

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington DC 20250

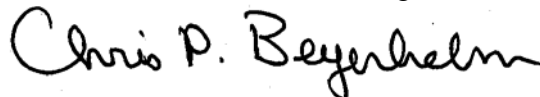
Notice FLP-508

1-FLP, 4-FLP, 5-FLP

For: FSA Offices

**Implementing the Food, Conservation, and Energy Act of 2008 (2008 Act)
Loan Servicing Provisions**

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

A Background

The 2008 Act (Pub. L. 110-234), enacted May 22, 2008, made several changes impacting direct loan servicing that were effective immediately.

B Purpose

This notice provides guidance about implementing the 2008 Act provisions effective May 22, 2008, which affects existing loan servicing and property management policies and regulations. CFR, 4-FLP, and 5-FLP will be revised as soon as possible.

See Notice FLP-507 for loanmaking issues.

C Contact

County Offices shall contact the State Office with any questions. State Offices shall contact Michael Cumpton, LSPMD at 202-690-4014.

Disposal Date	Distribution
January 1, 2009	All FSA Offices; State Offices relay to County Offices

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2 Acceleration and Foreclosure Moratorium

A Effects of Moratorium

Currently, 1-FLP, paragraph 41 provides that FSA will **not** “accelerate or foreclose a loan before a discrimination complaint is closed.” Under the 2008 Act provisions, there is a moratorium on the acceleration or foreclosure for borrowers who have a pending program discrimination complaint, or file a program discrimination complaint, that is accepted by USDA as valid.

In addition, during the moratorium period (subparagraphs B and C), interest will **not** accrue on any program loan and **no** offsets will be taken. Any offsets collected during a moratorium period will be refunded to the borrower.

If FSA prevails on the discrimination claim, the borrower will be liable for the interest that would have accrued during the moratorium and all offsets and servicing actions will resume on the ending date of the moratorium.

If the borrower prevails on the discrimination claim, FSA will proceed according to the settlement agreement or court order, as appropriate. The interest suspended during the moratorium will **not** be added back to the account unless specifically required by the settlement agreement or court order.

Any requests for debt settlement or payoff during the moratorium should be referred to LSPMD.

B Beginning Date

For those borrowers who:

- had a pending program discrimination claim and were at the point of acceleration or foreclosure as of May 22, 2008, the moratorium will be immediately effective as of May 22, 2008
- have a program discrimination claim accepted by the Department as valid after the effective date of the 2008 Act (May 22, 2008,) the moratorium will begin at the point of acceleration or foreclosure.

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2 Acceleration and Foreclosure Moratorium (Continued)

B Beginning Date (Continued)

The point of acceleration is the **earliest** of the following:

- the day after the appeal rights offered on FSA-2521 or FSA-2525 expire, if the borrower does **not** appeal
- the day after all appeals resulting from FSA-2521 or FSA-2525 are concluded, if the borrower did appeal and FSA prevailed on the appeal
- the day after any appeal rights or appeal have concluded relating to graduation under 4 FLP, paragraph 48
- any other time when, because of litigation, third party action, or other unforeseen circumstance, acceleration is the next step for FSA.

A borrower is considered to be at the point of foreclosure anytime **after** acceleration.

C Ending Date

The moratorium will end on the **earlier** of the following:

- date the discrimination claim is resolved by the USDA, Office of Adjudication and Compliance (OAC), according to notification of SED by OCR
- date that a court of competent jurisdiction renders a final decision on the claim, if the farmer or rancher appeals the decision of OAC.

Note: Before any moratorium is ended, SED will contact the Director, LSPMD for clearance before proceeding.

D Notifying the Farm Loan Operations Office, Loan Servicing Group (FLOO, LSG) and Using the Moratorium Flag

When it is determined that the moratorium has begun on an account, the borrower will be notified by SED, or State Office designee, with Exhibit 1. Notify FLOO, LSG by FAXing a courtesy copy of Exhibit 1 to the following:

- 314-539-3111 for State Offices coded 1-32 (LSG1)
- 314-539-6447 for State Offices coded 33-64 (LSG2).

The State Office will process ADPS Transaction “5G”, “Establish Descriptive Code”, using the Descriptive Code “7 - Moratorium” to establish the indicator for accounts on moratorium.

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2 Acceleration and Foreclosure Moratorium (Continued)

D Notifying the Farm Loan Operations Office, Loan Servicing Group (FLOO, LSG) and Using the Moratorium Flag (Continued)

Exhibit 2 will be used by SED, or State Office designee, to inform the borrower that the moratorium has ended. FLOO, LSG will be notified by separate correspondence of the requirements of the Settlement Agreement with regard to interest accrual and offsets.

The State Office will process ADPS Transaction “5H”, “Remove Descriptive Code” at the conclusion of the moratorium.

3 Implementing Other 2008 Act Provisions

A Homestead Protection Option to Purchase

Effective immediately, if the lessee is a member of a socially disadvantaged group, as defined in 3-FLP, Exhibit 2, the rights of the lessee to purchase the homestead property, as described in 5-FLP, subparagraph 300 A, are extended to the lessee’s immediate family, that is lessee’s parents, children, and siblings. If more than 1 person wants to exercise the option to purchase the homestead property, contact LSPMD.

B Inventory Sales and Lease Preferences

Effective immediately, all rights of beginning farmers under 5-FLP, Parts 20 or 21, are extended to members of socially disadvantaged groups.

C Graduation

The CFR and handbooks are being revised to ensure that borrower training, assessment, supervised credit, and market placement are **all** used to transition borrowers to commercial credit as soon as possible. FSA graduation policies continue in effect.

Moratorium Notice

This an example Moratorium Notice that will be sent to borrower by SED, or State Office designee, when it is determined that the moratorium has begun on an account. FAX a courtesy copy to FLOO, LSG (subparagraph 2 D).

Dear (Borrower's Name),

This is to inform you that the Food, Conservation and Energy Act of 2008 (2008 Act) was enacted on May 22, 2008 and required several changes to your account.

Under section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a), during the period you have a program discrimination claim accepted by the United States Department of Agriculture as valid, AND your account has reached the point of acceleration or foreclosure, the acceleration and foreclosure will be put on hold and interest accrual and offset on your Farm Service Agency (FSA) program loans will be suspended. This moratorium began on _____. This moratorium will continue until the USDA Office of Adjudication and Compliance resolves your discrimination claim or a court of competent jurisdiction renders a final decision, whichever is earlier.

When the moratorium ends:

1. FSA will act in accordance with any Settlement Agreement, final decision by the Secretary, or court order, as appropriate.
2. If FSA prevails, the interest which was suspended will be added back to your account just as if the moratorium had not happened, offsets will resume, and FSA will continue acceleration and foreclosure proceedings according to its regulations.

Please do not hesitate to contact this office if any further information is required.

Sincerely,

CC: County Office
FLOO, LSG

Termination of Moratorium

This is an example Termination of Moratorium that will be sent to the borrower by SED, or State Office designee, to inform the borrower that the moratorium has ended.

Note: FLOO, LSG will be notified by separate correspondence of the requirements of the Settlement Agreement with regard to interest accrual and offsets.

Dear (Borrower's Name),

You were previously informed of a moratorium placed on your Farm Service Agency (FSA) program loan account under section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) . FSA understands that your program discrimination claim was *[resolved by the USDA Office of Adjudication and Compliance / determined by a court of competent jurisdiction]* on _____ . On this date the moratorium on your account ended.

Now that your discrimination claim has been *[resolved / decided]*,

[Insert appropriate language depending on the outcome of the resolution/ Settlement Agreement/court order:]

FSA will act in accordance with the Settlement Agreement, final decision by the Secretary, or court order, as appropriate.

or

the interest which was suspended will be added back to your account just as if the moratorium had not happened, offsets will resume, and FSA will continue acceleration and foreclosure procedures according to its regulations.

Please do not hesitate to contact this office if any further information is required.

Sincerely,

CC: County Office