | FSA Percent of Debt | | Market Value or Sales Proceeds Less Prior Liens | | FSA Share of Market Value or Sales Proceeds |

| | | | | | |
|--------|------------------------------------|---------------|---------------------------------------|---|--------------------------|
| Step 2 | _____ % | Multiplied by | \$ _____ | = | \$ _____ |
| | FSA Percent of Debt from Step 1 | | Liquidation or Selling Expenses | | FSA Share of Expenses |

| | | | | | |
|--------|---|-------|---|---|--|
| Step 3 | \$ _____ | Minus | \$ _____ | = | \$ _____ |
| | FSA Share of Market Value or Sale Proceeds from Step 1 | | FSA Share of Expenses from Step 2 | | Net FSA Share of Market Value or Sale Proceeds |

1/ This is the unpaid FSA debt that is equally secured with an RD loan that was made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.

2/ This is the total unpaid balance of the RD and FSA loans that are equally secured. All other loans made before and after will not be counted in this calculation.

Note: Debt includes unpaid principal, interest, protective advances, and any recapture due, except RH recapture will not be included if acquired by RD or FSA.

Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages (Continued)

Calculation of RD Share:

| | | | | | | | | | |
|--------|-------------------|------------|-------------------------------|---|--------------------|---------------|---|---|--|
| Step 4 | \$ _____ | Divided by | \$ _____ | = | _____ % | Multiplied by | \$ _____ | = | \$ _____ |
| | RD Debt <u>1/</u> | | Total RD & FSA Debt <u>2/</u> | | RD Percent of Debt | | Market Value or Sales Proceeds Less Prior Liens | | RD Share of Market Value or Sales Proceeds |

| | | | | | |
|--------|--------------------------------|---------------|---------------------------------|---|----------------------|
| Step 5 | \$ _____ | Multiplied by | \$ _____ | = | \$ _____ |
| | RD Percent of Debt from Step 4 | | Liquidation or Selling Expenses | | RD Share of Expenses |

| | | | | | |
|--------|---|-------|----------------------------------|---|---|
| Step 6 | \$ _____ | Minus | \$ _____ | = | \$ _____ |
| | RD Share of Market Value or Sale Proceeds from Step 1 | | RD Share of Expenses from Step 2 | | Net RD Share of Market Value or Sale Proceeds |

1/ This is the unpaid RD debt that is equally secured with an FSA loan that was made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.

2/ This is the total unpaid balance of the RD and FSA loans that are equally secured. All other loans made before and after will not be counted in this calculation.

Note: Debt includes unpaid principal, interest, protective advances, and any recapture due, except RH recapture will not be included if acquired by RD or FSA.

ADPS 3E Transaction Form

Complete the following for all acquisitions when the borrower has both an RD and FSA loan. Do not process an ADPS 3E transaction. Complete 1 for each property acquired.

To: Janet Marxkors, FAX: 314-539-6447

From: _____
 Name of Preparer, Agency, and Telephone Number

Subject: Acquisition – Borrower with FSA and RD Loans

1. Acquiring Agency Name (FSA or RD) _____
2. Case Number _____
3. Name of Borrower _____
4. OK Code (Leave Blank) _____
5. Date Acquired _____
6. Most Secured FLP Loan _____
7. Most Secured RD Loan _____
8. Property ID of Acquiring Agency _____
9. Property Description Code _____
10. Property Suitability Code _____
11. Taypayer ID _____
12. Property Address (Leave Blank if acquired property is chattels)

_____ Street

_____ City, State, ZIP

13. Acres Acquired: Cropland _____ Pasture _____ Woodland _____ Other _____
14. Market Value – Acquisition \$ _____
15. Date Last Appraisal _____
16. Amount Credited – FSA \$ _____ RD \$ _____ Total \$ _____
17. Date Submitted _____
18. Business Code _____
19. How Acquired _____
20. Farm Code _____
21. Card Code (Leave Blank) _____
22. Loans to Acquire: (Ender Fund Code and Loan Number. Leave Blank if all FSA and RD loans are to be acquired)
 FSA _____ RD _____