

**For:** State and County Offices

**SBA Economic Injury Disaster Loan (EIDL) Issues for FLP's**

**Approved by:** Deputy Administrator, Farm Loan Programs



**1 Overview**

**A Background**

As a result of the Paycheck Protection Program and Health Care Enactment Act of 2020, the SBA EIDL Program expanded to allow EIDL assistance to agribusinesses affected by the COVID-19 pandemic.

Agricultural businesses are permitted to apply for EIDL assistance from SBA and FLP assistance through FSA. To secure an EIDL, SBA had initially filed UCC-1 with State authorities that provided a general lien on all business assets. The broad nature of the standard filing provided SBA a lien on farm products, crops, livestock, and equipment, which may conflict with FLP lien requirements for certain loan types.

To clarify the intent and scope of SBA security requirements for agricultural businesses, SBA issued a frequently asked questions document on August 18, 2020 (Exhibit 1). While this document states SBA does not intend to perfect a lien on farm products, the original SBA UCC-1's did perfect a lien on farm products, including crops and livestock. Accordingly, for EIDL's where SBA filed broad UCC-1's covering farm products, crops, and livestock, additional guidance is required to ensure that FLP interests are secured when making loans.

**B Purpose**

This notice provides guidance for FLP staff on several loan making and servicing issues for FLP customers who have received an SBA EIDL.

**C Contact**

County Offices will send questions about this notice to the State Office. State Offices may e-mail:

- loan making questions to Mike Moore at [michael.moore@usda.gov](mailto:michael.moore@usda.gov)
- loan servicing questions to Bruce Mair at [bruce.mair@usda.gov](mailto:bruce.mair@usda.gov).

<b>Disposal Date</b>	<b>Distribution</b>
April 1, 2021 10-23-20	State Offices; State Offices relay to County Offices

## Notice FLP-828

### 2 General Issues

#### A Subordination Requests

To allow FLP to obtain the required lien position for certain loan requests, SBA may need to provide a subordination of its lien position in favor of FSA. SBA has indicated their willingness to provide subordinations to lenders, including FSA, who require a superior lien position on farm products, including crops and livestock. FSA-2361 should be completed in these circumstances.

FSA staff are advised to complete FSA-2361 as provided in Exhibit 2 before sending the request to SBA, so that SBA will only need to complete FSA-2361, items 13 through 16. To ensure consistency on farm product subordination requests, Exhibit 2 provides an example of FSA-2361 with specific verbiage that should be used in FSA-2361, items 11 and 12 for crop and livestock subordination requests.

County Offices must send all SBA subordination requests to the central SBA intake account by e-mailing **SBA.USDA.FLP@sba.gov**. The subject line must reference that the request is for a crop and/or livestock subordination. In addition to attaching FSA-2361, FSA staff shall provide the name, telephone, mailing address, and e-mail address of both the customer and the FSA representative. Additionally, the customer's EIDL number should be provided. The customer information is required to more easily allow SBA to identify and contact the customer to confirm their desire to provide a subordination. FSA staff information is required to inform SBA who to contact for questions and where to return the completed subordination request.

SBA is authorized to use authenticated electronic signatures on FSA-2361 to formally approve the subordination request.

Unless specifically required by State law, notary acknowledgements are not required for subordination agreements. State Offices shall consult with regional OGC contacts to confirm notary requirements for subordination agreements.

**Note:** Allow a 2-week turn around to receive a response from SBA.

#### B SBA Lien on Equipment

As described in Exhibit 1, SBA does require and intend to obtain a lien on equipment. Accordingly, should FSA require a lien subordination of equipment security from SBA, FSA staff must specifically highlight this distinction in the e-mail request to the referenced intake e-mail address in subparagraph A. The subject line must reference that the request is for an equipment subordination. SBA will review subordinations of equipment liens in a different manner than requests for farm product subordinations. This may require additional review time and additional information as determined by SBA on a case-by-case basis.

## Notice FLP-828

### 2 General Issues (Continued)

#### C Application Processing Issues

Like all debt obligations, a customer's SBA EIDL repayment terms need to be adequately evaluated when processing FLP loan requests. Debt verifications are an important component to that process. Certain repayment terms are the same for all EIDL's, including monthly installment plans and an initial 12-month deferral of any payments. For FLP loan processing purposes, the original EIDL promissory note will be adequate debt verification of the status of the debt for all FLP applications processed within 12 months of the customer receiving EIDL assistance.

Updated debt verifications will be required to process FLP requests for customers who received EIDL assistance 12 months or more before the date of the FLP application. Debt verification requests can be e-mailed to [birminghamtops@sba.gov](mailto:birminghamtops@sba.gov).

#### D Jointly Payable Checks and Releases

Because of the SBA UCC-1 on those EIDL's for which UCC-1 was broadly written to include farm products, crops, and livestock, checks from the sale of proceeds of these encumbered farm products, crops, and livestock may include SBA as jointly payable with the customer and FSA. To obtain the release of SBA in these circumstances, FSA or the customer must mail the check for endorsement, along with a letter explaining the request, to the SBA physical intake facility at the following address.

U.S. Small Business Administration  
14925 Kingsport Road  
Fort Worth, TX 76155

The check should be sent to the intake facility along with information providing the name, telephone, mailing address, and e-mail address of both the customer and the FSA representative, if applicable. Additionally, the customer's EIDL number should be provided. The customer information is required to more easily allow SBA to identify the customer. FSA staff information is required to inform SBA who to contact for questions should they arise. SBA staff must be notified what mailing address to return endorsed checks.

#### E Lender Communication

The issues stemming from SBA EIDL UCC-1's are not unique to FSA. Private lenders, including many FSA guaranteed lenders, may experience similar circumstances. FSA staff may communicate how the Agency is addressing these issues and provide the lender with the contact information for SBA described in this notice. However, each lender will need to coordinate their own response to issues related to SBA.

## SBA COVID-19 EIDL Program Frequently Asked Questions for Agricultural Business and Farming Operations



U.S. Small Business  
Administration

Agricultural Business and Farming  
Operations  
COVID-19 EIDL FAQ

### Frequently Asked Questions Regarding Agricultural and Farm Loan Collateral Security and the SBA Economic Injury Disaster Loan Program (EIDL)

**Overview:** The Paycheck Protection Program and Health Care Enhancement Act, enacted on April 24, 2020, expanded eligibility of agricultural enterprises for U.S. Small Business Administration (SBA) Economic Injury Disaster Loans (EIDLs) and Advances (grants) for COVID-19. Although not traditionally a part of EIDL funding, as a result of this new authority agricultural businesses with 500 or fewer employees are now eligible for EIDL assistance in response to the COVID-19 pandemic.

Nonprofit organizations, small business owners and small agricultural businesses in all U.S. states and territories are currently eligible to apply for a low-interest loan due to Coronavirus (COVID-19).

In light of questions from agricultural businesses regarding the effect of SBA collateral requirements on continuing operations of the agricultural businesses and/or farming operations, SBA is issuing the following guidance and clarification.

#### Frequently Asked Questions

- 1. Is SBA requiring agricultural businesses to pledge collateral for the EIDL loan, if so what type?**  
**Yes.** Collateral is required for all COVID-19 EIDL loans over \$25,000. SBA files a UCC-1 general security interest against non-real estate business assets.
- 2. Will SBA place a lien on farm products such as agricultural commodities, crops, livestock, and/or the proceeds from any sale of these items.**  
**No.** SBA does not require farm products to serve as collateral on COVID-19 EIDL loans. SBA's standard UCC-1 is not set up to create a security interest in any farm products such as agricultural commodities, crops, and/or livestock. SBA has no intent to create a lien on any of these items.
- 3. Is SBA required to be included on any checks agricultural businesses and farms receive from the sale of crops, livestock, or other agricultural commodities?**  
**No.** Farmers and purchasers of farm products and agricultural commodities are not required to notify SBA as part of any sale of these items and borrowers are not required to remit to SBA any proceeds from the sale of agricultural production commodities in the ordinary course of business. SBA does not need to be included in any financing transactions or on any checks from purchasers involving these items.

**SBA COVID-19 EIDL Program Frequently Asked Questions for Agricultural Business and Farming Operations (Continued)**U.S. Small Business  
AdministrationAgricultural Business and Farming  
Operations  
EIDL FAQ

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**4. Does SBA have a lien on my equipment if I obtain a COVID-19 EIDL loan over \$25,000?****Yes.** The SBA's standard UCC-1 creates a security interest in all business equipment.**5. Does SBA need to be notified if I sell or trade equipment?****Yes.** SBA's consent is required before selling or transferring collateral secured by the loans, including equipment.**6. Do I have to remit to SBA the net proceeds from the sale or trade of equipment?****Yes, unless alternative conditions are agreed up prior to the sale or trade of the equipment securing the loan.** You must notify SBA of any net proceeds from the sale or trade of collateral equipment.**7. Will SBA subordinate its lien if I have to finance new equipment for my business?**

SBA will review requests to subordinate its lien interest to new loans upon request.

**Note:** This memorandum is intended to provide general guidance and clarification exclusive to collateral security involving COVID-19 EIDL loans for Agricultural Businesses and Farms. Applicants and borrowers with additional questions about SBA's Economic Injury Disaster Loan program may call the Disaster Customer Service Center at 1-800-659-2955 (TTY: 1-800-877-8339) or send an email to [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).

The SBA also has local district offices that can work with Agricultural Businesses and Farms if they need further assistance. Please go to [www.sba.gov/local-assistance](http://www.sba.gov/local-assistance) to locate the email address and phone number for the nearest SBA district office.

Example of FSA-2361 for Subordination Requests of Farm Products, Crops, and Livestock

Form Approved – OMB No. 0560-0237  
(See Page 2 for Privacy Act and Public Burden Statement)

This form is available electronically.

**FSA-2361**  
(10-27-08)

**U.S. DEPARTMENT OF AGRICULTURE**  
Farm Service Agency

**SUBORDINATION TO THE GOVERNMENT**

(1) U.S. SMALL BUSINESS ADMINISTRATION ,  
(Lienholder) is the owner and holder of the following described instruments executed by (2) NAME OF BORROWER

(Borrower) of (3) NAME OF COUNTY County, State of (4) NAME OF STATE  
:

(5) Instrument Title	(6) Instrument Date	(7) Date Filed	(8) Office Filed	(9) Document File No.
UCC-1	DATE OF UCC	DATE OF UCC FILING	OFFICE FILED (I.E. SECRETARY OF STATE)	UCC FILING NUMBER

The United States of America, acting through the U.S. Department of Agriculture, Farm Service Agency,  
(Government) has agreed to loan (10) \$ FSA LOAN AMOUNT to the Borrower for the following purposes (11):  
ANNUAL AND/OR TERM OPERATING EXPENSES

THEREFORE, in consideration of the Government's agreement to make such loan to the Borrower, the Lienholder (a) consents to the borrower obtaining the loan from the Government for such purposes; and (b) agrees to and does subordinate in favor of the Government and its successors and assigns its liens and security interests created or evidenced by the above-described instruments insofar as they cover the following described property (12):  
FARM PRODUCTS, INCLUDING CROPS AND LIVESTOCK

**Example of FSA-2361 for Subordination Requests of Farm Products, Crops, and Livestock (Continued)**

FSA-2361 (10-27-08)

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This subordination covers: (1) the amount actually loaned by the Government to the Borrower (principal and accrued interest) for the foregoing purposes, (2) future advances for taxes, insurance, payment of prior liens, and protection of the security, and (3) the amount actually advanced for foreclosure costs made by the Government.

IN WITNESS WHEREOF, the lienholder has executed this subordination agreement by signing on

(13)

(Date)

\_\_\_\_\_  
(14) Name of Lienholder's Representative

\_\_\_\_\_  
(15) Title

\_\_\_\_\_  
(16) Signature

**17. ACKNOWLEDGEMENT**

FSA DOES NOT REQUIRE A NOTARY FOR THIS DOCUMENT

**NOTE:** *The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a): the Farm Service Agency (FSA) is authorized by the Consolidated Farm and Rural Development Act, as amended (7 USC 1921 et seq.), or other Acts, and the regulations promulgated thereunder, to solicit the information requested on its application forms. The information requested is necessary for FSA to determine eligibility for credit or other financial assistance, service your loan, and conduct statistical analyses. Supplied information may be furnished to other Department of Agriculture agencies, the Internal Revenue Service, the Department of Justice or other law enforcement agencies, the Department of Defense, the Department of Housing and Urban Development, the Department of Labor, the United States Postal Service, or other Federal, State, or local agencies as required or permitted by law. In addition, information may be referred to interested parties under the Freedom of Information Act (FOIA), to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, to collection or servicing contractors, to credit reporting agencies, to private attorneys under contract with FSA or the Department of Justice, to business firms in the trade area that buy chattel or crops or sell them for commission, to Members of Congress or Congressional staff members, or to courts or adjudicative bodies. Disclosure of the information requested is voluntary. However, failure to disclose certain items of information requested, including your Social Security Number or Federal Tax Identification Number, may result in a delay in the processing of an application or its rejection.*

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0237. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.***

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