

For: FSA Offices

**Office of Inspector General (OIG) Reviews of Violations
Involving Unauthorized Disposition of Marketing Assistance Loan Collateral**

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

Producers who violate the Marketing Assistance Loan Program are subject to:

- assessment of liquidated damages and other administrative actions, and shall be liable for monetary amounts specified in the applicable regulations and terms and conditions of the applicable forms
- criminal prosecution under Federal law.

Violations include, but are not limited to, discrepancies involving pledged loan quantities not within tolerance and failure to comply with terms or conditions as prescribed on the applicable marketing assistance loan forms.

Special provisions apply to violations resulting from an unauthorized disposition. These special provisions may include an investigation by OIG. To ensure that State and County Offices do **not** impede possible investigation efforts, State and County Offices are instructed to follow the special provisions for unauthorized disposition as provided in 8-LP, paragraph 618 and this notice.

B Purpose

This notice instructs State and County Offices to:

- follow existing policies and special provisions for violations involving unauthorized disposition
- use the memorandum provided in Exhibit 1 when forwarding unauthorized disposition cases to OIG for investigation.

Note: The memorandum in Exhibit 1 will be used by State Offices **only**.

Disposal Date January 1, 2005	Distribution All FSA Offices; State Offices relay to County Offices
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Notice LP-1969

2 Special Provisions for Unauthorized Disposition Cases

A Unauthorized Disposition

Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from CCC.

Producers who remove or dispose of outstanding loan collateral without prior approval from CCC have committed a violation. When a violation is discovered, COC shall assume good faith cannot be determined. COC shall notify producers of the violation and the actions to be taken as provided in 8-LP.

For each violation of unauthorized disposition, COC shall submit to SED:

- a memorandum summarizing the details of the violation and any action taken by the County Office and COC, such as date notification was sent, if verbal contact was made prior to sending notification, etc.
- copies of documents and/or forms associated with the marketing assistance loan, including a complete copy of the loan file.

Note: COC shall not make a good faith determination or include a determination in the summary of details provided to the SED before receiving notification from the State Office indicating OIG action.

B OIG Investigation

OIG is the USDA agency responsible for conducting and supervising audits and investigations relating to USDA programs and operations. OIG shall ensure that proper criminal, civil, and administrative action is promptly taken in response to investigation findings.

For unauthorized disposition cases, OIG will review the summary of details and other information provided to determine whether an investigation will be conducted. State Offices can assume that OIG will **not** investigate the unauthorized disposition violation if OIG does not respond within 30 calendar days of the request for investigation.

Employees and COC's shall fully cooperate with OIG during the course of an official investigation.

Notice LP-1969

3 State and County Office Action

A State Office Action

State Offices shall:

- remind County Offices to:
 - follow 8-LP, paragraph 618
 - **not** make a “good faith” determination
- contact their Regional Attorney to obtain the most current version of the Department of Justice (DOJ) prosecutive guidelines if guidelines have not been provided and follow procedure in 8-LP, subparagraph 618 B
- use the memorandum included in Exhibit 1 when sending OIG cases for investigation
- inform County Offices that an investigation will not be conducted if OIG does not respond within 30 calendar days of the request letter.

Note: The request for determination shall **not** include any recommendation that OIG **not** conduct an investigation.

B County Office Action

County Offices shall:

- provide all documentation about the unauthorized disposition and a complete copy of the loan folder to the State Office
- not determine or imply “good faith” in the case file or any other documentation specific to the unauthorized disposition case.

Example COC Memorandum to SED for Unauthorized Disposition Cases

September 30, 2004

To: _____, OIG
Anytown, USA

From: State Executive Director
_____ State FSA Office

Subject: Request for OIG Investigation - Marketing Assistance Loan - Unauthorized Disposition –
2004 Calendar Year, Loan Number 55-555, Mr. Producer Jones/_____ County FSA Office

(Explain when and how the unauthorized disposition was discovered.)

The total amount to repay, including liquidated damages assessed at 25% times the violated quantity, is:

- principal due
- liquidated damages
- interest due.

Attached is the subject case file and other pertinent information for your review and determination to open or decline an investigation. No further action will be taken pending your reply. If a response is **not** received within 30 calendar days of this letter, the County Office will be notified to take administrative action, as applicable.

Sincerely,

State Executive Director,
_____ State FSA Office