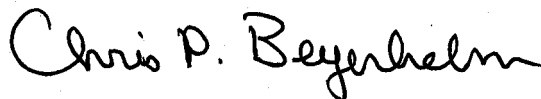


For: State and County Offices

**Using Existing Regulatory Flexibilities to Lend in Credit Deserts
and Areas With Unique Circumstances**

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

Farming, ranching, and lending in areas where there are very few lenders (credit deserts) and/or areas where cultural and/or economic conditions create unique circumstances can be challenging. Consequently all credit actions must factor in these unique challenges while processing loans.

The information in this notice will clarify flexibilities found in 3-FLP and how to apply the flexibilities when reviewing an application from an applicant in a credit desert or impacted by 1 or more of these unique challenges. Additionally, these flexibilities can apply to any applicant, and their use, which shall be determined on a case by case basis, will depend on the circumstances involved.

B Purpose

This notice clarifies actions to be taken when processing loans to applicants living in credit deserts or unique areas.

C Contact

State Offices shall direct questions about this notice to Mike Moore, LMD at 202-690-0651.

Disposal Date	Distribution
December 1, 2014	State Offices; State Offices relay to County Offices

Notice FLP-665

2 **Reviewing Applications From Applicants in Credit Deserts and Areas With Unique Challenges**

A **Circumstances Affecting Credit Deserts and Other Unique Areas and Groups**

The following are some, but not all, of the circumstances that may have an impact on income and credit history under 7 CFR 764.101(d) in credit deserts and other unique areas. These credit deserts often include Indian Country, and groups such as the Hmong and Amish among others.

- Incomes generally are very low, seasonal employment is common, and unemployment is exceptionally high.
- Family members often take on the debts of other family members.
- Children care for their elders within their household, and grandparents often care for their grandchildren without formal custody arrangements.
- Families often double up to prevent homelessness.
- Most applicants will not have an “after rejection” plan, although alternative mortgage financing for very low-income people living on restricted lands either does not exist, or often comes in from a predatory lender.
- The remoteness of many areas may necessitate purchases, such as a new and reliable vehicle for lengthy drives over difficult terrain and in bad weather conditions, that may seem frivolous given the applicant’s income.
- A “per capita” payment may distort the applicant’s income.
- High interest rates, which are often called “the norm”, can be an underlying cause for repayment problems.

All these circumstances may lead to frequent and sometimes unconventional debts, and fluctuating household incomes. Therefore, these circumstances should be taken into account when evaluating credit history and repayment ability of an applicant.

Notice FLP-665

2 Reviewing Applications From Applicants in Credit Deserts and Areas With Unique Challenges (Continued)

A Circumstances Affecting Credit Deserts and Other Unique Areas and Groups (Continued)

In many credit deserts, producers have the ability to increase their operation or become more profitable if additional credit is available to them.

Example: A borrower may have a 300 head of cattle grazing allocation, and currently only have 100 head on pasture. It is possible that because of FSA lending limits, the borrower would be unable to fully stock his available pasture. In these cases FSA needs to look at structuring the borrower's loan and using available authorities in a way to allow them to use some of their own resources to maximize their potential. This can be done by using maximum repayment terms and/or ballooning term loans to allow the borrower to use income or livestock, which would otherwise be used for debt repayment, to move their operation towards full productivity through additional livestock purchase or retention.

Another example of a circumstance affecting a unique area or group is documentation of hazard and flood insurance in Amish areas. When working with Amish applicants and borrowers, acceptable forms of documentation to demonstrate adequate hazard and/or flood insurance coverage may include a copy of the "Amish Aid Society" form, or a letter from their church that identifies what will be covered and is signed by the church elders.

B Credit Reports

In some cases credit reports for applicants, especially in credit deserts, can be negatively impacted by delays in healthcare reimbursements, slow interaction with other agencies and organizations, or circumstances beyond the applicant's control.

Therefore, extra diligence should be taken to review the credit reports to determine if the circumstances:

- are beyond the control of the applicant and/or
- have been corrected or will be corrected if the requested loan is approved.

If it is determined that FSA will not be able to assist the applicant because of a credit history problem, a meeting with the applicant should be conducted to fully explain the decision and provide clear guidance on what action the applicant can take to improve their credit history. Additionally, FSA can provide contact information to local entities that may be able to assist the applicant in these matters.

Notice FLP-665

2 **Reviewing Applications from Applicants in Credit Deserts and Areas With Unique Challenges (Continued)**

C Unacceptable Credit

7 CFR 764.101(d) addresses how to evaluate whether or not an applicant has an acceptable credit history. Examples of nontraditional income, or compensating factors, can be used on a case by case basis to justify increasing the amount of money loaned. These include payment history, savings history, improved job prospects, and overtime pay, which all must be clearly documented.

D Test for Credit

7 CFR 764.101(d) and (e) addresses how to evaluate and document the test for credit requirements. Some parts of the Country do not have significant numbers of lenders making agricultural loans (credit desert). In addition, even if lenders are interested in making agricultural loans, some lenders have particular areas where they are unwilling to make loans (Native American Reservations). Additionally, some lenders say they are willing to make loans in these areas but only at rates and terms that are unreasonable compared to rates and terms in normal areas.

Consequently, when FSA loan officers are considering the “test for credit”, they must not only consider the financial strength of the applicant but also if other lenders are actively making agricultural loans in the applicant’s area at reasonable rates and terms in comparison to noncredit desert areas.

Furthermore, **there is no requirement for any applicant to obtain credit denial letters from a lender when obtaining FO or OL** from FSA under 7 CFR 764.101(e). Loan officers have the ability to review applications and determine if credit is not available elsewhere, according to 3-FLP, paragraph 66. If it is determined that credit is not available, the loan officer must document this in the applicant’s file (hard file or FBP) and proceed with processing the loan.

E Managerial Ability

7 CFR 764.101(i) addresses how to evaluate whether or not an applicant has acceptable managerial ability. In some cases applicants living in these unique areas do not have the same access to training and education as those not living in unique areas. However, in their culture, elders or other community members routinely provide guidance and training in how to farm or ranch areas such as Amish communities or Native American Reservations. Training received through traditional means for the area may be considered sufficient, under 7 CFR 764.101(i), to meet the managerial requirements necessary for OL.

Notice FLP-665

2 **Reviewing Applications from Applicants in Credit Deserts and Areas With Unique Challenges (Continued)**

E Managerial Ability (Continued)

The applicant will need additional experience to meet the FO requirements for actively managing a farm operation for 3 of the last 10 years (7 CFR 764.101(d)).

In addition, other cultural differences need to be taken into consideration when determining the feasibility of an operation.

Example: In some cultures there are areas where, written agreements are not as heavily relied upon to document business arrangements. The loan officer must assess the “business climate” of the area or culture in determining the adequacy of supplied documents, and may rely on historical data to validate verbal agreements.

F Graduation

7 CFR 765.101 addresses how to evaluate whether or not a borrower can “graduate” or move on to other credit. Similar to the problems associated with “test for credit”, there are additional problems related to borrower graduation for a borrower who operates in a unique area. It is not uncommon for a borrower to have been very successful, have a good net worth, and still be unable to find a lender who is willing to make them a loan. This again may be because the borrower resides in a “credit desert” where no commercial lender is willing to make him a loan purely because of location, or such a loan would have rates and terms that would inhibit the operator’s ability to be successful. In these cases, it should be documented in the file that the applicant is unable to graduate because under 7 CFR 764.101(a)(2) there is not adequate credit and FSA will continue to be the lender, maybe for the full duration of the loan.

3 **Making Loans Secured by Real Estate in Indian Country**

A Loans in Indian Country

Making real estate secured loans in Indian Country can be challenging at times and present unique circumstances. However, FSA has had authority for many years to make loans on a leasehold interest in land. Yet, before 1990, very few loans were made on Native American restricted lands, which may be leased or assigned to a tribal member for specific uses. It is important to understand the land ownership types and other unique circumstances for making real estate loans in Indian Country. The types of land ownership in Indian Country are discussed in subparagraph C.

3 Making Loans Secured by Real Estate in Indian Country (Continued)

B Land Ownership Structures

The land tenure system within many Native American communities is very complex. Land may be owned by the tribe, individual Indians, non-Indians, and/or the federal, state, and local governments. In addition, land may be held in trust or fee simple status. The pattern of land ownership within a community is determined in part by the history of the tribe.

C Three Major Types of Land Ownership

Following are 3 major types of land ownership found in many tribal communities.

- Tribal trust lands are held by the Federal Government in trust for the tribe. The tribe can lease or assign rights to use these lands. Tribal trust lands can only be encumbered pursuant to Tribal Law, which often means that BIA approval is needed.
- Individual trust and/or restricted lands (allotted lands) are held in trust by the Federal Government for individual members. Because of the complex inheritance and succession rules involving individual trust lands, many individuals may have an ownership interest in the land. Individual trust lands **cannot** be alienated or encumbered without BIA approval.
- Fee simple lands are held by the owner without restrictions. Other land arrangements are found in specific geographical areas, such as:
 - New Mexico Pueblo lands held by the tribe as fee simple lands
 - Alaskan Native lands held by the Alaskan village corporation, and subject to corporation by-laws.

Different types of land structure are interspersed in many communities, creating a highly fractionated or “checkerboard” pattern of land ownership. This intermixing has created administrative and jurisdictional problems, as each type of land is subject to different laws. For instance, tribal trust lands are under the jurisdiction and control of the tribe, while fee simple lands may fall under the laws of the State. Thus, it is helpful to be aware of what type of land structure is being used when making a loan.

D Appropriate Security on Native American Restricted Land

Individually-owned land, such as individual trust land, may be mortgaged with the permission of BIA. When allowed by Tribal law, tribal trust lands that have been leased or assigned by the tribe to an individual may also be mortgaged, with the lease acting as security for the loan. BIA must also approve all leases and mortgages.

3 Making Loans Secured by Real Estate in Indian Country (Continued)

E Leasing of Native American Lands

Standard leases do not exist, but a legislative change in the 1990's enables tribes to provide 50-year leases (before passage of this legislation, most were for 25 years, with the opportunity to renew). The longer term accommodates FSA's need for the lease to be as long as the period of the loan. Some Tribes do offer "right of first refusal" to current lessees, and this should be taken into account as well.

F Title Insurance on Native American Restricted Lands

Until recently, title insurance generally could not be obtained on Native American lands. Therefore, exceptions can be made for loans for which it is determined that title insurance is **not** available or is **not** economically feasible. In these cases a final title opinion is acceptable.

G BIA's Title Search

Sometimes, and especially when there is no title insurance available, a title search is performed by BIA, although there may be tribes that have assumed this responsibility from BIA.

When beginning to do mortgage lending in Indian country, it is always important to meet with tribal and BIA staff to develop some process and contact points for lease approval, title search, and mortgage approval. Knowing the appropriate people to call or visit could help move the process along.

H MOU With BIA

Lending in Indian Country can also be complicated by the required interaction with BIA, which is why USDA and BIA have entered into MOU (Exhibit 1) for assisting those applicants being served by both agencies.

Therefore, County, District and State Office FSA Officials should either establish or continue a collective effort with their local BIA representative. The MOU contemplates that BIA and USDA will look for ways to eliminate duplication of efforts. Working closely with and establishing a relationship with a local BIA representative will allow FSA and BIA to deliver efficient and effective services in Indian Country

Example: If both BIA and FSA need to verify cattle numbers, the agencies should try to coordinate their efforts so the cattle only need to be rounded up and counted once.

Example MOU

Following is an example of the MOU for planning and implementing USDA programs on Indian lands.



**MEMORANDUM OF UNDERSTANDING
AMONG
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY**

**RELATIVE TO
PLANNING AND IMPLEMENTING UNITED STATES DEPARTMENT OF
AGRICULTURE PROGRAMS ON INDIAN LANDS**

This Memorandum of Understanding (MOU) is made and entered into among the Department of the Interior (DOI), Bureau of Indian Affairs (BIA), the Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA).

I. PURPOSE

The BIA, NRCS, and FSA have common objectives of communication, collaboration, cooperation, and consultation with agricultural producers, Indian landowners, and Indian tribes for the development, conservation and sustainable use of natural resources. The parties, therefore, enter into this MOU for the coordination, planning, and implementation of USDA programs on Indian lands in an environmentally, culturally, and economically sound manner. This MOU identifies the respective Federal responsibilities that must be coordinated. It also recognizes the role of Indians and Indian tribes as landowners, land users, and as sovereign governmental entities with authority and responsibility for the management of agricultural land and conservation of natural resources programs on Indian lands. This Agreement is made and entered into and among the BIA, NRCS, and FSA to update and replace the 2006 Agreement among BIA, NRCS, and FSA.

The parties to this MOU recognize the variability of and degree to which the respective Agencies are organized, staffed, and funded to carry out their trust responsibilities to tribes through a government-to-government relationship with tribes, which varies from region to region and from tribe to tribe. While this in no way diminishes those trust responsibilities, it is mutually acknowledged that the nature in which this MOU is carried out will be subject to these variables.

Definitions for the purposes of this MOU:

1. *ARMP* means Agricultural Resource Management Plan, which is a 10-year agricultural resource management and monitoring plan developed in accordance with American Indian Agricultural Resource Management Act (P.L. 103-177).
2. *BIA* means the Bureau of Indian Affairs within the Department of the Interior.

Example MOU (Continued)

3. *BIA Conservation Plan* is a statement of management objectives for Indian agricultural lands, including required uses, operations, and improvements.
4. *Conservation District (CD)* means a political subdivision of a state, Indian tribe, or territory, organized pursuant to the state or territorial soil conservation district law or tribal law.
5. *Conservation Practice* means a management action to protect, conserve, utilize, and maintain the sustained yield productivity of Indian agricultural land.
6. *Conservation System* means the combination of conservation practices and resource management for the treatment of soil, water, air, plant, animal, and/or energy resource concerns.
7. *FSA* means the U.S. Department of Agriculture Farm Service Agency.
8. *Indian* means an individual who is a member, or eligible to become a member, of an Indian tribe, band, nation, or other group.
9. *Indian lands* means all:
 - a. Lands held in trust by the United States for individual Indians or Indian tribes; or
 - b. Lands, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance; or
 - c. A combination of one or more of the lands listed above.
10. *Indian tribe* means an Indian tribe, band, nation, pueblo, Rancheria, or other organized or community, including any Alaska Native village, regional corporation, or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act 43 U.S.C.A § 1601 *et seq.*, that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians.
11. *IRMP* means Integrated Resource Management Plan, which is a tribal policy document, based on the vision a tribe has for its resources, that describes a tribe's resources, the tribe's long-term resource goals, and appropriate management activities designed to reach those goals.
12. *NRCS* means U.S. Department of Agriculture Natural Resources Conservation Service.
13. *NRCS Conservation Plan* means a record of the client's decisions and supporting information for treatment of a land unit or water as a result of the planning process, that meets Field Office Technical Guide (FOTG) quality criteria for each natural resource (soil, water air, plants, and animals) and takes into account economic and social consideration. The plan describes the schedules of operations and activities needed to solve identified natural resources problems and take advantage of opportunities at a conservation management system level. The needs of the client, the resources, Federal, state and tribal requirements will be met.

Example MOU (Continued)

II. BACKGROUND

This MOU establishes a foundation to improve assistance to Indian tribes, American Indians and Alaska Natives. Assistance shall be provided within the authorities and resources available to each Agency.

The BIA administers approximately 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. There are 566 federally recognized tribal governments in the United States. Within the government-to-government relationship, BIA assists Indian tribes and individual Indian landowners in developing conservation and management plans to protect and preserve their natural resources on Indian land and shared off-reservation resources. The BIA also assists tribes and individual Indian landowners to lease or permit their land for agricultural production and other uses. Federal statutes and regulations generally require BIA approval of encumbrances to title of Indian lands.

The NRCS provides leadership in a partnership effort by providing conservation planning and management assistance to maintain, conserve, and improve natural resources and the environment (which may include resources of cultural and sacred sites important to the tribes). NRCS provides technical and financial assistance for implementing national conservation programs using conservation practices that address natural resource concerns. This is done directly and in partnership with Conservation Districts, Technical Service Providers and other Federal, tribal, state and local entities regarding natural and other environmental resources on non-Federal, private and Indian lands.

The FSA stabilizes farm income; helps farmers and ranchers conserve land, air, wildlife, and water resources; provides credit to new or disadvantaged farmers and ranchers; and helps farm operations recover from the effects of disaster. FSA operates under a unique system where Federal farm programs are administered locally. This grassroots approach gives farmers a much needed say in how Federal actions affect their communities and their individual operations.

III. STATEMENT OF MUTUAL BENEFIT

The BIA, NRCS, and FSA have common objectives of consulting with Indian landowners and Indian tribes, promoting the best management/conservation practices for Indian lands, including the development of rural business, farming and animal management, grazing and ranching operations on Indian lands. These objectives are carried out through a government-to-government relationship and tribal consultation process.

This Agreement is made and entered into by and amongst the BIA, NRCS, and FSA to:

1. Ensure a clear understanding of the applicable Federal and tribal laws and regulations and to define the role and responsibilities of the signatory parties in order to increase the amount of Indian land enrolled under USDA conservation and farm loan programs.
2. Define those areas of mutual interest and assistance relative to managing and conserving natural resources and the delivery of conservation programs of the Federal Government administered by the BIA, NRCS, and FSA.

Example MOU (Continued)

3. Effectively utilize the available resources of each signatory such as personnel, time, conservation technology, equipment, office space, and funds which may be made available for the delivery of conservation programs and services on Indian lands.
4. Increase efficiency and reduce redundancy by sharing pertinent data, as authorized by Federal law, to facilitate conservation and management of natural resources on Indian land.

Therefore, the BIA, NRCS, and FSA find it mutually beneficial to cooperate in this undertaking and hereby agree as follows:

IV. RESPONSIBILITIES**A. The BIA will:**

1. Review all NRCS developed conservation plans that will affect Indian lands to ensure consistency with existing leases, permits and BIA conservation plans incorporated therein and incorporate NRCS developed conservation plans where appropriate.
2. Assist NRCS and FSA to verify eligibility of individual landowners and operators as well as Indian land parcels for USDA conservation programs.
3. Provide technical assistance to NRCS to make needs assessments and feasibility determinations for conservation programs on Indian lands.
4. Assist lessees, permittees, Indians, and Indian tribes in developing conservation plans certified by NRCS that will protect natural resources and comply with NRCS or FSA conservation program provisions, as applicable.
5. Work with NRCS to coordinate recommendations for stocking rates and grazing capacities on Indian lands, and provide production data and permit or lease information upon request, for the development and implementation of conservation plans to ensure that permitted livestock numbers are not exceeded with ultimate authority to establish stocking rates for leases and permits of Indian lands residing with BIA, in consultation with the Indian landowner.
6. Upon request advise NRCS and FSA of existing programs, leases, rights-of-way or other encumbrances which may affect proposed projects on Indian lands.
7. Assist in conducting land and resources surveys and investigations and preparing designs and conservation practice layouts that meet the specifications of the NRCS Field Operations Trust Guide and conservation program specifications, for NRCS or FSA conservation program provisions, when requested by Indian tribe, Indian landowner, Tribal Conservation District or permittee/leasee.

Example MOU (Continued)

8. Assist NRCS and FSA to ensure that all statutory and regulatory requirements are met prior to the BIA approving and the cooperator implementing any USDA conservation practice on Indian lands which includes providing IRMP's and ARMPs that have been completed and/or are under development by tribes.
9. Notify NRCS and FSA office of any changes in tribal or Federal law that may affect implementation of existing USDA programs, to the extent that BIA is aware of such changes.
10. Where appropriate, provide rights-of-way, leasing, permitting and landowner information for the installation of NRCS and FSA conservation practices on Indian lands.
11. Notify NRCS and FSA of changes of permittee or lessee on lands under NRCS and FSA conservation program contracts.
12. Cooperate with NRCS and tribes in conducting and maintaining soil surveys under the National Cooperative Soil Survey (NCSS) Program on Indian lands, working through local MOU's and agreements, following NCSS guidelines, policy and handbooks.
13. Assist FSA and NRCS in obtaining the required consent of owners of trust and restricted interests in Indian land for FSA farm programs and NRCS conservation programs.
14. Work with FSA Farm Loan Programs to develop a standard process for handling requests for BIA action, where needed, in a timely manner so that FSA Farm Loan programs is able to service distressed loan accounts within statutory and regulatory time frames.
15. Develop a shared process with FSA for spot checks by BIA and loan servicing by FSA where the Agencies, as permitted by Federal law, can accept each other's chattel and other security inspection and monitoring reports.

B. The NRCS will:

1. Provide technical assistance to Indian tribes, Indian landowners, and Indian land users, including subsistence agricultural producers on Indian and non-Indian lands. This assistance is provided to facilitate participation in NRCS programs for which the individuals, tribes, or groups are eligible.
2. Coordinate with BIA to ensure that applicants for NRCS conservation programs have an interest in Indian lands and are eligible to participate in NRCS programs.
3. Integrate the provisions of tribal programmatic resource management plans, where available, in the delivery of NRCS programs, as permitted by regulations.
4. Inform BIA of appropriate available natural resource conservation programs and training offered by NRCS.

Example MOU (Continued)

5. Assist with the development of IRMPs, ARMPs, conservation plans, and/or conservation systems, to identify resource concerns and guide proper management of natural resources and other environmental resources as well as improving and/or maintaining production of agricultural commodities and subsistence agricultural activities on Indian lands that comply with the conservation compliance requirements of Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*, and amendments) and content requirements set forth by BIA.
 6. Coordinate with BIA Irrigation Project or System Managers on all draft and final plans outlining the conservation and management of natural resources on any lands (including non-Indian, or non-Trust) within BIA Irrigation Projects.
 7. Provide high-level information collected detailing NRCS assistance and compliance reports to Indians, Indian tribes, or non-Indians on Indian lands to the Director of BIA.
 8. Prioritize conservation application workloads, giving joint projects between the signatories of this MOU a high priority for the use of available personnel, time, equipment, materials, and funding. The NRCS will help facilitate the implementation of joint agency projects.
 9. Certify the design, application and construction of planned and mutually reviewed and approved conservation practices delivered through NRCS-administered conservation programs.
 10. Conduct and maintain soil surveys under the National Cooperative Soil Survey (NCSS) Program in cooperation with BIA and tribes on Indian lands, working through local MOU's and agreements, following NCSS policy guidelines and the Technical Soil Survey Handbook.
 11. Encourage the development of Tribal Conservation Districts and district associations; and work collaboratively with such districts and other associated parties to encourage the use of traditional ecological knowledge within approved conservation practices on tribal lands.
- C. The FSA will:**
1. Accept eligible applications for its programs and maintain a record of referrals for projects on Indian lands.
 2. As permitted by Federal law coordinate with BIA to ensure that applicants for FSA programs have an interest in Indian lands and confirm eligibility for participation in FSA programs.
 3. Transmit completed offers to participate in FSA conservation programs, as appropriate, to the appropriate NRCS District Conservationist and BIA office.
 4. Provide program benefits, including payments to approved program participants, consistent with program rules and regulations.
 5. Perform contract compliance oversight during the term of FSA-administered contracts.

Example MOU (Continued)

6. When requested by BIA, identify operators holding FSA contracts on Indian lands as permitted by Federal law.
7. Advise BIA and NRCS personnel of available programs and technical requirements for distribution to Indians and Indian tribes.
8. Advise BIA and Indian landowners and land users of FSA programs, notices of local committee elections, and other special events.
9. Receive or attend training on land ownership of Indian lands. This training may be conducted as a joint effort by the signatory parties to this agreement.
10. Work with BIA to develop a standard process for handling requests for BIA action in a timely manner so that FSA Farm Loan Programs is able to service its distressed loan accounts within statutory and regulatory timeframes.
11. Develop a shared process with BIA for spot checks by BIA and loan servicing by FSA where the Agencies, as permitted by Federal law, can accept each other's chattel and other security inspection reports.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE PARTIES THAT:

1. The parties will communicate, collaborate, cooperate, and consult to ensure that conservation and farm programs comply with all applicable Indian and Federal laws and regulations. The parties mutually agree that the purpose of this MOU is to improve, and make more effective and efficient, program delivery by all signatories on Indian lands, for the benefit of Indian people, their communities, and their tribal governments, and in furtherance of the government-to-government relationship between the United States and Indian tribes and trust responsibilities owed by the Federal Government to Indian tribes and individual Indians.
2. All signatory parties will use their best efforts to efficiently and effectively coordinate the delivery of programs on Indian lands, including, when possible, the prioritization of approval and review mechanisms between the two Departments and among the various signatory Agencies; and the identification and eradication of duplicative administrative requirements, where possible to streamline and add flexibility to program delivery on Indian lands.
3. Conservation practice improvements constructed on Indian lands, under NRCS or FSA programs, will remain on the land and the operation and maintenance (O&M) shall become the responsibility of the current and succeeding lessee or permittee for the life of the practice. Conservation practice improvements will be considered, for purposes of all conservation programs, improvements to the land and not rights-of-way.
4. The Indian Self-Determination and Education Assistance Act, 25 USC § 450 *et seq.*, authorizes the BIA to contract with, and fund, tribes and tribal organizations that choose to take over operation of programs, including natural resource programs, and services

Example MOU (Continued)

operated by the BIA; however, the BIA is still responsible for the contracted program and remains the deciding Federal official.

5. BIA, NRCS and FSA will work with the Intertribal Technical Assistance Network coordinated by the Intertribal Agriculture Council and funded through the USDA Office of Tribal Relations to improve service delivery of programs on Indian lands.
6. Although not a signatory to this agency-level agreement, the BIA, NRCS, and FSA will work jointly by and through the Office of Tribal Relations within the USDA Office of the Secretary to facilitate and support the full implementation of this agreement.
7. The signatories to this MOU encourage the development of supplementary cooperative working agreements between tribal governments, BIA, and state-level NRCS and FSA offices.
8. The parties to this Agreement may consider joint consultation with tribal governments on program issues related to this Agreement, where applicable and consider coordinating consultation schedules among the Agencies to improve delivery of programs related to this MOU. This joint consultation shall not substitute for other project or program government to government consultation responsibilities (such as under Section 106 of the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), or Executive Order 13175).
9. The parties to this Agreement will entertain opportunities such as short term personnel details and inter-agency personnel agreements to foster career advancement opportunities and better understanding of each Agency's mission, responsibilities and work load.
10. The parties agree to consult before and during conservation planning assistance as needed to confirm the appropriate land owner, lessee or permittee and to ensure compliance with all statutory requirements and regulatory requirements. For example, such requirements could arise from the American Indian Agricultural Resources Management Act, NEPA, NHPA and Endangered Species Act (ESA) and their implementing regulations. This includes NRCS and FSA State Offices seeking opportunities to collaborate and cross train with BIA staff on each Agency's historic preservation responsibilities, policies, procedures, consultation agreements and contracts. Interagency agreements, such as the Historic Preservation Agreement currently in effect between NRCS Montana and the Rocky Mountain Regional Office, are encouraged to facilitate communication and coordination and define roles and responsibilities.
11. Each Agency agrees to provide training to staff of the Agencies, tribes, lenders and other interested parties regarding the statutory, regulatory and administrative requirements and policies of each Agency, upon request as funding and agency priorities allow.
12. The BIA, NRCS, and FSA personnel will work to develop a process to perform quality reviews and spot checks on conservation practices on Indian lands, as determined by the specific conservation programs, during the lifespan of the specific program.

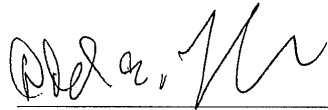
Example MOU (Continued)

13. The parties will strive to provide appropriate training to each Agency on program implementation on Indian lands. This includes FSA and NRCS training on USDA programs for BIA and BIA training on ownership of Indian lands and the leasing and permitting process to FSA and NRCS.
14. The signatory parties to the Agreement will strive to conduct regular meetings between USDA field staff, BIA representatives, and tribal leadership.
15. Nothing in this MOU shall obligate BIA, NRCS, and FSA to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the Agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
16. The mutual exchange of geospatial information, including ownership and usage information, would be useful in the context of agricultural and financial development on Indian lands. 7 USC § 8791 prohibits the Secretary of Agriculture and its employees from disclosing certain information that has been provided by agricultural landowners and producers to participate in the U.S. Department of Agriculture's (USDA) programs, except for specific exclusions. If the Department determines that the natural resource spatial data from Indian lands will not be disclosed according to 7 U.S.C. § 8791, it may be released in cooperation with BIA (a Federal Agency) to provide technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices on Indian lands as permitted by this statute. The parties will sign separate agreements to share this data.
17. This MOU takes effect upon the signatures of the Director of BIA, the Chief of NRCS and the Administrator of FSA and shall remain in effect for 5 years from the date of execution. This MOU may be extended or modified upon written request of any of the Agencies and the subsequent written concurrence of the other(s). BIA, NRCS or FSA may terminate this MOU with a 60-day written notice to the other(s).
18. The BIA, NRCS, and FSA will jointly review this MOU periodically to determine if changes are needed to meet new policy, laws, regulations, and arrangements. The Agency signatories will delegate a lead point of contact for each Agency, which is reflected in Addendum A, with regard to implementation of this agreement and those points of contact will coordinate periodic meetings between program staff of all signatory Agencies at the national level, to augment field office-level regular meetings between applicable staff.
19. None of the provisions of this MOU shall affect other programs and activities carried out by BIA, NRCS, and FSA.

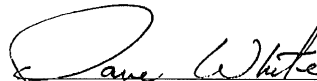
Example MOU (Continued)

20. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

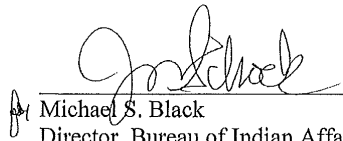
APPROVAL:



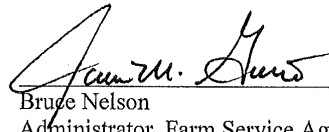
Donald E. Laverdure
Acting Assistant Secretary – Indian Affairs
U.S. Department of the Interior
Date: **AUG 28 2012**



Dave White
Chief, Natural Resources Conservation Service
U.S. Department of Agriculture
Date:



Michael S. Black
Director, Bureau of Indian Affairs
U.S. Department of the Interior
Date: **AUG 28 2012**



Bruce Nelson
Administrator, Farm Service Agency
U.S. Department of Agriculture
Date: **SEP 06 2012**

Example MOU (Continued)

**ADDENDUM A
TO THE
MEMORANDUM OF UNDERSTANDING
AMONG
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY**

IMPLEMENTATION TEAM

BUREAU OF INDIAN AFFAIRS

1. Deputy Director of Trust Services

NATURAL RESOURCES CONSERVATION SERVICE

1. Chief of the NRCS or his designee
2. Regional Conservationist as designated by Chief, NRCS
3. State Conservationist as designated by Chief, NRCS

FARM SERVICE AGENCY

1. Assistant Deputy Administrator for Farm Loan Programs
2. Assistant Deputy Administrator for Farm Programs

USDA OFFICE OF TRIBAL RELATIONS

1. Program Specialist or Program Manager, as designated by the Director of the Office of Tribal Relations
2. Additional Technical Assistance provided by USDA OCIO, specifically regarding data sharing and data improvement functions (as determined by Chief Information Officer, USDA)