

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Regular Direct Loan Servicing
4-FLP

Amendment 43

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Paragraph 7 has been amended to address non-procurement debarment and suspension requirements.

Paragraphs 16, 23, 24 and 116 have been amended to revise references to “year-end analysis” to “analysis” only.

Subparagraph 16 B has been amended to include a revision to 7 CFR 765.101(c) requiring income tax returns for reviewing a borrower’s financial condition.

Subparagraph 17 B and paragraph 22 have been amended to clarify the scope of annual reviews and requirements for assessment updates.

Subparagraph 19 D has been amended to clarify the scope of graduation reviews for borrowers accumulating cash reserves.

Subparagraph 19 H has been removed and incorporated into subparagraph 19.5 A.

Paragraph 19.5 has been added to provide major revision to 7 CFR 765.102 for graduation non-compliance.

Subparagraphs 22 A and B have been amended to address planning cash reserves in completing subordinations and Limited Resource reviews.

Subparagraphs 23 A, 117 A, 118 B, 119 A and paragraph 118 have been amended to update references to “personal property”.

Subparagraphs 61 A and 64 C have been amended to include reference to Exhibit 25.3.

Subparagraph 98 C has been amended to include clarify Security Agreement requirements:

Subparagraph 99 E has been amended to include a revision to 7 CFR 765.252(a) to:

- update the lessee reference to “related by blood or marriage”
- revise “operation” to “agency security”
- revise “Government” to “Agency.”

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 99 H has been amended to include a revision to 7 CFR 765.252(c) providing requirements for leasing personal property security.

Subparagraph 116 C has been added to include 7 CFR 765.252(b) on processing incomplete subordination applications.

Subparagraphs 117 A, 118 A, 118 B and 119 A have been amended renumbering 7 CFR 765.205 respectively.

Subparagraph 120 A has been amended to clarify approval authority for subordinating real estate security for an operating-type loan purpose.

Part 6, Section 5 and Paragraph 146 have been amended to revise “consideration” to “compensation” to be consistent with CFR.

Subparagraph 146 D has been amended to include a revision to 7 CFR 765.305(c) providing new requirements for releasing personal property security without monetary compensation.

Subparagraph 146 E has been amended to include a revision to 7 CFR 765.351(f) providing new requirements for releasing real estate security without monetary compensation.

Subparagraph 162 B has been amended to specify normal income security dispositions listed on the FSA 2040.

Subparagraph 163 C has been amended to include a minor revision to 7 CFR 765.303 to clarify uses of basic security are for “farming” needs.

Subparagraph 196 A has been amended to clarify that requests for conservation easements will also be handled under this section.

Subparagraph 196 B has been amended to:

- include a minor revision to 7 CFR 765.351(a) to revise amount “received by the borrower” to “paid” when considering transactions affecting real estate security
- to clarify that appraisals are required to determine value lost when a right-of-way or easement is being granted to another federal agency.

Subparagraph 197 D has been added to include 7 CFR 765.352(a)(4) on authorizing the payment of capital gains taxes from real estate sales proceeds.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 246 A has been amended to notate debarment and suspension screening requirements.

Subparagraph 247 A has been amended to include 7 CFR 765.403(f) on requiring complete applications for transfers and assumptions to eligible applicants.

Subparagraph 247 F has been added to include 7 CFR 765.403(g) on security requirements for eligible applicants.

Subparagraph 248 C has been amended to revise CFR cite:

- from “family member” to “relative”
- for requirements for a new entity.

Subparagraph 248 D has been added to include application requirements for eligible applicants.

Subparagraph 248 E has been added to include 7 CFR 765.402(g) for security requirements involving transfers and assumptions for same rates and terms.

Subparagraph 248 E has been amended to correct spelling to “down payment”.

Subparagraph 248 H has been added to include 7 CFR 765.404 (g) for security requirements involving transfers and assumptions for NP applicants.

Subparagraph 281 A has been amended to clarify the verification method for determining whether the country is in a time of war or national emergency.

Subparagraph 282 A has been amended to appropriately reference the utilization of Exhibit 51 when notifying borrowers of the benefits provided by the Servicemembers Civil Relief Act of 2003.

Subparagraph 283 A has been amended to clarify that the suspension of payments and interest accrual only applies to loans that were outstanding at the time a borrower enters active duty.

Subparagraph 283 C has been amended to include references to DBSA.

Exhibit 2 has been amended to add or update definitions of:

- Essential family living and farm operating expenses
- Good Faith regarding independent OGC determinations
- Limited resource interest rate
- Non-essential assets
- Personal Property
- Primary loan servicing programs
- Related by blood or marriage
- Relative.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Exhibit 20 has been amended to:

- improve the language within the letter
- add reference to FSA-2421.

Exhibit 24.5 has been added as addendum for the promissory note or assumption agreement when converting a loan to NP rates and terms upon failure to graduate.

Exhibit 25.3 has been added to provide an updated version of the 60-day payment reminder letter. Exhibit 25.3 contains significant changes to the content of the letter and is now titled “Loan Payment Reminder - Annual Installment Due in 60 Days”.

Exhibit 25.4 has been withdrawn.

| Page Control Chart | | |
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| TC | Text | Exhibit |
| 1-4 5 | 1-9, 1-10 1-11 (add) 2-1 through 2-8 2-8.5 through 2-8.8 (add) 2-13, 2-14 2-15 5-1, 5-2 5-5, 5-6 6-6.5, 6-6.6 6-11, 6-12 6-12.5, 6-12.6 (add) 6-32.5, 6-32.6 6-33 through 6-46 6-71, 6-72 6-72.5, 6-72.6 (add) 6-73, 6-74 7-5 through 7-8 7-44.5, 7-44.6 7-45, 7-46 7-49, 7-50 7-50.5, 7-50.6 (add) 9-1 through 9-12 11-1, 11-2 11-5, 11-6 11-7 | 1, pages 1-4 2, pages 3-12 20, page 1 24.5, page 1 (add) 25.3, pages 1, 2 (add) 25.4, page 1 (remove) |

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5 Introduction to Direct Loan Servicing (Regular)

A Purpose

[7 CFR 765.1(a)] This part describes the policies for servicing FLP direct loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.

B Servicing Actions

[7 CFR 765.1(b)] Servicing actions described in this part include:

- (1) Limited resource reviews;**
- (2) Graduation to commercial credit;**
- (3) Application of payments;**
- (4) Maintaining and disposing of security;**
- (5) Transfer of security and assumption of debt; and**
- (6) Servicing accounts of deceased borrowers.**

C Loans Covered

[7 CFR 765.1(c)] The Agency services FLP direct loans under the policies contained in this part. This part is not applicable to Non-program loans, except where noted.

This handbook discusses the regular servicing of the following types of FSA loans:

- EE
- EM
- FO (including beginning farmer downpayment)
- NP (where specifically addressed)
- OL (including youth)
- RHF
- RL
- ST
- SW
- CL.

6 ECOA Requirements for Actions Involving Real Estate Security

A Release of Real Estate Appraisals

Equal Credit Opportunity Act (ECOA) requires the Agency to provide a copy of a written real estate appraisal or valuation performed on any real estate that is pledged as security as part of an application for FSA assistance. For servicing actions authorized by this handbook that involve FSA completing any real estate valuation, local offices will comply with the requirements of 1-FLP paragraph 148 to provide a copy of the valuation to the borrower, when applicable.

*--7 Non-Procurement Debarment and Suspension

A Covered Transactions

[2 CFR 417.10] This part adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USDA policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part.

[2 CFR 417.210] All non-procurement transactions, as defined in section 417.970 are covered transactions unless listed in section 417.215.

[2 CFR 417.970] (a) “Non-procurement transaction” means any transaction, regardless of type (except procurement contracts), including, but not limited to . . .

(6) Loans.

[2 CFR 417.215] (a) Transactions not covered:

- (1) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.**
- (7) Permits, licenses, exchanges and other acquisitions of real property, rights of way and easements under natural resource management programs.**

Subordinations (Part 6, Section 2) and Assumption of Debt (Part 9) are the non-procurement transactions in this handbook not covered by exceptions.--*

*--7 **Non-Procurement Debarment and Suspension**

B System for Award Management (SAM) Exclusions

[2 CFR 417.500] SAM exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

[2 CFR 416.595] (a) Federal agency officials use SAM Exclusions to determine whether to enter into a transaction with a person, as required under section 180.430 of this title.

Before offering a borrower a subordination (Part 6, Section 2), or an applicant an assumption of debt (Part 9), the agency approval official will check SAM Exclusions at **<https://sam.gov/content/home>** to ensure that the borrower has not been excluded or disqualified. DNP portal users may use DNP.

A copy of this search will be placed in position 3 of the case file. If a borrower or applicant has been excluded or disqualified, the transaction will not be offered. Appeal rights will be provided as set forth in Parts 6 or 9. See to 1-FLP paragraph 43.--*

8-15 (Reserved)

Part 2 Operational Reviews

16 Reviewing a Borrower's Account

A Overview

Full operational reviews will be completed at least every 2 years on each account except as noted in subparagraph B. More frequent operational reviews may be completed at the *--agency official's discretion or in conjunction with an analysis according to 1-FLP,--* subparagraph 263 A.

An operational review is performed to:

- update the:
 - assessment review every other year
 - account classification
- complete:
 - the graduation review
 - FSA-2040 (if debt secured by crops, livestock, equipment, or machinery).
 - the limited resource review (if applicable)
 - *--analysis (if applicable).--*

The biennial operational review will be tracked and monitored within DLS and documented in FBP by completing a D-Loan/Class/LR/YEA Only credit action; if no loan making or special servicing credit action is applicable. If a loan making action is being completed, select that credit action to document the operational review.

16 **Reviewing a Borrower's Account (Continued)****B Requesting Information**

[7 CFR 761.102(b)] **A borrower also must agree in writing to:**

(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, * * * and all other loan-related requirements and documents

(2) Submit financial information and an updated farm operating plan when requested by the Agency

(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.

[7 CFR 765.101(c)] The borrower must submit all information that the Agency requests *--in conjunction with the review of the borrower's financial condition, including Federal income tax returns.--*

At least every 2 years, each borrower will be sent Exhibit 20 requesting information to assist the Agency in completing the operational review.

Note: Exceptions to requesting information is for borrowers with only Y-OL's, CL's, NP's, judgment, CNC's, or whose accounts are flagged "BAP", "ACL", "FAP", "CAP", or otherwise determined by OGC.

--County Offices will add the "OGC" flag (5-FLP, Exhibit 11) in DLS to indicate OGC has-- determined FSA should suspend certain routine servicing. This flag will only be used when specific written correspondence from OGC is provided, advising to suspend certain routine loan servicing actions. For example, a borrower might have pending litigation against the Agency and OGC determines FSA should suspend an Operational Review and other routine servicing actions.

--The "OGC" flag will be removed when the suspension is no longer applicable. The-- "OGC" flag is available from the Manage Flags section of Customer Management. This is a DLS only flag, meaning that it will not process a transaction to ADPS. The flag will only be visible in DLS. Refer to the DLS User Guide for instructions to add and remove the flag.

Exhibit 20 will be sent twice in a 30-day period if the borrower does not supply the required information. The first time Exhibit 20 is sent, the borrower will be given 30 calendar days to supply the required information. The second Exhibit 20 will be sent on day 15, only if the required information has not been submitted and will give the borrower 15 calendar days to submit the required information.

Borrowers who fail to respond will be serviced according to subparagraph 19 H, for graduation review, or 21 D, if subject to limited resource interest rates.

--16 Reviewing a Borrower's Account (Continued)*C Developing Farm Operating Plan**

The agency official will use the financial information provided by the borrower as requested by Exhibit 20 for the most recent operating cycle to develop a farm operating plan according to 1-FLP, Part 8, Section 3. This farm operating plan will be used to complete the components of the operational reviews described in this part.

17 Updating the Assessment**A Objective of Annual Review**

[7 CFR 761.103(e)] The Agency reviews the assessment to determine a borrower's progress at least annually, combining any required classification and graduation reviews as part of the review. For streamlined CLs, the borrower must provide a current balance sheet and income tax records. Any negative trends noted between the previous years' and the current years' information must be evaluated and addressed in the assessment of the streamlined CL borrower.

[7 CFR 761.103(f)] If a CL borrower becomes financially distressed, delinquent, or receives any servicing options available under part 766 of this chapter (5-FLP), all elements of the assessment in paragraph (b) of this section (1-FLP, paragraph 222) must be addressed.

The annual assessment review monitors the borrower's progress towards the operation's goals including progression to commercial credit.

Note: 1-FLP, subparagraph 263 B requires that an assessment update be prepared for each subsequent loan. The assessment update will constitute the annual assessment review.--*

17 Updating the Assessment (Continued)

B Scope of Annual Review

During the biennial operational review, information obtained from Exhibit 20 will be used to update the annual assessment.

The review must address any significant changes to the borrower's farming operation, expenses, or financial condition that have occurred since the most recent assessment update. The authorized agency official must pay particular attention to the following:

- *--changes in operations or goals, including current production cycle goals and long-term development goals
- status of progress toward goals, including progression to commercial credit and accumulation of a reasonable amount of working capital reserves and savings, including savings for retirement and education of family members--*
- need for additional borrower training
- term limits
- remind borrower to review farm transition and estate planning documents.

Note: The assessment update will not address the actual contents nor include the actual documents of the farm transition and estate planning.

During the non-operational review year, the annual review may be completed in the form of an office visit, field visit, letter, or phone conversation and documented in FBP.

Note: During a time of limited staffing resources the authorized agency official may prioritize the completion of the annual review during the non-operational review year according to current agency directives.

C Documentation

If significant changes have occurred, the authorized agency official must document the nature of each change and the reason for the change.

The documentation must address only new or changed information.

--18 Updating Account Classification*A Action**

The FBP completed in subparagraph 16 C will be used to update the account classification according to 1-FLP, Part 8, Section 4.

The classification review will be documented with the biennial DLS full operational review.

19 Graduation Review**A General**

Direct FLP is a temporary source of credit. Graduation reviews are completed as part of the biennial operational review to assess the borrower's ability to graduate to commercial credit.

B Graduation Criteria

[7 CFR 765.101(g)] CLs are not subject to graduation requirements under this part.

The requirements of this part apply only to program borrowers, except CL-only borrowers. NP loans and borrowers with only youth loans are also not subject to graduation requirements.

[7 CFR 765.101(a)] In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:

- (1) The borrower has the ability to obtain credit from other sources; and**
- (2) Adequate credit is available from other sources at reasonable rates and terms.**

[7 CFR 765.101(b)] The Agency may require partial or full graduation.

(1) In a partial graduation, all FLP loans of one type (i.e. all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.

(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.

(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.

Note: Promissory notes for certain soil and water loans may not include graduation requirements. FSA will review provisions of individual promissory notes for loan type SW to determine if graduation language is included.--*

19 Graduation Review (Continued)

C Obtaining Underwriting Criteria from Local Lenders

Each October, the authorized agency official will contact local lenders to obtain their underwriting criteria for making agricultural loans. Information gathered from these contacts will be summarized on Exhibit 22, with any additional comments in narrative form, and placed in the county operational files FLPF-4-B “Graduation,” according to 32-AS. At a minimum, the narrative for each lender will contain the following:

- lender’s interest in refinancing FSA borrowers, including interest in receiving the graduation prospectus described in subparagraph E
- lender’s rates, terms, fee, loan conditions, and policies for annual operating, term operating and real estate loans.

D Screening Borrowers

Note: Exceptions to consideration for graduation include borrowers with only Y-OL’s, CL’s, NP’s, judgment, CNC’s, or whose accounts are flagged “BAP”, “ACL”, “FAP”, “CAP”, or otherwise determined by OGC.

The FBP completed in subparagraph 16 C and updated account classification completed in paragraph 18 will be used to determine if the borrower’s financial condition has improved to where they can refinance their FSA debt in full or in part with commercial credit.

If the financial information provided indicates that the borrower cannot meet local underwriting criteria, the authorized agency official will document why the borrower, despite being classified a “1” or “2,” is unlikely to graduate. The authorized agency official will record this in the * * * FBP Credit Presentation and in the Operational Review workflow in DLS.

*--Borrowers classified a “1” or “2” should be evaluated to determine if the classification score is due, in part, to higher TDCLR or liquidity ratio resulting from the accumulation of a reasonable amount of working capital reserves and savings. The non-essential asset provisions of 3-FLP, subparagraph 66 A will be considered, including recognition that working capital reserves and savings in excess of the greater of \$30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity, as well as funds held by the applicant or borrower which are accumulated for specific farm related capital purchases to be realized in the next two operating cycles.

Similarly, borrowers are unlikely to be meet local underwriting criteria if they are or recently were financially distressed, have recently received primary loan servicing, or whose current repayment schedules include deferrals, interest-only or reduced principal payments.--*

If the borrower’s financial information indicates that the borrower meets local underwriting criteria * * *, the borrower’s prospectus will be forwarded according to subparagraph E.

--19 Graduation Review (Continued)*E Sending Prospectus**

[7 CFR 765.101(d)] The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan. The Agency will notify the borrower when the borrower's prospectus is provided to one or more lenders.

If the borrower's financial information indicates they meet local underwriting criteria, the authorized agency official will:

- include the borrower's name, loan type, balance sheet, and projected cash flow on Exhibit 23
- send Exhibit 23 to commercial lenders.

Exhibit 23 asks lenders to indicate an interest in further review of borrowers listed. The lenders review will determine if they would be willing to refinance FSA.

When an authorized agency official includes a borrower's information on Exhibit 23 and sends it to a lender, a copy of Exhibit 23 will be sent to the borrower with a cover letter with language similar to: "Enclosed, please find Exhibit 23. This exhibit has been sent to several lenders in the area so they could review your financial information and consider refinancing your FSA account."

F Applying for Commercial Credit

[7 CFR 765.101(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:

- (1) Apply for a loan from the interested lender within 30 days of notice; or**
- (2) Seek guaranteed loan assistance under the market placement program in accordance with section 762.110(g) of this chapter (2-FLP, paragraph 72).**

An authorized agency official will assist the borrower with completion of an application for guaranteed loan, if a lender expresses an interest in providing assistance with a guarantee.

See 2-FLP for information on guaranteed loans.--*

19 Graduation Review (Continued)**F Applying for Commercial Credit (Continued)**

If any lenders are interested in refinancing FSA, the authorized agency official will send the borrower a letter similar to Exhibit 24 listing lenders that are interested in refinancing the borrower's FSA loans.

The borrower must contact the lenders listed in the letter and complete an application for commercial credit within 30 calendar days.

If the borrower finds a creditor who will make a loan to refinance FSA at reasonable rates and terms, the borrower must graduate.

[7 CFR 765.101(f)] The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.

If a commercial lender rejects the borrower, the borrower must obtain from the lender written evidence that specifies the reasons for rejection. The borrower must submit these documents to FSA.

G Transfer and Assignment of FSA Liens

[7 CFR 765.103] The Agency may assign its lien to the new lender when the borrower is graduating and all FLP debt will be paid in full.

Promissory notes and lien instruments for graduating borrowers may be assigned to the new lender by SED with the concurrence and as directed by Regional OGC.

* * *

--19.5 Non-Compliance with Graduation Requirements*A Borrower Non-compliance with Graduation Requirements**

[7 CFR 765.102(a)] Borrower failure to fulfill all graduation requirements, including failure to submit information as specified 7 CFR 765.101(c), within the time-period specified by the Agency constitutes default on the loan. Except as provided in paragraph (b) of this section, the Agency will accelerate the borrower's loan without offering servicing options provided in 7 CFR Part 766 (5-FLP) if any outstanding direct loan was closed prior to September 25, 2024.

If the borrower with an outstanding direct loan closed prior to September 25, 2024, fails to provide requested financial information or to graduate when able to do so, the authorized agency official will notify the borrower and all entity members of the non-compliance by sending FSA-2420 that provides FSA's intent to accelerate the loans with appeal rights according to 1-APP and informing the borrower(s) of their option to make a written request for conversion of their loan(s) to NP status according to subparagraph 19.5 B.

FSA-2420 must be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address.

Special Servicing will be initialized in DLS utilizing Chart 4 "Borrower in Non-Monetary or Monetary and Non-Monetary Default".

The authorized agency official must prepare and submit all required documents for concurrence to accelerate and liquidate. This adverse action does not require primary loan servicing. See 5-FLP, Parts 15 and 16 for more detail on acceleration and liquidation.--*

--19.5 Non-Compliance with Graduation Requirements (Continued)*B Conversion to NP Rates and Terms in lieu of Acceleration**

[7 CFR 765.102(b)] If all outstanding direct loans were closed after September 25, 2024, or when the borrower, or borrowers in the case of an entity, that has at least one outstanding direct loan closed on or before that date, makes a written request in response to the Agency's notification of intent to accelerate within provided timeframes, the Agency will convert the debt to a non-program loan under the following conditions:

- (1) It is in the interest of the Agency;**
- (2) The debt will be subject to the interest rate for non-program loans in effect at the time of default;**

See 1-FLP, Exhibit 17 for NP interest rates.

- (3) The debt will be serviced as a non-program loan; and**
- (4) The term of the non-program loan will be:**
 - (i) For FOs, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security, or 25 years.**
 - (ii) For OLs, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security or 5 years.**

Note: Conversion to NP terms will not be used to extend the maturity date of the original note. For example, a 7-year OL that is currently in year 5 will be scheduled for repayment with equal installments for the remaining 2 years.

If the borrower with all outstanding direct loans closed on or after September 25, 2024, fails to provide requested financial information or to graduate when able to do so within provided timeframes, the authorized agency official will notify the borrower and all entity members of the non-compliance and intent to convert their loan(s) to NP status by sending FSA-2421 with appeal rights according to 1-APP. If the borrower does not appeal, the loan official will convert the loan(s) to NP status, documenting the action in FBP with a credit action approved by the authorized agency official, and send FSA-2422 to the borrower informing them of the new provisions of the loan(s). The date of the conversion to NP status will be the date the notification is signed by the authorized agency official. The borrower will be given a copy of the addendum at closing. A copy of the notification will be attached to the original promissory note.--*

--19.5 Non-Compliance with Graduation Requirements (Continued)*B Conversion to NP Rates and Terms in lieu of Acceleration (Continued)**

Borrowers with an outstanding direct loan closed prior to September 25, 2024, that fail to provide requested financial information or to graduate when able to do so within provided timeframes, will be sent FSA-2420. Should the borrower and all entity members request in writing conversion of their loan(s) to NP status within prescribed timeframes, the authorized agency official will convert the loan(s) to NP status, documenting the action in FBP with a credit action approved by the authorized agency official. All liable parties must sign Exhibit 24.5 providing the new provisions of the loan(s). The date of the conversion to NP status will be the date the notification is signed by the authorized agency official. The borrower will be given a copy of the addendum at closing. A copy of this notification will be attached to the original promissory note.

See 1-FLP, Part 2, for levels of authority for approval of NP loans. SED has unlimited approval authority for NP loans.

C Final Processing

The authorized agency official will notify Rural Development Business Center Servicing Office, FLB through ECM system to complete a standalone 1M transaction to convert all loans to NP rates and terms. It is recommended that a manual notation of the conversion to NP be made in the OR-Graduation Notes section in DLS.--*

21 Limited Resource Review (Continued)**F Sending Notification Letters**

The authorized agency official must notify a borrower of any decision to change an interest rate with a letter similar to Exhibit 25. The letter must inform the borrower of:

- the new interest rate
- the authorization and reason for the change in interest rate
- the effective date of the new rate
- the amounts of new payments and dates due
- appeal rights unless the borrower requested the rate increase.

--The letter must be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. A copy of the notification letter shall be attached to the original promissory note and a file copy of the promissory note shall be maintained in the borrower's case file. The authorized agency official will not apply the increased interest rate until 30-- calendar days after the letter is sent to the borrower. If the borrower appeals FSA's decision to increase the interest rate, the rate will not be changed until the appeal is concluded.

G Change in Regular Interest Rate

If the rate is being changed to the regular rate, and as of the effective date the regular rate of interest is something other than the rate noted in Exhibit 25, the borrower will receive the lower of the 2 rates.

22 * * * Analysis

A Summary of * * * Analysis

See 1-FLP, Part 8 for guidance on * * * analysis.

The following is a summary of * * * analysis to be completed with Operational Review and level of documentation * * *.

- *--In-Depth Analysis is required for a new loan or assumption, a subordination prepared for the lender by FSA (or request from a lender with whom FSA has no experience or the request is principally to refinance the lender's debt), a PLS action, a loan on deferral, or a Limited Resource Interest Rate Review. The following criteria apply:--*
 - The level of financial review * * * will be an in-depth analysis and documentation.
 - If there was a cash flow prepared in the previous production cycle, the * * * analysis will compare previous year projections to the actuals. If there was not a cash flow prepared in the previous production cycle, use previous year actuals to assure projections are realistic.
- *--For subordination requests prepared by FSA, LSPMD is aware that the FSA-2062 does not list production records under Part A, item 3 as it is not included within the applicable CFR. However, FSA is authorized to request production records as it is required to complete an in-depth analysis.
- Biennial Operational Review is required for a subordination prepared and submitted by an experienced lender, or when there is no new loan request being considered. The following criteria apply:--*
 - The level of financial review for * * * analysis will be mid-level analysis and documentation.
 - If there was a cash flow prepared in the previous production cycle, the * * * analysis will compare previous year projections to the actuals. If there was not a cash flow prepared in the previous production cycle, utilize previous year actuals to assure projections are realistic.
- *--For subordination requests prepared by an experienced lender, FSA is encouraged to rely upon the information provided by the lender.
- If an only an Annual Assessment update is being completed, the following criteria apply:--*
 - There will be no * * * analysis completed.
 - Documentation of discussion for annual assessment will be completed.

23 Summary of Operational Review

A Summary

The following is a summary of the operational review components to be completed.

*--

| | Par Ref | In-Depth Analysis | Biennial Operational Review | Annual Assessment Update Only |
|--|----------------|---|---|--------------------------------------|
| Farm Assessment – Update | 17 | Yes | Yes | No |
| Farm Assessment – Discussion Documentation | 17 B | No | No | Yes |
| Classification Review | 18 | Yes | Yes | No |
| Graduation Review | 19 | Yes | Yes | No |
| FSA-2040 | 20 | If personal property according to subparagraph 20 A | If personal property according to subparagraph 20 A | No |
| Limited Resource Review | 21 | If Applicable | If Applicable | No |
| Analysis | 22 | Yes | Yes | No |

--*

24-30 (Reserved)

Part 3 Withdrawn--Amend. 35

31-33 (Withdrawn--Amend. 35)

34-45 (Reserved)

Part 4 Withdrawn--Amend. 35

46-48 (Withdrawn--Amend. 35)

49-60 (Reserved)

Part 5 Borrower Payments

61 General

A Purpose

This part identifies how payments received by FSA from the borrower are to be applied to borrower loans. For borrowers with chattel security, this part refers to proceeds that FSA will apply to the borrower's FLP debt according to FBP and FSA-2040.

B Acceptable Payment Forms

[7 CFR 765.151(a)] Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.

***--Note:** Cash payments are limited to no more than \$100 per transaction. Payments over \$100 can be made in the form of ACH, check, debit card, money order, or wire transfer.

PML is a self-service application for borrowers to make payments on their direct loans. To use the feature, borrowers must have a farmers.gov account. To create an account, borrowers will need to visit **farmers.gov/account**. Local offices are encouraged to include a copy of the PML Quick Start Guide, available on Farmers.gov, when sending Exhibit 25.3 to borrowers.--*

C Processing Payments

[7 CFR 765.151(b)] The Agency credits the borrower's account as of the date the Agency receives payment.

Note: When an office is closed because of a lapse in government funding, natural disaster, or response to emergency situation, borrower payments submitted by mail will be credited as of the date of the postmark.

When FSA receives a payment, the authorized agency official must record and process the payment according to 64-FI.

A receipt for payments received will be given when cash is received, or the borrower requests a receipt with other payment forms.

Any subsequent correction of applications will be processed in NRRS. For the correction to be updated to borrower's account, the authorized agency official will need to submit FSA-2429 through the RD Business Center, FLB, ECM system. Changes in application of *--loan payments will not be for trivial or minor purposes. FSA-2429 **must** be submitted as--* soon as the error in application of payments is discovered or by December 31 of the current CY, to not adversely impact FSA issuance of IRS-1098. Only payments received in the current CY can be changed.

Approval from Director, LSPMD is required to make changes in past CY's or after *--IRS-1098's have been prepared. Request will be submitted by email to e-mail to--* **SM.FSA.DCWa2.AdmException** or **adminexception@wdc.usda.gov**.

61 General (Continued)

D Identifying Regular and Extra Payments

When FSA receives a payment from the borrower, the authorized agency official will identify the source of income from which the payment was derived. The source of the income or proceeds is essential to determine whether FSA applies payments as regular or extra.

[7 CFR 765.152(a)] Regular payments are derived from, but are not limited to:

- (1) The sale of normal income security;**
- (2) The sale of farm products;**
- (3) Lease income, including mineral lease signing bonus;**
- (4) Program or disaster-related disbursements from USDA or crop insurance entities; and**
- (5) Non-farm income.**

[7 CFR 765.152(b)] Extra payments are derived from any of the following:

- (1) Sale of chattel security other than normal income security;**

such as farm equipment and breeding livestock.

- (2) Sale of real estate security;**
- (3) Refinancing of Agency debt;**

Note: As required in 64-FI, Exhibit 17, collections for refinancing are coded as “Y” in NRRS.

- (4) Proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;**

--Repair and replacement of security may include expenses such as engineering fees, contractor estimates or similar expenses to ensure insurance companies have properly adjusted damages to Agency security.--

- (5) Any transaction that results in a loss in the value of any Agency basic security;**
- (6) Refunds of duplicate program benefits or assistance to be applied on CL or EM loans; or**
- (7) Refunds of unused loan funds.**

63 Extra Payments

A Applying Extra Payments

[7 CFR 765.153(b)] An extra payment is not credited to a scheduled installment and does not relieve the borrower’s responsibility to make scheduled loan installments, but will reduce the borrower’s FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.

64 Distributing Payments to Loans

A Order

[7 CFR 765.154] The Agency applies both regular and extra payments to each loan in the following order, as applicable:

- (a) Recoverable costs and protective advances plus interest;**
- (b) Deferred non-capitalized interest;**
- (c) Accrued deferred interest;**

Note: Accrued noncapitalized interest will be credited after accrued deferred interest.

- (d) Interest accrued to date of payment; and**
- (e) Loan principal.**

B Distribution

Distribute payments according to the following.

| IF the loan... | THEN... |
|--|---|
| number is identified correctly on the payment information | *--the RD Business Center, FLB will automatically--* distribute the payment to borrower debt according to subparagraph A. |
| costs are separate from their parent loan (usually identified by loan numbers between 75 and 99) | the payment needs to be specifically identified to be applied to those loan cost accounts and then to the original loan. |

64 **Distributing Payments to Loans (Continued)****C Notification of Account Activity and Status**

--The RD Business Center, FLB will normally send the borrower and the local FSA office-- the following:

- “Reminder of Payments To Be Made” 60 calendar days before the installment due date, which shows the borrower the installments due on each loan

*--**Notes:** State Offices that have elected to discontinue the RD Business Center, FLB--* notification will send a payment reminder letter similar to Exhibit 25.3 to the borrower. A report is under development to assist in accessing the needed data.

The “Reminder of Payments To Be Made” or payment reminder letter sent by the State Office will always provide the VRU telephone number (1-888-518-4983). VRU is a secure, automated system that requires a PIN number, and guides borrowers in obtaining the status of their loans at any time. If further loan information is needed, such as a payoff amount, borrowers are directed to call the FSA office.

The borrower has the ability to change their PIN using the following instructions:

- borrower calls toll free number
- after being asked for their ID, the system checks to see if a PIN is present
- if so, the borrower will be asked to enter the PIN
- if they enter the incorrect PIN they will be given the option to PRESS “1” to re-enter it, or PRESS “2” to change it
- after pressing 2, they will ne walked through the process of changing their PIN.
- FSA-2065 annually, which shows the loan status, all transactions completed during the calendar year, and VRU telephone number.

Note: See Exhibit 25.5 for an explanation of IRS forms sent to borrowers annually.

98 Maintaining Security Instruments (Continued)

B Maintaining Current Information

FSA must review or renew financing statements, security agreements, and other documents *--for each borrower periodically. County Offices will use DLS to identify and track security--* instruments that need to be continued or updated. The authorized agency official will notify the borrower of any required information and documents. Notification, if not made in writing, should be documented in FBP.

C Obtaining Subsequent FSA-2028's

FSA obtains new FSA-2028's when:

- a security interest is taken in crops, if an interest was not previously obtained
- FSA obtains additional security new or additional security through a new loan or PLS
- modifications to the security listed on the working copy of current FSA-2028's have been made
- deemed necessary to protect FSA's security interests.

*--**Note:** FSA Security Agreements, FSA-2028, do not include a blanket security interest in all equipment or livestock now owned or later acquired. Therefore, it is necessary for the FSA-2028 to be reviewed and updated regularly to ensure it accurately reflects FSA security interests in specific collateral. Should specific items be replaced, for example, FSA must obtain an updated security agreement as a condition of authorizing the replacement.--*

SED will issue a State supplement to specify when to obtain a subsequent FSA-2028 based on State law.

D Direct Operating Loan-Micro Loan (DOL-ML) Identification Requirements for new FSA-2028's

For each DOL-ML, an "M" and the fund code and loan number will remain next to the security for that loan, unless the loan is serviced according to 5-FLP. If a loan is serviced under 5-FLP as a delinquent borrower, the "M", fund code, and loan number will be discontinued.

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

D Conditions for FSA Consent to Borrower Ceasing to Operate (Continued)

(d) Any one of the following conditions is met:

(i) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;

(ii) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or

(iii) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 years.

E Real Estate Surface Leases

[7 CFR 765.252(a)] The borrower must request prior approval to lease the surface of real estate security. The Agency will approve requests provided the following conditions are met:

(1) The lease will not adversely affect the Agency's security interest;

(2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or *--5 years if the borrower and the lessee are related by blood or marriage. However, the term of surface leases for farm property no longer in use, such as old barns, or for--* nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

Note: Surface leases of farm property no longer in use or nonfarm purposes must be approved by SED, unless redelegated to FLC, FLS, or DD.

(3) The lease does not contain an option to purchase; * * *

(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met (subparagraph D). Leases for nonfarm enterprises, such as solar farms, which take *--significant acreage of the Agency's security out of agriculture production are not--* authorized. Non-productive land may be considered for this type of lease; and

(5) The lease and any contracts or agreements in connection with the lease must be *--reviewed and approved by the Agency.--*

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)**F Conditions for Continuation**

Consent for a borrower's request or action to cease operating the security or lease the
--property will be considered by DD's according to this paragraph.--

If FSA cannot give the borrower consent to cease operating or lease the real estate security, FSA will immediately notify the borrower of non-monetary default according to 5-FLP, paragraph 66.

G Mineral Leases

[7 CFR 765.252 (b)] The borrower must request Agency consent to lease any mineral rights used as security for FLP loans.

(1) For FO loans made from December 23, 1985, to February 7, 2014, and loans other than FO loans secured by real estate and made from December 23, 1985, to November 1, 2013, the value of the mineral rights must have been included in the original appraisal in order for the Agency to obtain a security interest in any oil, gas, and other mineral associated with the real estate security.

(2) For all other loans not covered by paragraph (b)(1) of this section (subparagraph 99 G), the Agency will obtain a security interest in any oil, gas, and other mineral on or under the real estate pledged as collateral in accordance with the applicable security agreement, regardless of whether such minerals were included in the original appraisal.

(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:

(i) The Agency's security interest; or

(ii) Compliance with any applicable environmental requirements of part 799 of this chapter.

See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.

(4) The term of the mineral lease is not limited.

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

***--H Personal Property Security Leases**

[7 CFR 765.252(c)] The borrower must request prior approval to lease chattel security. The Agency will approve requests provided the following conditions are met:

- (1) The term of lease does not exceed 12 months and does not automatically renew;**
- (2) The lease does not contain an option to purchase;**
- (3) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met; and**
- (4) The lease must be in the best interest of the Agency as determined by the authorized Agency official;**
- (5) Leased security must be accessible and readily identifiable at all times. Leased livestock required to be branded, tagged or be otherwise specifically identifiable; and**

The authorized agency official must consider the following factors in determining if the lease is acceptable:

- excessive wear and tear where the loss of value in the security that would not be economically feasible to repair or replace
- provisions for the return of the security and enforcement of those provisions
- provisions designating responsibility for repair or loss of security
- proposed location for the use of security and if that security will be comingled with other security
- the borrower will always maintain hazard insurance.

Note: The FSA borrower is responsible for the security at all times.

(6) The lease and any contracts or agreements in connection with the lease must be reviewed and approved by the Agency.

Upon approval of the lease, the authorized agency official will notify the lessee of the Agency's lien on the borrower's security. The letter should state that payments for the lease will be issued jointly to FSA and the borrower unless otherwise agreed between the Agency and the borrower. All projected lease payments will be documented on the FSA-2040.

FSA immediately notifies the borrower of non-monetary default according to 5-FLP, paragraph 66 if determined a lease was previously approved.--*

116 Requesting Subordinations (Continued)

B Processing Subordination Requests

The authorized agency official will enter the following information into DLS and use it to track and monitor subordination requests:

- date the application is received
- applicant name
- type of assistance requested
- subordination amount requested.

During a time of limited staffing resources, the authorized agency official may prioritize the completion of the * * * analysis for subordinations during non-operational review year according to current agency directives. The authorized agency official may approve a subordination request without an operational review during non-operational review years when both of the following requirements are met:

- an operational review has been completed in the last 12 months
- the decision is based upon the cash flow submitted by the lender which the agency concurs. An FBP cashflow is not being used; however, concurrence will be documented in FBP Running Record.

*--C Incomplete Applications

[7 CFR 765.205 (b)] Incomplete applications will be processed in accordance with 7 CFR 764.52 (3-FLP Paragraph 45).

DLS Workflow SI-Other should be utilized as a reminder tool for sending incomplete notifications or when to withdraw. DLS SI-Other for subordinations currently records an outcome for withdrawal.--*

117 Conditions for Real Estate Subordinations

A Real Estate Security

Note: See Part 7 Section 3 for requirements for subordinations and non-disturbance agreements made for non-lending purposes.

--[7 CFR 765.205(c)] For loans secured by real estate, the Agency will approve a-- request for subordination subject to the following conditions:

(1) If a lender requires that the Agency subordinate its lien position on the borrower's existing property in order for the borrower to acquire new property and the request meets the requirements in paragraph (b) (3) of this section (subparagraph 117 A), the request may be approved. The Agency will obtain a valid mortgage and the required lien position on the new property. The Agency will require title clearance and loan closing for the property in accordance with § 764.402 of this chapter (3-FLP, Part 16).

(2) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized loan purpose may be approved when it meets the requirements in paragraph (b)(3) of this section (subparagraph 117 A) and it is needed for the entity member to finance a separate farming operation. The subordination must not cause the unpaid principal and interest on the FLP loan to exceed the value of loan security or otherwise adversely affect the security.

(3) The Agency will approve a request for subordination of real estate to a creditor if:

(i) The loan will be used for an authorized loan purpose or is to refinance a loan made for an authorized loan purpose by the Agency or another creditor;

See 3-FLP for authorized loan purposes. Exception: Refinancing real estate debt is an authorized purpose for a subordination.

(ii) The credit is essential to the farming operation, and the borrower cannot obtain the credit without a subordination;

(iii) The FLP loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;

(iv) Except as authorized by paragraph (c)(2) of this section (subparagraph 118 B), there is no other subordination outstanding with another lender in connection with the same security;

(v) The subordination is limited to a specific amount;

(vi) The loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;

***--Note:** Prior to approval, borrower must also be screened for debarment and suspension. See 4-FLP, paragraph 7.--*

117 Conditions for Real Estate Subordinations

A Real Estate Security (Continued)

(vii) If the loan is made in conjunction with a guaranteed loan, the guaranteed loan meets the requirements of § 762.142(c) of this chapter (2 FLP, paragraph 279);

(viii) The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;

(ix) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the production cycle;

(x) Except for CL, the borrower is unable to partially or fully graduate;

Note: Account classification must have been completed within the last 24 months as required by 1-FLP, Part 8, Section 4. For accounts classified as 1 or 2, graduation review must have been completed according to requirements of Part 4.

(xi) The borrower must not be ineligible as a result of a conviction for controlled substances according to part 718 of this chapter (1-CM);

(xii) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to part 718 of this chapter (1-CM);

(xiii) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in part 799 of this chapter; (1-EQ and 6-CP)

(xiv) Any planned development of real estate security will be performed as directed by the lessor or creditor, as approved by the Agency, and will comply with the terms and conditions of § 761.10 of this chapter (1-FLP);

(xv) If a borrower with an SAA mortgage is refinancing a loan held by a lender, subordination of the SAA mortgage may only be approved when the refinanced loan does not increase the amount of debt; and

(xvi) In the case of a subordination of non-program loan security, the non-program loan security also secures a program loan with the same borrower.

* * *

(4) The Agency will approve a request for subordination of real estate to a lessee if the conditions in paragraphs (b)(3)(viii) through (b)(3)(xvi) of this section are met (subparagraph 117 A and subparagraph 196).

Note: Real estate subordination to a lessee must be approved by SED.

117 Conditions for Real Estate Subordinations (Continued)

B Releasing and Refiling Lien Instruments Instead of Subordination

SED's may approve releasing and refiling lien instruments instead of subordination when the request meets the following:

- application meets requirements in subparagraphs 116 A and 117 A
- subordination is unacceptable to the lender refinancing the borrower's loan

Note: The refinanced loan will be sold on the secondary market and a first lien is required.

- the borrower agrees to execute new security instruments

Notes: The new security instruments will be refiled immediately following the lender's security instrument securing the loan.

SED will consult OGC to obtain instructions in protecting FLP's lien position. SED will issue a State supplement to provide additional guidance and ensure compliance.

- no additional debt will be placed ahead of FLP's debt, except for customary costs appropriate to the transaction

***--Notes:** On a case-by-case basis, the SED may approve an increase in debt ahead of FSA if the requirements in subparagraph 117 A are met and it is determined to be in the best interest of the government.

Example: A borrower is seeking to refinance a first lien on a primary residence taken as additional security. However, they need to cash-out additional funds to make necessary real estate repairs and improvements which results in an increase in the value of FSA security such that the overall Agency security position is unchanged or improved.--*

If construction is started before a request is received, approval will not be provided.

See subparagraph 197 B for customary costs.

- the refinancing will result in better repayment terms that, except for CL, will assist the borrower in progressing toward graduation.

Note: SED's may delegate their approval authority for releasing and refiling lien instruments instead of subordination to FLC, FLS, or DD.

--118 Conditions for Personal Property Subordinations*A Personal Property Security--***

[7 CFR 765.205(c)] **The requirement for chattel subordinations are as follows:**

(1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(3)(i) through (xiii) of this section (subparagraph 117 A). Multi-year subordinations may only be approved according to OGC-approved State supplements.

Multi-year subordination must meet all requirements set forth in this subparagraph. State supplements must specifically address the following:

- borrower's inability to obtain credit without subordination, including guarantee
- borrower's inability to partially graduate
- borrower's ability to pay debt before funds are released for each production cycle
- advances for the subsequent years are not authorized without FSA's written consent.

*--**Note:** Borrower must be screened for debarment and suspension. See 4-FLP, paragraph 7.

B Second Subordinations on Personal Property

[7 CFR 765.205(d)(2)] **The Agency will approve a request for a second subordination to--* enable a borrower to obtain crop insurance, if the following conditions are met:**

(i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay insurance premiums from the crop or insurance proceeds;

(ii) The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and

(iii) The subordination meets the conditions under paragraphs (b)(1) through (12) of this section (subparagraph 117 A).

C CCC Loans

CCC-679's will be used according to 8-LP instead of a subordination when FP makes a CCC loan to the borrower. FSA does not subordinate to CCC loans.

119 Appraisal Requirements

A Appraisals

***--[7 CFR 765.205(e)] An appraisal of the property that secures the Agency loan will--* be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 (1-FLP) of this chapter.**

At a minimum, real estate appraisals will be obtained when property is to be improved, purchased, or exchanged. FSA does not require an appraisal for real estate security when either of the following occur:

- borrower's case file contains an existing appraisal that was completed within the previous 18 months and meets the requirements of 1-FLP, subparagraph 141 G.
- loan for which the borrower requests the subordination is:
 - to refinance an existing prior lien and the resulting prior lien will **not** be increased except for customary costs appropriate to the transactions

Note: See subparagraph 197 B for customary costs.

- for an essential repair that is needed to restore the value of the security and complies with subparagraph 117 A.

*--FSA does **not** require an appraisal for personal property security when either of the following criteria are met:

- the proposed subordination is for annual operating and family living expenses only and the projected income from farm production exceeds the subordination amount
- the existing FSA personal property appraisal is less than 1 year old and meets the requirements of 1-FLP, subparagraph 141 G.--*

The authorized agency official must consider property additions to, and deletions from, the latest FSA appraisal and fully document the decision.

120 Approving or Denying Subordination Requests

A Approval Authority

Except for SED's, approval officials may approve subordinations if the amount of the subordination, plus the principal balance of existing subordinations, is not more than their maximum approval authorities for each loan type subordinated according to 1-FLP, subparagraph 29 A. When the lien priority for more than 1 type of loan is subordinated the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. SED authority to approve subordinations is limited to \$1 million total EM indebtedness; otherwise, SED's may approve subordinations regardless of the amount. SED's may delegate their authority for approving subordinations to FLC, FLS, or DD.

***--Note:** SED's are the only FSA officials with approval authority for subordinating real estate security for an operating-type loan purpose, which includes an annual line of credit and multi-year line of credit. This specific approval authority cannot be redelegated.--*

The authorized agency official may approve the subordination by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the local servicing official the responsibility to execute agency and required legal documents to complete the subordination.

The authorized agency official must include in the physical case file, all components of FBP that require signatures as provided in the FPB User Guide, available at <https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index>.

The authorized agency official will sign FSA-2455 or any other format required in State supplements, as necessary, to meet State legal requirements.

Once a request is approved, it is closed according to State supplements. The authorized agency official must enter the date that FSA approves a request in DLS.

B Appeal Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.

121-125 (Reserved)

***--Section 5 Release of Real Estate and Personal Property Security Liens
Without Monetary Compensation**

146 Release Without Monetary Compensation--*

A Approval

SED or delegated official may approve a request for release by authorizing execution of FSA-2045, FSA-2061, FSA-2470, or other documents approved by OGC. Before approval *--of a release without monetary compensation, borrower's ability to graduate to commercial--* credit must be considered and documented. The SED or delegated official's authorization must be attached to the applicable executed documents.

The transaction may be approved by using the electronic signature command in the credit presentation section of FBP. SED may designate responsibility to an authorized agency official to execute agency and required legal documents to complete the transaction in FBP. All components of FBP that requires signatures must be included in the physical case file.

B Release Because of Mutual Mistakes

SED's can authorize a release because of mutual mistakes only when they do all of the following:

- determine that a mutual error existed when the security was included in FSA's mortgage or lien
- obtain OGC's advice on whether a mutual mistake was made
- substantiate that the mistake was made
- document the findings in the borrower's FBP credit presentation.

C Release Because of No Evidence of Indebtedness

SED may release a borrower's mortgage or lien, if the records of State and County Offices and the RD Business Center, FLB contain no evidence of an existing indebtedness secured by the mortgage or lien.

Note: The authorized agency official should verify that the borrower has no outstanding debt with the Rural Development. The findings should be documented in the borrowers FBP credit presentation.

--146 Release Without Monetary Compensation (Continued)*D Borrower Requested Personal Property Security Release**

[7 CFR 765.305(c)] The Agency will release its lien on chattel security without compensation, after written request from the borrower provided all the following criteria are satisfied:

Note: The borrower will submit FSA-2061 to request a release of security.

(1) The borrower is current on all loan accounts with FSA and has not received PLS, DBSA, or DSA on any loan within the last 36 months;

(2) The borrower has paid in full direct term loan installments that include principal reduction in each of the last 3 calendar years;

Note: The borrower must demonstrate timely payment according to loan schedules of all direct loan installments over the most recent 36-month period. Payments made no later than 90 days of the scheduled due date are considered timely.

(3) After the release, the security margin on each Agency direct loan will be 125 percent (or more, if it is not practicable to separate the property, if necessary to ensure the loan is fully secured for the life of the loan, or if the borrower requests only a portion of Agency security to be released). The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter (1-FLP, Part 6); however, well documented recent sales of similar properties can be used if the Agency determines a supportable decision can be made without current appraisals;

The authorized agency official with SED delegated authority to prepare personal property appraisals and real estate evaluations under 1 FLP, will adequately document the analysis and determination to release security as provided in this paragraph. In some cases, more than a 125 percent security margin may be required. For example, borrowers with a balloon installment, the authority agency official must ensure adequate security is available when the balloon installment comes due. The authorized agency official will not release to 125 percent if the balloon installment is under secured. Non-PMI security will be considered for release prior to considering the release of security with perfected PMI.

Livestock can only be released in whole by species. Individual animal units within a species cannot be released.

Example: A release of a borrower's beef cattle herd can be authorized, but the agency will retain its lien on the borrower's swine herd to maintain the 125 percent security margin.--*

--146 Release Without Monetary Compensation (Continued)*D Borrower Requested Personal Property Security Release (Continued)**

Individual units of equipment may be released if the equipment is separate and identifiable, making it practical to separate the item(s) from the remaining security.

Example 1: FSA has a lien on three non-titled, and non-registered, homemade trailers of the same length and type; therefore, they are not separately identifiable. A release of lien can be authorized provided all three trailers are released and the 125 percent security margin is maintained. However, a release of just one of those trailers may not be possible if the borrower intends to maintain ownership of the released trailer, as FSA would not be able to identify which exact trailers it maintains a security interest in.

Example 2: FSA has a lien on three tractors, which include two John Deere tractors that were funded by FSA (PMI) and a Kubota tractor that represents non-PMI security. All three tractors are separate and identifiable per their brand, model, and serial numbers. The borrower has downsized their farm and no longer requires all three tractors. The borrower is requesting to release a tractor. A release of lien on an individual tractor is authorized provided that a 125 percent security margin is maintained. The Kubota tractor will be the first tractor considered for release as it represents non-PMI security.

(4) Any asset requested for release must serve only as security for term loan(s) that have been outstanding for at least the prior 36 months and cannot serve as adequate security for another existing Agency direct loan;

In some cases, it may not be feasible to determine primary or additional security taken at the time of the loan. For example, loans are restructured multiple times, and each time additional security was taken. It may not be possible to distinguish the primary security from additional. In those cases, an Administrator Exception can be submitted for review according to paragraph 4.--*

(5) Except for CL, the borrower is unable to fully graduate as specified in § 765.101 (Part 2).

The authorized agency official will prepare FBP credit presentation explaining how each of the applicable conditions above are met and submit the narrative along with supporting *--documentation to the State Office for review and concurrence. To meet the 36-month requirement for not having received PLS, DBSA, or DSA, the borrower's request can only be made at least 36 months since their initial loans. Supporting documentation will include all--* calculations and copies of any well-documented recent sales, such as recent auctions, or other transactions in the area. In addition, the authorized agency official will assure that requirements in Part 2 are completed. State Office officials will review the request and if they concur, submit the request to the SED for approval.

--146 Release Without Monetary Compensation (Continued)*E Processing Release Requests**

The authorized agency official will inform the borrower in writing of the approval and include a copy of the FSA-2061 executed by the authorized agency official.

Security released without monetary compensation will be documented on the FSA-2045 in accordance with the form instructions. A new security agreement, FSA-2028, must be obtained in accordance with subparagraph 98 C, detailing the specific FSA security. This is of particular importance when equipment serves as FSA security, as FSA does not require a blanket security interest in all equipment and relies on updated security agreements to perfect its security interests.

FSA's blanket UCC-1 will not be amended to reflect the release of personal property security unless there is a specific category of security that is being released. For example, if all equipment security is released, the authorized agency official may file a UCC-3 to reflect the release, if determined necessary. SED will issue a State Supplement on amending financing statements after consulting with the Regional OGC, as appropriate, to satisfy State legal requirements.

Note: If through a subsequent loan making action, an item of security that was released becomes FSA security again, that item(s) will be lined through on the FSA-2045, initialed and dated by an authorized loan official.

F Borrower Requested Real Estate Security Release

[765.351(f)] Real estate security may be released by FSA without compensation upon written request from the borrower when the requirements of paragraph (a) of this section (subparagraph 196 B), except paragraph (a)(3) of this section (subparagraph 196 B), are met, and all the following criteria are satisfied:

(1) The borrower is current on all loan accounts with FSA and has not received DBSA, DSA, or PLS within the last 36 months;

(2) The borrower has paid in full scheduled direct term loan installments that include principal reduction in each of the last 3 calendar years;

Note: The borrower must demonstrate timely payment according to loan schedules of all direct loan installments over the most recent 36-month period. Payments made no later than 90 days of the scheduled due date are considered timely.--*

* * *

(3) The property released will not interfere with access to or operation of the remaining farm;

(4) Essential buildings and facilities will not be released if they reduce the utility or marketability of the remaining property;

(5) Any issues arising due to legal descriptions, surveys, environmental concerns, utilities are the borrower's responsibility and no costs or fees will be paid by FSA;

--146 Release Without Monetary Compensation (Continued)--**F Borrower Requested Real Estate Security Release (Continued)**

***--(6) After the release, the security margin on each Agency direct loan will be 125 percent (or more if it is not practical to separate the property, if necessary to ensure the loan is fully secured for the life of the loan, or if the borrower requests only a portion of Agency security to be released). The value of the retained security will normally be based on appraisals obtained as specified in § 761.7 of this chapter (1-FLP, Part 6); however, well documented recent sales of similar properties can be used if the Agency determines a supportable decision can be made without current appraisals;**

The authorized agency official with SED delegated authority to prepare personal property appraisals and real estate evaluations under 1-FLP, will adequately document the analysis and determination to release security as provided in this paragraph. The 125 percent security margin applies to each direct loan on the account, including any proposed new loans.

(7) Any asset requested for release must serve only as security for term loan(s) that have been outstanding for at least the prior 36 months and cannot serve as adequate security for another existing Agency direct loan;

In some cases, it may not be feasible to determine primary or additional security taken at the time of the loan. For example, loans are restructured multiple times and each time additional security was taken. It may not be possible to distinguish the primary security. In those cases, an Administrator Exception can be submitted for review according to paragraph 4.--*

(8) Except for CL, the borrower is unable to fully graduate as specified in § 765.101 (Part 4).

The authorized agency official will prepare a FBP credit presentation explaining how each of the applicable conditions above are met and submit the narrative along with supporting *--documentation to the State Office for review and concurrence. To meet the 36-month requirement for not having received PLS, DBSA, or DSA, the borrower's request can only be made at least 36 months since their initial loan. Supporting documentation will include all--* calculations and copies of any well-documented recent sales, such as real estate comparables, recent auctions, or other transactions in the area. In addition, the authorized agency official will assure that requirements in Part 2 are completed. State Office officials will review the request and if they concur, submit the request to the SED for approval.

G Appeals Rights

If a request under this section cannot be approved, the borrower will be notified of all appeal rights according to 1-APP.

147 Releasing Valueless Liens

A Conditions for Releasing Valueless Liens

SED's are authorized to release FSA mortgages or other liens, if 1 of the following is determined:

- the mortgage or lien has no present or prospective value
- enforcement of the mortgage or lien would be ineffectual or uneconomical.

SED authority may:

- be exercised under any of the following:
 - for the borrower to convey title of the property to a third party
 - because of litigation
 - if the account has been accelerated and either of the following is occurring:
 - Government is liquidating the security
 - borrower has voluntarily liquidated all other remaining security
- **not** be redelegated; however, an acting SED may approve releases.

SED's cannot release a valueless judgment lien or valueless statutory redemption rights, except with OGC's consent.

B Information Required to Release a Valueless Lien

To determine the present or prospective value of the security to be released, the authorized agency official should obtain all of the following:

- market value appraisal report on the security prepared according to 1-FLP, Part 6 except in cases in which FSA determines that the lien is invalid

Note: Exceptions may be requested in accordance with paragraph 4 for appraisals completed between 12 and 18 months ago which have not been updated by the appraiser.

- names of the holders of prior liens on the property
- written verification of the amount secured by each lien that is before FSA's
- amount of taxes or assessments
- other items that might constitute a prior claim.

The authorized agency official must document this information in the borrower's FBP and submit the case file to SED for review.

162 Agreement for Disposition of Normal Income and Basic Chattel Security (Continued)**B Using the Agreement for the Use of Proceeds (Continued)**

FSA will record the disposition of security on FSA-2045. When the borrower sells chattel security and notifies FSA, the authorized agency official must complete FSA-2045 to record the:

- description of security sold
- quantity of security sold
- way in which security was sold (such as to a wholesaler, to a neighbor, etc.)
- date of sale
- amount of proceeds received
- use of proceeds (exact amount recorded for debt repayment, operating expenses, family living, or capital purchases).

The authorized agency official must indicate whether approval is granted for the disposition and use of proceeds by marking “yes” or “no”, initialing, and dating the agreement in the appropriate location. If the disposition or use of proceeds is not authorized on the agreement, *--the authorized agency official will take action according to Part 7, Section 2.

Normal income security dispositions listed on the FSA-2040 will continue to be reported--* and recorded until all annual installments due to FSA have been paid current. Basic security dispositions must be reported until FSA no longer has a lien against the security.

C Government Payments and Insurance

The borrower must submit documentation of all Government payments, crop insurance, and insurance proceeds derived from the loss of security.

162 * * * Agreement for Disposition of Normal Income and Basic Chattel Security (Continued)

--D Modifying and Updating Agreements for the Use of Proceeds--

[7 CFR 765.302(e)] The borrower must provide the Agency with the necessary information to update the agreement for the use of proceeds.

[7 CFR 765.302(f)] Changes to the agreement on the use of proceeds will be recorded, dated, and initialed by the borrower and the Agency.

FSA and the borrower will document agreed upon changes to FBP and FSA-2040 through entering, initialing, and dating mutually accepted modifications as indicated for each FBP and FSA-2040. See 1-FLP, Part 8, Section 3.

Note: The authorized agency official and the borrower must complete a new FBP and revise FSA-2040 for major changes to the borrower's farming operation.

SED's may issue further guidance as needed on the changes that require FBP revision or replacement.

When FSA and the borrower agree to revisions over the telephone, the authorized agency official will:

- initial and date the change
- mark FBP or FSA-2040 with "Revised through telephone contact."
- send written confirmation to the borrower of any significant changes
- have the borrower date and initial the change the next time the borrower is in the County Office.

--163 Using Proceeds From Personal Property Security--**A General Requirements**

[7 CFR 765.303(a)] (1) Proceeds from the sale of basic security and normal income security must be remitted to lienholders in order of lien priority.

(2) Proceeds remitted to the Agency may be used as follows:

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

(3) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means in time to prevent the borrower and the Agency from suffering a substantial loss.

(4) Security may be consumed as follows:

(i) Livestock may be used by the borrower's family for subsistence;

(ii) If crops serve as security and usually would be marketed, the Agency may allow such crops to be fed to the borrower's livestock, if this is preferable to marketing, provided the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.

B Releasing Normal Income Security for Essential Family Living and Farm Operating Expenses

[7 CFR 765.303(b)] In addition to the uses specified in paragraph (a) of this section, the agreement for the use of proceeds will allow for release of proceeds from the sale of normal income security to be used to pay essential family living and farm operating expenses. Such releases will be terminated when an account is accelerated.

See Exhibit 2 for the definition of essential family living and farm operating expenses. FSA may not consider all of the examples included in the definition as essential for every family and farming operation. The authorized agency official must consider all of the following:

- the individual borrower's operation
- what is typical for that type of operation in that area
- what is an efficient method of production considering the borrower's resources.

--163 Using Proceeds From Personal Property Security (Continued)--**B Releasing Normal Income Security for Essential Family Living and Farm Operating Expenses (Continued)**

The borrower must contact FSA for approval if the borrower wants to use proceeds to pay for farm operating expenses for future operations not included in the current FBP, so that FSA may work with the borrower to develop a feasible FBP. When the borrower and FSA cannot agree on security releases for essential family living and operating expenses, the borrower must request the release in writing. If rejected, the authorized agency official will notify the borrower, in writing, why the requested release was denied, including why the expenses requested for release are not basic, crucial, or indispensable to the family, the farming operation, or both. Appeal rights will be included with the notification. See 1-APP for appeal procedures.

C Basic Security

--[7 CFR 765.303(c)] In addition to the uses specified in paragraph (a) of this section:--

(1) Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

(2) Security may be exchanged for chattel property better suited to the borrower's farming needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.

Notes: FSA Security Agreements, FSA-2028, do not include a blanket security interest in all equipment or livestock now owned or later acquired. Therefore, it is necessary for the FSA-2028 to be reviewed and updated regularly to ensure it accurately reflects FSA security interests in specific collateral. Should specific items be replaced, for example, FSA must obtain an updated security agreement as a condition of authorizing the replacement. Updated subordinations may also be required.--*

Insurance proceeds not being used immediately to replace the security should be kept in a supervised bank account according to 1-FLP, Part 4. If an account is not established, SED may request an Administrator's Exception under paragraph 4.

(3) Proceeds may be used to purchase chattel property better suited to the borrower's farming needs if the Agency will acquire a lien on the purchased property. The value--* of the purchased property, together with any proceeds applied to the FLP loan, must at least equal the value of the Agency lien on the old security.

**Section 3 Real Estate Security Releases, Exchanges or other Disposition
of Portion or Interest****196 Requirements****A General**

[7 CFR 765.351] The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.

***--Notes:** This section also applies to subordinations and non-disturbance agreements made for non-lending purposes.

This section also covers conservation easements, as well as the sale of water and--*
water rights.

The borrower must:

- complete and sign FSA-2061 with the assistance of the authorized agency official

Note: Only items 1 through 5 of the FSA-2061 are required if the transaction results in FSA debts being paid in full.

- provide a written contract or an agreement for the property indicating the price and terms of the transaction
- complete an operational review according to 4-FLP, Part 2, reflecting the proposed transaction. If the review reflects that the operation will be financially distressed, the account will be serviced according to 4-FLP, Part 3
- sell the property for not less than the appraised value unless FSA is being paid in full.

196 Requirements (Continued)

B Conditions for Approval

[7 CFR 765.351(a)] The following conditions apply to all transactions affecting real estate:

[7 CFR 765.351(a)] (1) The transaction will enhance the objectives for which the Agency loan or loans were made;

[7 CFR 765.351(a)] (2) The transaction will not jeopardize the borrower's ability to repay the Agency loan, or is necessary to place the borrower's operation on a sound basis;

Note: Partial releases after acceleration can be approved, according to subparagraph 197 E, as items (1) and (2) can be met by orderly liquidation.

[7 CFR 765.351(a)] (3) Except for releases in paragraph (f) of this section
--(subparagraph 146 E), the amount paid for the security being disposed of, or the rights--
being granted, is not less than the market value and will be remitted to the lienholders in the order of lien priority;

Note: Release of real estate security to be retained by the borrower is not authorized except in conjunction with an approved debt settlement action or as set forth in subparagraph 146 E.

--Appraisals are required to determine market value of the right being granted, see paragraph 198. Conservation easements and rights-of-way granted to another federal agency still require appraisals to ensure that market value is being received.--

[7 CFR 765.351(a)] (4) The transaction must not interfere with the borrower's farming operation;

[7 CFR 765.351(a)] (5) The market value of the remaining security is adequate to secure the Agency loans, or if the market value of the security before the transaction was inadequate to fully secure the Agency loans, the Agency's equity in the security is not diminished;

[7 CFR 765.351(a)] (6) The environmental requirements of part 799 of this chapter must be met (1-EQ and 6-CP);

See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.

196 Requirements (Continued)

B Conditions for Approval (Continued)

[7 CFR 765.351(a)] (7) The borrower cannot graduate to other credit on any program except for CL;

***--Note:** Account classification must have been completed within the last 24 months as required by 1-FLP, Part 8, Section 4. For accounts classified as 1 or 2, graduation review must have been completed according to requirements of Part 4.--*

[7 CFR 765.351(a)] (8) The borrower must not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.

--C Sale of Timber, Gravel, Oil, Gas, Coal, Other Minerals, Water, or Water Rights--

[7 CFR 765.351(b)] (1) Agency security instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate which secures an FLP loan will be considered a disposition of a portion of the security.

Note: When renewable annual sales of timber can be projected, the proceeds may be treated as normal income.

(ii) When the Agency has a security interest in oil, gas, or other minerals as provided by § 765.252(b) (subparagraph 99 G), the sale of such products will be considered a disposition of a portion of the security by the Agency.

--The sale of water or water rights from real estate that secures an FLP loan will be considered a disposition of a portion of the security.--

D Compensation for Damage to Real Estate Security

[7 CFR 765.351(b)(2)] Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage, and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders' consent, used for an authorized loan purpose.

E Disposition of Security for Outstanding ST's

[7 CFR 765.351(a)(9)] The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

Commodities produced by the property, such as when timber is thinned, can be sold without paying ST in full, as long as all proceeds are applied to ST.

197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)**C Use of Proceeds for Land Development**

With SED consent, proceeds may also be used for:

[7 CFR 765.352(a)(3)] For development or enlargement of real estate owned by the borrower as follows:

- (i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;**
- (ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;**
- (iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 (1 FLP, Part 4) of this chapter;**
- (iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;**
- (v) Construction and development will be completed in accordance with § 761.10 of this chapter.**

The authorized agency official must:

- require the borrower to prepare a development plan for the planned activity
- conduct a final inspection of the borrower's property after construction completion.

197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)

***--D Capital Gains Taxes**

[7 CFR 765.352(a)(4)] To pay capital gains taxes on real estate transactions when the following conditions are met:

(i) The borrower is unable to obtain commercial credit at reasonable rates and terms to pay the capital gains taxes;

(ii) The Agency approves the amount to be retained to pay capital gains taxes;

(iii) The remaining Agency debt remains fully secured;

(iv) All other lienholders will:

(A) be fully satisfied from the sale, or

(B) consent to the use of proceeds to be used to pay capital gains taxes;

Note: Written confirmation from the other lienholders is required prior to approval.

(v) At the borrower's expense, funds will be held in escrow, or deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter; and

(vi) Funds that are not used within 18 months towards the capital gains taxes will be remitted to the Agency debt.

With SED consent, proceeds from the sale of real estate security may be used to pay capital gains taxes when determined to be in the best interest of the Government. It will typically be in the interest of the agency to authorize the release if the alternative method to cover capital gains taxes would require a new direct loan request. The authorized agency official should consider if a release of proceeds is preferable to extending additional credit through use of direct loan funds. Examples of when a release is preferable include when:

- the borrower is not concurrently considering a new loan request that could include financing of the capital gains taxes
- the sale of real estate is time sensitive and would not allow FSA to underwrite a new loan
- the cash flow margin would not support additional debt payments
- the borrower would exceed term limits or loan limits if a new loan was closed
- there are insufficient direct loan funds available for funding a new loan.--*

197 Allowable Use of Proceeds From the Release of Real Estate Security (Continued)**E Additional Proceeds Usage Requiring FSA Consent**

With SED's consent, proceeds may be applied to FSA as regular payments, according to paragraph 62. SED's should consider the following when providing consent:

- using real estate proceeds as regular payment should not be a re-occurring event
- FSA has significant excess security based upon current appraisals
- the security being sold is a non-essential asset
- the borrower has not received disaster set-aside or PLS within the past 3 years or have payments deferred
- *--the application of the payment is not being used to resolve non-monetary default or--* impending acceleration
- the borrower has been impacted directly by a disaster, is still in recovery, and the sale and application of the proceeds will allow the borrower to resume normal payments.

Note: SED's authority may be redelegated to FLC.

F Pending Liquidation

[7 CFR 765.352(b)] After acceleration, according to 5-FLP, Part 15, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

Necessary and customary costs appropriate to the transaction:

- include only those costs that the borrower cannot pay from their own resources
- do not include capital gains taxes or junior liens.

--Part 9 Transfer of Real Estate and Personal Property Security--**246 Transfer of Security and Assumption of Debt****A General**

[7 CFR 765.401(a)] (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each entity member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

FBP must demonstrate the repayment ability and management capacity of the transferee.

***--Note:** Applicant must be screened for debarment and suspension. See paragraph 7.--*

[7 CFR 765.401(b)] A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

FSA requires the transfer and assumption of security and FSA debt when:

- a new borrower wants to replace the existing borrower
- an existing borrower is now operating, or proposes to operate as an entity with a non-relative
- an existing borrower proposes to transfer FSA security to an entity controlled or owned by the borrower.

FSA requires an assumption of debt, but not a transfer of security (assumes title to assets is not changing) when:

- a new member wants to join the borrower entity
- the entity member withdraws when remaining entity members are not personally liable for the debt

Note: See definition of operator in Exhibit 2.

Operators include borrowers who obtained individual loans and later formed an operating entity with a relative. If the member with the individual loan owns at least 50 percent of the operating entity, the individual meets the definition of operator for loan servicing purposes.

246 Transfer of Security and Assumption of Debt (Continued)**A General (Continued)**

***--Example:** An individual obtains an FO and later forms an operating-only entity with a relative and obtains an OL for the same operation. The individual then needs servicing for the individual FO. In these cases, if the individual owns at least 50 percent of the operating entity, the definition of operation is met.

Borrowers who obtained individual loans and later formed an operating-only entity with a non-relative must have the entity assume the debt to be eligible for loan servicing, as provided in 4-FLP, subparagraph 248 C. However, transfer of the collateral to the entity is not required.

In either of these circumstances, the operating entity must have their own unique tax ID number.--*

B ST's

ST's will only be transferred on NP rates and terms according to subparagraph 248 E, unless transfer is required because of the death of a borrower, in which case transfer will be considered according to Part 10.

C Junior Liens

When a transferee assumes:

- the transferor's entire FSA debt, SED's must concur with the proposed transfer of any junior liens
- less than the full amount of FSA's debt, junior liens to the assumed debt are prohibited.

D Partial Transfer and Assumption

A borrower may transfer FSA indebtedness in whole notes only. The borrower and transferee may not split an individual loan. The borrower must demonstrate that a proposed partial sale is in the best financial interest of the operation and that the sale will not adversely affect the security and/or Government's financial interest.

The compensation received by the transferor and applied to the transferor's FSA debt may not be less than the market value of the property sold.

When the value of the property exceeds the debt to be assumed, the transferee may pay with cash on hand or obtained through credit. FSA applies such cash payment to the transferor's indebtedness according to Part 5.

246 Transfer of Security and Assumption of Debt (Continued)**E Determining the Assumption Amount**

[7 CFR 765.403(d)] **The transferee must assume the lesser of:**

- (1) The outstanding balance of the transferor's loan; or**
- (2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.**

F Determining the Value of the Security Property

The value of the security property must be determined before approving a transfer and assumption. Appraisals will be conducted according to 1-FLP, Part 6. The appraisal determines the value of the security and the amount of the indebtedness that may be assumed.

G Forgiveness of Youth Loan Debt

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this section as part of its eligibility. The criteria for determining if the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR section 766.104(a)(1). Any borrower who met those criteria when the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to the present regulations and can preclude the applicant from receiving a loan from FSA.

247 Types of Transfers and Assumptions**A New Eligible Borrower**

[7 CFR 765.403(a)] **The Agency may approve transfers of security with assumption of Agency debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:**

- (1) The transferee meets all loan and security requirements in part 764 (3-FLP) of this chapter for the type of loan being assumed; and**
- (2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 (1-FLP) of this chapter.**

--Transfer of security and assumption of debt for a new eligible borrower is completed at new rates and terms. If the debt for the existing borrower is delinquent, the delinquency is resolved when the transfer and assumption at new rates and terms is completed.--

247 Types of Transfers and Assumptions (Continued)

A New Eligible Borrower (Continued)

--[7 CFR 765.403(f)] Transferees must submit a complete application in accordance with 7 CFR 764.51 (3-FLP subparagraph 42 A).--

Before a sale, the borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process.

The completed documents must include, as applicable:

- complete application by the proposed transferee for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- appraisal from the transferor's file, with a copy to the transferee's file
- transferring "deed" or "bill of sale" from the transferor to the transferee
- FSA-2025
- FSA-2061
- FSA-2080, if applicable
- FSA-2476
- FSA-2489
- additional documents such as UCC1's, FSA-2028's, and mortgages as required.

B Adding a New Member to a Borrower Entity

To add new entity members to an existing borrower entity, the proposed individual entity members and the entity as a whole must meet the eligibility requirements as defined in 3-FLP, Part 4. Adding a new member to a borrower entity is completed at same rates and terms.

The borrower and the proposed entity member should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- complete application by the proposed new entity for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal

247 Types of Transfers and Assumptions (Continued)**B Adding a New Member to a Borrower Entity (Continued)**

- FSA-2025
- FSA-2489 or FSA-2026, or both
- new FSA-2026's, if needed
- FSA-2476, if applicable
- security instruments, as appropriate.

The transaction will be completed under subparagraph 248 C.

C Withdrawing a Member and the Remaining Members Are Not Jointly Liable

If a personally liable party withdraws from an entity and all remaining entity members are not jointly liable for the debt, FSA will process the transfer and assumption according to this part. Accordingly, all transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If all remaining entity members are jointly liable, the withdrawal is processed according to Part 8.

The borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- FBP, for the new entity demonstrating the repayment ability and management capacity of the remaining borrower entity
- updated farm assessment
- documents identifying the reason for the withdrawal such as a death certificate, a divorce decree, or a change in the composition of a corporation or partnership
- documentation of the transfer of the property such as a “deed” or “bill of sale” to the remaining members of the borrower entity
- narrative by the authorized agency official describing and recommending the proposal
- FSA-2025
- FSA-2489, FSA-2026, or both
- FSA-2080, if applicable
- FSA-2476, if applicable
- new security instruments, as appropriate.

247 Types of Transfers and Assumptions (Continued)

D Adding New Entity

When an existing individual borrower forms an entity, the borrower should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process.

Example 1: Existing individual borrower has created a sole proprietor LLC. Borrower will now operate the farm under this new LLC.

Example 2: Existing sole individual borrower is requesting to add his son as a co-borrower. The primary borrower (father) will remain the same, but there will now be 2 individual co-borrowers. As a result, the operation will be considered an entity as the definition within handbook 4-FLP consists of an exception to include any arrangement in which more than 1 person is party to the debt

The completed documents may include:

- FSA-2001
- narrative by the authorized agency official describing the proposal
- FBP demonstrating the repayment ability
- new security instruments, as appropriate
- FSA-2489, FSA-2026, or both
- FSA-2476, if applicable.

The transaction will be completed under subparagraph 248 C.

E NP Applicant

FSA may allow NP assistance only when it is in FSA's best financial interest.

FSA allows NP assistance only to accommodate enhanced collection potential for outstanding loans.

FSA application requirements for a NP transfer and assumption are the same as for a program eligible applicant, except FSA does not need to determine the borrower's eligibility. An applicant, including all entity members, for NP assistance will only be approved if the applicant, including all entity members, meets the requirements as provided in subparagraph 248 E.

*--F Security Requirements

[7 CFR 765.403(g)] All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed (3-FLP Part 5).--*

248 Assumption Terms

A Basic Policy

Loans will generally be assumed on new rates and terms. A loan may only be assumed on the same rates and terms according to paragraph C.

B Eligible Applicant - New Rates and Terms

[7 CFR 765.403(e)] The interest rate and loan term will be determined according to rates and terms established in part 764 (3-FLP) of this chapter for the type of loan being assumed.

C Eligible Applicant - Same Rates and Terms

A transfer and assumption of all debt and security processed at the same rates and terms does not require an appraisal.

[7 CFR 765.402] An eligible applicant may assume an Agency loan under the same rates and terms as the original note if:

(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;

***--(b) A relative of the borrower or an entity comprised solely of relatives of the--* borrower assumes the debt along with the original borrower;**

Note: Includes an existing individual borrower that has created a sole proprietor entity and will now operate the farm under the new entity.

(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;

***--(d) A new entity consisting of the same members as the borrower entity buys the--* borrower entity and continues to operate the farm in accordance with loan requirements; or**

*** * ***

248 Assumption Terms (Continued)

C Eligible Applicant - Same Rates and Terms (Continued)

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

***--(1) An individual borrower, the transferee must be a relative of the original borrower or an entity in which the entity members are comprised solely of relatives--* of the original borrower.**

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when FSA made the original loan or remain an entity comprised solely of people who were original entity members, partners or joint operators when the entity received the original loan.

(3) A corporation, including limited liability company, cooperative, or other legal business organization, the transferee must:

(i) Have been a corporate stockholder, cooperative member, or other member of a legal business organization, when the Agency made the original loan or will be an entity comprised solely of entity members who were entity members when the entity--* received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or entity members in the transferee.

***--D Application Requirements**

[7 CFR 765.402(f)] Transferees must submit a complete application in accordance with 7 CFR 764.51 of this chapter (3-FLP. subparagraph 42 A).

FSA application requirements for transfer and assumption at same rates and terms are the same as an eligible applicant as described in subparagraph 247 A.

E Security

[7 CFR 765.402(g)] All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed (3-FLP Part 5).--*

248 Assumption Terms (Continued)

F Transfer and Assumption of Types of Loans No Longer Made by FSA

[7 CFR 765.403(c)] Real estate loan types the Agency no longer makes (i.e. EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter (3-FLP) and the property proposed for transfer meets program requirements.

G Transfer of Security and Assumption of Debt by Ineligible Borrowers

See 1-FLP, Part 2 for levels of authority for approval of NP loans. SED has unlimited approval authority for NP loans. FSA approves NP loans on FSA-2025. Applications for NP assistance that cannot be approved will be denied by sending Exhibit 35 to the applicant. Applicants have 15 calendar days to request a review of the decision by the next level supervisor within FSA.

[7 CFR 765.404(a)] (1) The Agency will allow the transfer of real estate and chattel security property to applicants who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.

(2) The Agency will reclassify the assumed loan as a Non-program loan.

[7 CFR 765.404(b)] Transferees must:

(1) Provide written documentation verifying their credit worthiness and debt repayment ability;

The authorized agency official will use guidance in 3-FLP to determine if the NP applicant is credit worthy or has not acted in good faith. If the applicant is not credit worthy or has not acted in good faith, the NP assistance will be denied.

(2) Not have received debt forgiveness from the Agency;

The authorized agency official will review agency records including past debts history in DLS/ADPS to determine if the applicant has had prior debt forgiveness. NP assistance will not be approved if the applicant caused the Agency a loss, unless specifically exempted in 3-FLP, subparagraph 65 A.

(3) Not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718; and

(4) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation according to 7 CFR part 718.

248 Assumption Terms (Continued)

G Transfer of Security and Assumption of Debt by Ineligible Borrowers (Continued)

[7 CFR 765.404(c)] The transferee must assume the total outstanding Agency debt or if the value of the property is less than the entire amount of debt, an amount equal to the market value of the security less any prior liens. The total outstanding Agency debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's market value.

[7 CFR 765.404(d)] Non-program transferees must make a down payment to the Agency of not less than 10 percent of the lesser of the market value or unpaid debt.

[7 CFR 765.404(e)] The interest rate will be the Non-program interest rate in effect at the time of loan approval.

See 1-FLP, Exhibit 17 for NP interest rates.

[7 CFR 765.404(f)] (1) For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the applicant's repayment ability.

(2) For a Non-program loan secured by chattel property only, the Agency schedules repayment in five years or less, based on the applicant's repayment ability.

***--H Security Requirement**

[7 CFR 765.404(g)] All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed (3-FLP Part 5).--*

248 Assumption Terms (Continued)

I Modification of Security Instruments

Covenants in promissory notes and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FLP operation requirements, and consent to junior lien encumbrance will be deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and the approval official initialing the changes.

J Transfer from a NP Borrower

[7 CFR 765.403(b)] Applicants eligible for FO loans under part 764 (3-FLP) of this chapter may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as an FO loan.

When a NP borrower proposes to sell security property, the authorized agency official may approve assumption of indebtedness on program or NP terms based on the eligibility of the transferee.

FSA does not release NP borrowers of liability.

249 Reviewing Transfer Request

A Reviewing Required Documents

The authorized agency official will review the transfer request to assure that the documents required are present and complete according to paragraph 247. See 1-FLP, Part 2 for transfer and assumption approval authority.

If the required documents are incomplete or additional information is needed, FSA will request the transferor and the transferee to provide the additional information, as appropriate. The authorized agency official must inform the transferor and the transferee that FSA will not process the transfer request until the application is complete.

B Insurance Requirements

A transferee must obtain insurance according to 3-FLP, Part 6.

C Title Clearance

A transferee must obtain title clearance and legal services for closing a transfer according to 3-FLP, Part 16. FSA does not require title clearance and legal services when the interest of a liable party on the note is conveyed to another liable party who assumes the total indebtedness at same rates and terms.

D Reviewing Loan Application

The authorized agency official will review the application according to this Part and 3-FLP, Part 3.

E Approving the Transfer and Assumption

Approval officials may approve transfer and assumption when the FSA indebtedness, after the transaction, does not exceed their approval authority for the type of loan or a combination of types of loans according to 1-FLP, subparagraph 29 D. When more than 1 type of loan is involved in the transaction, the loan approval authority of approval official will be the highest combination amount authorized in 1-FLP, subparagraph 29 D for any loan types involved. SED may redelegate their authority to approve transfer and assumption to FLC, FLS, or DD.

The authorized agency official may approve the transfer and assumption by executing the electronic signature command in the credit presentation section of FBP. Under the electronic signature, the approval official may designate the FLM, SFLO, or FLO, the responsibility to execute the required documents to complete the transaction.

The authorized agency official must include in the physical case file, all components of FBP *--that require signatures as provided in the FPB User Guide, available at https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index.--*

Part 11 Borrowers Entering the Armed Forces

281 General

A Protections for Borrowers on Active Duty

[7 CFR 765.161] (a) *Protections for borrowers on active duty.* The Servicemembers Civil Relief Act (Public Law 108-189) and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (Public Law 108-375) provide certain loan servicing protections for military borrowers. The Agency will apply those loan servicing protections to applicable Farm Loan borrowers.

(1) The benefits and protections of the Servicemembers Civil Relief Act apply to borrowers on active duty at all times.

(2) The requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 apply during a time of a war or national emergency as declared by the President or Congress.

*--Servicing officials should check 50 U.S.C 1621 for the annual status of Proclamation 7463 at [50 USC 1621: Declaration of national emergency by President; publication in Federal Register; effect on other laws; superseding legislation \(house.gov\)](#). Proclamation 7463 was issued by President Bush and has been renewed each year since its inception in 2001 to maintain a declared national emergency due to the continuous threat of terrorism.

Note: When navigating the above website, select the “notes” tab as this will display the current and past continuations of the proclamation.--*

(b) *Eligibility for National Guard members and military reservists.* Borrowers who are National Guard members or military reservists will be eligible for the protections covered by this section, as specified in paragraphs (b)(1) and (2) of this section:

(1) National Guard members must be on duty for at least 30 consecutive calendar days.

(2) Military reservists are eligible from the date orders are received to report for active duty.

(c) *Entity eligibility.* National Guard members and military reservists on active duty and any operating entity owned solely by the active duty borrower may be considered for protections specified in paragraph (a) of this section.

282 Servicemembers Civil Relief Act of 2003**A Interest Rate**

Subject to paragraph 283, FSA may not charge interest exceeding 6 percent on existing FLP debt if the borrower enters full-time active military duty.

--Upon learning that a borrower enters active duty, the authorized agency official will send Exhibit 51 to the borrower stating that the interest rate on their existing FSA loans will not exceed 6 percent while the borrower is on active military duty. The borrower will submit-- written notice and a copy of the military orders calling the service member to military service and any orders further extending military service. The interest rate change will be effective with the date the military service started (as verified in the military orders submitted by the borrower).

If the borrower's interest rate is already lower than the 6 percent rate, the borrower will be notified that FSA will not increase the borrower's interest rate.

In times of war or national emergency, active duty members are eligible to have their FSA interest and payments deferred on existing loans. Exhibit 52 may be used as is or a similar notification letter may be used to address the borrower's specific circumstances. See paragraph 283 for additional details.

Adjustments to the interest rate based on military service must be processed by the RD Business Center, FLB only; therefore, the authorized agency official should send a memorandum to the RD Business Center, FLB that confirms the military service of the borrower and the effective date of that service.

--In addition, the authorized agency official will process applicable changes to MIDAS-- Business Partner to change the borrower's address to the address at which FSA may contact the borrower while on active military duty or the address of a designated power of attorney.

B Penalty for Violations

Violations of the Servicemembers Civil Relief Act of 2003 are misdemeanors. Knowingly violating the provisions of the Servicemembers Civil Relief Act of 2003 is punishable by fines, imprisonment for not more than 1 year, or both.

282 Servicemembers Civil Relief Act of 2003 (Continued)**J Treasury and Internal Administrative Offsets**

Treasury and internal administrative offsets will be discontinued once a borrower is ordered to report for induction or military service, and any payments received as a result of offset after the date the borrower was called to active duty will be refunded. Treasury offsets shall be suspended by State Offices by deleting affected loans each quarter on the Borrowers Eligible for TOP Offset Certified Screen or the Borrowers Eligible for TOP Offset Screen. Co-borrowers associated with this debt must also be deleted in an effort to reduce hardship on the family. See applicable FI directives for further information. The suspension will begin when the borrower is ordered to report for induction or military service and continues during the period of active duty and 3 months thereafter.

Note: Use delete code “07”, “Borrower was indebted to FSA before entering full time active duty military service and the account is being serviced according to the National Defense Act.”

K Treasury Cross-Servicing

Borrowers and co-borrowers called to active military duty similarly shall not be referred for cross-servicing.

Note: If the borrower has been referred to Treasury for cross-servicing, State Offices must *--FAX FSA-2722's with code “07” in item 14A to the RD Business Center, FLB.--*
See 1-FLP, subparagraph 5 B.

L Canceling the 6 Percent Interest Rate

If FSA decreased the borrower's interest rate, as soon as the authorized agency official verifies that a borrower is no longer on active duty, the authorized agency official shall send a *--letter to the RD Business Center, FLB. This letter instructs the RD Business Center, FLB--* to terminate the 6 percent interest rate and revert to the rate in existence before the assignment of the 6 percent rate.

283 Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005

A Suspension of Interest Accrual and Payments

During a time of war or national emergency as declared by the President or Congress, the FLP payments on existing loans of borrowers on active duty will be suspended and interest will not accrue beginning on October 28, 2004, or the date in which they enter active duty, whichever is later. If any regular payments have been made since the date noted, October 28, 2004, the borrower should be contacted, and the payment will be refunded at their request. For **existing** loans, all payments due, as well as the due dates of all payments due during and after such active duty will be suspended or deferred for a period of time equal to the time the borrower is on active duty during war or a national emergency.

Example: A borrower with an OL (matures January 15, 2019, annual payment on January 1) and a FO (matures February 15, 2040, annual payment on January 1) enters active duty on October 1, 2016, and is discharged on April 1, 2017 (182 days).

- Interest will not accrue from October 1, 2016, to April 1, 2017.
- The payments on both loans will be due on September 30 each year (April 1, 2017 + 182 days = September 30).

***--Notes:** Suspension of payments and interest accrual only applies to loans that were outstanding at the time a borrower enters active duty. This does not apply to any loans obtained by the borrower while in active duty status.--*

Funds from the sale of basic security must be applied as an extra payment according to subparagraph 63 A.

When information is received by the County Office that a borrower has entered or is entering active duty, the County Office will send:

- the borrower, Exhibit 52, informing them that for **existing** loans, payments will be suspended and interest will not accrue during time of active duty
- the RD Business Center, FLB a courtesy copy by FAX (1-FLP, subparagraph 5 B).

**283 Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005
(Continued)**

B Reinstating Annual Payments and Interest Accrual

The payment suspension and interest nonaccrual status will end on the earlier of the date the:

- war or national emergency is over
- borrower is released from active duty.

When information is received that the war or national emergency is over, or the borrower has
--been released from active duty, the County Office will:--

- send the borrower Exhibit 53, informing them that suspension and nonaccrual status has ended, the payment deferral period has started, and the expected due date of the post-deferral payment
- send the RD Business Center, FLB a courtesy copy by FAX
- attach a copy of Exhibit 53 to the impacted promissory notes.

Note: Pre-military service delinquent payments will also be deferred on Exhibit 53 for a period equal to the length of service. Any delinquency remaining at the end of the deferral period will be serviced under 5-FLP, Part 3.

--C PLS, DBSA, and DSA--

When a borrower applies for PLS, it will be treated like a normal servicing application under 5-FLP, Part 3 and will be entered into eDALR\$ accordingly without any changes to the servicing term available. If eDALR\$ generates a feasible plan, provide the offer to the borrower as normal.

--For instances where a feasible plan cannot be found or the borrower requests DBSA or DSA, State Offices will contact LSPMD for assistance.--

D Acceleration or Foreclosure

FSA will not accelerate or foreclose on the property of a borrower in the armed forces during the borrower's tenure of service and for the term of their deferral, thereafter.

Notes: If the account has been referred to DOJ, notify DOJ that the borrower is entitled to relief under the Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (subparagraph 281 A).

Notify DOJ once information is received that the war or national emergency is over, or if the borrower has been released from active duty.

284-290 (Reserved)

Reports, Forms, Abbreviations, and Delegations of Authority

Reports

None.

Forms

This table lists all forms referenced in this handbook.

| Form Number | Title | Display Reference | Paragraph Reference |
|--------------------|---|--------------------------|----------------------------|
| AD-1026 | Highly Erodible Land Conservation and Wetland Conservation Certification | | 116 |
| CCC-679 | Lien Waiver | | 118 |
| FSA-2002 | Three-Year Financial History | | Ex. 20 |
| FSA-2003 | Three-Year Production History | | Ex. 20 |
| FSA-2025 | Notification of Approval Terms and Conditions and Borrower Responsibilities | | 247-249 |
| FSA-2026 | Promissory Note | | 3, 247, Ex. 2, 20 |
| FSA-2028 | Security Agreement | | Text, Ex. 2, 4 |
| FSA-2029 | Mortgage/Deed of Trust | | 3 |
| FSA-2037 | Farm Business Plan – Balance Sheet | | 116, Ex. 20 |
| FSA-2038 | Farm Business Plan – Income and Expenses | | 116, Ex. 20 |
| FSA-2040 | Agreement for the Use of Proceeds and Security | | 20, 162, 181, Ex. 29 |
| FSA-2044 | Assignment of Income | | 281 |
| FSA-2045 | Record of the Disposition of FSA Security/Release of Proceeds | | 146, 162, 166, 181 |
| FSA-2061 | Application for Partial Release or Consent | | Text |
| FSA-2062 | Application for Subordination to a Commercial Lender | | 116 |
| FSA-2065 | Annual Statement of Loan Account | | 64, Ex. 25.5 |
| FSA-2071 | Transmittal of Document | | 65 |
| FSA-2072 | Cancellation of U.S. Treasury Check and/or Obligation | | 61 |
| FSA-2080 | Release From Personal Liability | | 231, 247, 251 |

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

| Form Number | Title | Display Reference | Paragraph Reference |
|---------------|--|-------------------|---------------------|
| FSA-2420 | Intent to ACL for Failure to Provide Information or to Graduate | | 19.5 |
| FSA-2421 | Intent to Convert Program Loans to Non-Program | | 19.5 |
| FSA-2422 | Notice of Non-Program Rates and Terms | | 19.5 |
| FSA-2425 | Request to Cancel Undisbursed Loan Funds | | 61 |
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| FSA-2455 | Subordination by the Government | | 120 |
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| FSA-2476 | Transfer of Real Estate Security | | 247 |
| FSA-2489 | Assumption Agreement | | 247 |
| FSA-2490 | Deceased Borrower Report | | 266 |
| FSA-2495 | Application to Move Security Property | | 291 |
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| FSA-2551 | Request for Non-monetary Default Determination | | 100, 181 |
| FSA-2585 | Acquisition or Abandonment of Secured Property | | Ex. 25.5 |
| FSA-2722 | Update to TOP and Cross-Servicing Information | | 282 |
| IRS 1098 | Mortgage Interest Statement | | 61, Ex. 25.5 |
| IRS 1099-A | Acquisition or Abandonment of Secured Property | | Ex. 25.5 |
| IRS 1099-C | Cancellation of Debt | | Ex. 25.5 |
| IRS 1099-G | Certain Government Payments | | Ex. 25.5 |
| IRS 1099-INT | Interest Income | | Ex. 25.5 |
| IRS 1099-MISC | Miscellaneous Income | | Ex. 25.5 |
| IRS W-9 | Request for Taxpayer Identification Number and Certification | | 68 |
| UCC1 | National Financing Statement | | 247, 291, Ex. 2 |
| RD-3550-28 | Authorization Agreement for Preauthorized Payments | | 66, 67 |

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|------------------------------|---|-----------------------|
| AI | account information | 65 |
| APCD | type of applicant code | Ex. 25.5 |
| CB | Collections Branch | 66, 67 |
| CFS | Central Filing System | 102 |
| CL | conservation loan | Text, Ex. 2 |
| CNC | currently not collectible | Ex. 25.5 |
| CONACT | Consolidated Farm and Rural Development Act | 1, Ex. 2 |
| CSB | Community Servicing Branch | 67 |
| DBSA | Distressed Borrower Set-Aside | 146, 283 |
| DSA | Disaster Set-Aside | 146, 283 |
| ECM | Enterprise Content Management | 61 |
| FLB | Farm Loan Branch | Text, Ex. 51-53 |
| GL | guide letter | 2 |
| NP | nonprogram loan | Text |
| PAD | Preauthorized Debit | 66, 67 |
| PF | Payoff Balance | 65 |
| PIN | personal ID number | 63 |
| PLS | primary loan servicing | 61, 98, 146, 197, 283 |
| PML | Pay My Loan | 61 |
| PRB | Program Reports Branch | Ex. 25.5 |
| RC | report code | Text, Ex. 25.5 |
| SAA | Shared Appreciation Agreement | 117, Ex. 2 |
| SAM | System for Award Management | 7 |
| ST | softwood timber loan | 16, 196, 246 |
| SW | soil and water | 19 |
| TDCLCR | Term Debt and Capital Lease Coverage Ratio | 21, 32 |
| VRU | Voice Response System | 63 |

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Redelegations of Authority

SED's may redelegate their authority to approve:

- subordinations or releasing and refiling lien instruments instead of subordination to FLC, FLS, or DD
- surface leases for farm property no longer in use (such as old barns) or for nonfarm purposes (such as wind turbines, communication towers, or other similar installations) to FLC, FLS, or DD
- severance agreement to FLC, FLS, or DD
- transfer and assumption to FLC, FLS, or DD.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**CONACT or CONACT Property**

CONACT or CONACT property is property that secures a loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 USC 1921 et seq.).

* * *

Cooperative

Cooperative is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

Corporation

Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

Debt Settlement

Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.

Debt Service Margin

Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.

* * *

Deed

Deed is a signed instrument legally transferring real estate to another.

Default

Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

Delinquent Borrower

Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Direct Loan

Direct loan is a loan funded and serviced by the Agency as the lender.

Embedded Entity

Embedded Entity means entity that has a direct or indirect interest, as a stockholder, member, beneficiary or otherwise, in an entity.

Entity

An **entity** means a corporation, partnership, joint operation, cooperative, limited liability company or trust.

Exception: For Parts 8 and 9, an **entity** is defined as a husband and wife, partnership, corporation, or any other arrangement in which more than 1 person is party to the debt.

Entity Member

An **entity member** means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.

Essential Family Living and Farm Operating Expenses

***--Essential family living and farm operating expenses** means those expenses that:

- (i) Are those that are basic, crucial, and indispensable.
- (ii) Are determined by the Agency based on the following considerations:
 - (A) The specific borrower's operation;
 - (B) What is typical for that type of operation in the area; and
 - (C) What is an efficient method of production considering the borrower's resources.
- (iii) Include, but are not limited to, essential: Household operating expenses; food,--* including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials, and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property, and crop insurance; auto and truck expenses; and utility payments.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Family Living Expenses

Family living expenses are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

Family Members

Family members are the immediate members of the family residing in the same household with the borrower, or, in the case of an entity, with the operator.

Farm

Farm is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term “farm” also includes the term “ranch.” It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

FLP’s

Farm Loan Programs are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Foreclosed

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Good Faith

Good faith is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and *--adheres to all written agreements with the Agency including, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. If the borrower’s inability to adhere to all agreements is due to circumstances beyond the borrower’s control, the Agency will consider the borrower to have acted in good faith. In addition, the Agency may also consider fraud, waste, or conversion actions when determining if an applicant or borrower has acted in good faith. Such determinations that are substantiated by a legal opinion from OGC constitute an independent basis for determinations of not having acted in good faith.

Note: A lack of good faith determination must be made for each decision. See 3-FLP subparagraph 65 A.--*

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Graduation

Graduation means the payment in full of all direct FLP loans, except for CLs, made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

Guaranteed Loan

Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

Hazard Insurance

Hazard insurance is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

Initial Loan

Initial loan is the first loan of its type processed by FSA. A borrower having one OL and one FO has 2 initial loans, because they are different loan types.

Joint Operation

Joint operation is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Junior Lien

A **junior lien** is a lien that is subordinate to a prior lien on the same item of security.

Lien

Lien is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Limited Resource Interest Rate

Limited resource interest rate is an interest rate normally below the Agency's regular interest rate, which is available to applicants unable to develop a feasible plan at regular rates and are requesting:

*--(i) FO or OL loan assistance under part 764 of this title; or

(ii) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.--*

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**Liquidation**

Liquidation is the act of selling security for recovery of amounts owed to the Agency or lender.

Liquidation occurs when no further assistance will be given and includes instituting civil suit against a borrower to recover security or Economic Opportunity property or against third parties to recover security or its value or to recover amounts owed to FSA; filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings.

Loan Costs

Loan costs are administrative costs and/or protective advances that have been charged back to a borrower's account according to the promissory note, other security instrument, or FSA regulation.

Note: Most loan costs are tied to specific loans; however, PLAS will only "Add on" this cost if the loan fund code is that of farm ownership or soil and water. If the loan fund code is for operating, emergency, or other loan types, the cost item is established under a separate loan number with the same fund code as the original loan. This loan numbering system generally starts with loan 99 and works backwards (98, 97, 96) with each loan cost paid. The interest rate of the loan cost will be the same as the original loan; however, the loan account is immediately due and payable and will reflect a final year of the loan the same as the year the cost was paid.

Loan Agreement

Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

Loan Servicing Programs

***--Loan servicing programs include any primary loan servicing program, conservation--* contract, current market value buyout, and homestead protection.**

Market Value

Market value is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

Mortgage

Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term "mortgage" also includes the terms "deed of trust" and "security agreement."

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Net Recovery Value of Agency Security

Net recovery value of Agency security is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.

Net Recovery Value of Non-Essential Assets

Net recovery value of non-essential assets is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

Non-Capitalized Interest

Non-capitalized interest is accrued interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

Non-Essential Assets

***--Non-essential assets mean assets in which the borrower has an ownership interest, that:**

(i) Do not contribute to:

(A) Income to pay essential family living expenses, or

(B) The farming operation; and

(ii) Are not exempt from judgment creditors or in a bankruptcy action.

For direct loans, working capital reserves and savings that do not exceed the greater of \$30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expenses, to be realized in the next operating cycle, are considered essential assets.--*

Non-Monetary Default

Non-monetary default means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements, or loan.

Note: Filing for bankruptcy and failing to complete the required borrower training are not considered non-monetary defaults. See 3-FLP, subparagraph 474 C.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Nonprogram Loan

Non-program loan is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

Normal Income Security

Normal income security is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.

Normal income security does not include any equipment (including fixtures in States that have adopted UCC) or foundation herd or flock that is the basis of the farming operation and is the basic security for an FSA loan.

Note

A note is written evidence of indebtedness, such as a bond or FSA-2026.

Operator

Operator is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.

Note: Operators include borrowers who obtained individual loans and later formed an operating entity with a relative. If the member with the individual loan owns at least 50 percent of the operating entity, the individual meets the definition of operator for loan servicing purposes.

Example: An individual obtains an FO and later forms an operating-only entity with a relative and obtains an OL for the same operation. The individual then needs servicing for the individual FO. In these cases, if the individual owns at least 50 percent of the operating entity, the definition of operation is met.

Borrowers who obtained individual loans and later formed an operating-only entity with a non-relative must have the entity assume the debt to be eligible for loan servicing, as provided in 4-FLP, subparagraph 248 C. However, transfer of the collateral to the entity is not required.

In either of these circumstances the operating entity must have their own unique tax ID number.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Partnership

Partnership is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

***--Personal Property**

Personal property is property that may consist of but is not limited to, crops, livestock, aquaculture species, farm equipment, inventory, accounts, contract rights, general intangibles, and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments. It is property that is not real estate, and the term is generally used to replace references to the term “chattel”.

Primary Loan Servicing Programs

Primary loan servicing programs means:

- (i) Loan consolidation and rescheduling, or reamortization;**
- (ii) Interest rate reduction, including use of the limited resource rate program;**
- (iii) Deferral;**
- (iv) Write-down of the principal or accumulated interest; or**
- (v) Any combination of paragraphs (i) through (iv).--***

Prior Lien

A prior lien is a lien that is recorded in front of, or is otherwise superior to, an FSA lien on the same security. The individual or entity that has filed this lien is the prior lienholder.

Prospectus

Prospectus consists of a transmittal letter, a current balance sheet, and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific FSA direct loan applicants and borrowers.

Protective Advance

A protective advance is an advance made by the Agency or a lender to protect or preserve the collateral itself from loss or deterioration. A protective advance may be used for purposes, including but not limited to the following:

- delinquent taxes
- annual assessments
- ground rents
- hazard or flood insurance premiums against or affecting the collateral
- harvesting costs
- other expenses needed for emergency measures to protect the collateral.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Related By Blood or Marriage**

Related by blood or marriage is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, grandparent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, nephew, niece, cousin, grandson, granddaughter, or the spouses of any of those individuals. “Related by blood or marriage” is used for consistency with a requirement in the CONTACT. It has the same meaning as the word “relative” for the Farm Loan Programs regulations in this Chapter.--*

Relative

***--Relative** means the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of any of those individuals. Relative has the same meaning as the term “related by blood or marriage” for the Farm Loan Programs regulations in this Chapter.--*

Security

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or “security property” will be considered a reference to the term “security.”

Security Instrument

Security instrument includes any document given the Agency a security interest on real or personal property.

Shared Appreciation Agreement

Shared Appreciation Agreement is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower on the appropriate Agency form that requires the borrower who has received a write-down on a direct or guaranteed loan to repay the Agency or the lender some or all of the write-down received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

Subordination

Subordination is a creditor’s temporary relinquishment of all or a portion of its lien priority to another party providing the other party with a priority lien on the collateral.

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**Subsequent Loan**

A subsequent loan is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

Transfer and Assumption

Transfer and assumption is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

Trust

Trust is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

Unauthorized Disposition Of Chattel Security

Unauthorized disposition of chattel security is the sale of chattel security not authorized by FSA before the sale.

VRU

VRU is a secure automated system that requires a PIN number, and guides borrowers in obtaining the status of their loans at any time. If further loan information is needed, such as a payoff amount, borrowers are directed to call the FSA office.

Request for Operational Review Information

--The following is a sample letter the authorized agency official should use to request-- **information from borrower.** Go to <https://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 20”.

4-FLP, Exhibit 20
(09-25-24)

(Use Agency Letterhead format with local return address)

REQUEST FOR OPERATIONAL REVIEW INFORMATION

Dear:

At the time you obtained your loan from the Farm Service Agency (FSA), you were unable to get the credit you needed from conventional lenders. The objective of the FSA credit program is to provide you with temporary credit assistance. Once you become financially able to obtain credit from conventional lenders, you are required to refinance and pay off your FSA loan (also called “Graduation”).

Agency policy requires that we complete an operational review to determine your financial status and the progress you are making at least biennially. As you progress financially, you may become eligible for release of FSA security. More frequent reviews are required when you obtain a subsequent FSA loan or subordination, become financially distressed or delinquent, or have loans with deferred payments. In order to complete an accurate review, we ask you to provide the following information to our office.

- 1) Actual financial performance for the past year (a copy of your last year’s tax return or last year’s income and expense records is acceptable).
- 2) Current balance sheet,
- 3) Projected income/expense for next year (a copy of your current year’s is also acceptable)
- 4) Annual crop and livestock production yields
- 5) Review and update, if needed, of assessment (copy attached). Please pencil in comments or changes.

Enclosed are forms you can use to provide us with the requested information, or you can provide us with copies of the actual records as indicated above. Please provide this information to our office by

(1st mailing) [insert date 30 calendar days from the letter].

(2nd mailing) [insert date 15 calendar days from the letter].

If you have made sufficient progress, the information or other information in your case file may be provided to lenders to determine if they can refinance your Farm Loan Programs debt.

(Insert the following paragraph only into 2nd mailing:)

Failure to submit the required documents is a violation of your loan agreement. You do not want to violate your loan agreement since this can impact any future request for Farm Loan Programs assistance. In addition, (choose one)

FSA may send you FSA-2420 “Intent to Accelerate for Failure to Provide Information or to Graduate.”

FSA may send you FSA-2421 “Intent to Convert Program Loans to Non-Program”.

(end of options)

If you have questions, or need help putting the information together, please contact our office.

Sincerely,

(Name)
(Title)

--*

Addendum to the Promissory Note or Assumption Agreement Converting to Non-Program Rates and Terms

If a loan is converted to NP rates and terms for failure to graduate, this addendum will be completed and attached to the original debt instrument.

Exhibit 24.5 is available in a fillable format. Go to <https://inside.fsa.usda.gov/>. CLICK **“Employee Forms”** at the top of the page and CLICK **“Find Current Forms Using Our Form Number Search”**. For “Form Number”, ENTER **“4-FLP Exhibit 24.5”**.

| | | |
|---|-----------|-------------------|
| 4-FLP, Exhibit 24.5 (09-25-24) | | |
| ADDENDUM TO THE PROMISSORY NOTE OR ASSUMPTION AGREEMENT CONVERTING TO NON-PROGRAM RATES AND TERMS (only for Notes or Agreements signed before August 19, 2024) | | |
| <p>THIS ADDENDUM TO PROMISSORY NOTE OR ASSUMPTION AGREEMENT (“Addendum”) is hereby made a part of the Promissory Note or Assumption Agreement, including all renewals, extensions, modifications and substitutions thereof, (“Note”) Fund Code _____ Loan Number _____ dated _____, from _____ (“Borrower”) payable to the order of the United States of America acting through the Farm Service Agency, United States Department of Agriculture (“Government”), or its assigns in the principal amount of _____ dollars \$ _____.</p> <p>Due to the Borrower(s) failure to comply with the graduation requirements of the Government, the Borrower(s) request that the Government convert the Note to Non-Program (NP) rate and terms, and the Government’s determination that conversion is in the best interest of the Government, this addendum amends the above-described Note to set forth the terms and conditions for conversion of the Note to NP rates and terms.</p> <p>Interest on the unpaid principal balance of _____ dollars \$ _____, shall now be charged at the NP RATE of _____ percent _____ % per annum from the date of this Addendum.</p> <p>Principal and interest shall be paid in _____ equal installment amounts of \$ _____ due on or before the original due dates described in the Note until the principal and interest are fully paid. The maturity date is; _____ (date).</p> <p>This Addendum does not modify any other conditions or terms of the Note except to the extent the same may be inconsistent with the amendments contained herein.</p> <p>The undersigned borrower and any cosigners hereby agree to pay the installments, as set forth on the Note as amended.</p> | | |
| Borrower Name | Signature | Date (MM/DD/YYYY) |
| | | |
| | | |
| | | |
| | | |

Loan Payment Reminder – Annual Installment Due Letter

The following is the 60-Day Annual Installment and Payment Due Reminder Letter. To obtain an electronic copy, go to <http://inside.fsa.usda.gov/>. CLICK “Employee Forms” at the top of the page and CLICK “Find Current Forms Using OUR Form Number Search”. For “Form Number” ENTER “4-FLP Exhibit 25.3”.

4-FLP, Exhibit 25.3
(09-25-24)

(Use Agency Letterhead with local return address)

**LOAN PAYMENT REMINDER
Annual Installment Due in 60 Days**

(Insert Date)

Borrower Name
Borrower Name Cont./Borrower Address
Borrower Address Cont.
City, State, Zip

LOAN PAYMENT REMINDER

The Farm Service Agency (FSA) is committed to supporting the success of America’s farmers and ranchers through farm loans. According to FSA records, you agreed to make annual payments on your farm loans. **This is a reminder that your loan(s) with installments are due in 60 days.** If you have other loans with different due dates, expect a separate letter. Immediate payable and due loan costs items if applicable are not included in this reminder. You can contact your local FSA Service Center for this information.

Ways to Pay:

- Pay Online:** FSA’s Pay My Loan (PML) feature, a self-service tool for individuals to make payments on your direct loans through Farmers.gov. **Primary borrowers** must create an account by visiting <https://www.farmers.gov/account>. Once an account is created, visit <https://www.farmers.gov/loans#login-view-farm-loanto> to submit your payments.
- Pre-Authorized Debit (PAD):** Customers have the option to set up recurring annual payment through pre-authorized debit. Contact your local FSA Service Center for more information.
- Pay by Phone or in the Office:** Contact your local FSA Service Center and provide payment information by phone, or a check or money order payable to “FARM SERVICE AGENCY” can be paid in person at any FSA Service Center convenient for you, or mailed to:

SERVICE CENTER NAME
SERVICE CENTER ADDRESS 1
SERVICE CENTER ADDRESS 2
CITY, STATE ZIP CODE
XXX-XXX-XXXX (PHONE)

If you have already submitted payment or have an assignment in place which will satisfy your full scheduled installment, please disregard this notice. To check the status of your account, call 1-888-518-4983 or login to your farmers.gov account to view your outstanding and historical loan information. If you have questions, please contact your local FSA farm loan official.

Below are your loan(s) with installments currently due in 60 days:

| 1. Loan Number | 2. Loan Date | 3. Loan Amount | 4. Payment Due Date | 5. Note Payment Amount | 6. Amount Due |
|-------------------|-----------------|-------------------|------------------------|---------------------------|------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Loan Payment Reminder – Annual Installment Due Letter (Continued)

4-FLP, Exhibit 25.3
(09-25-24)

Notice to Customers Presenting Checks

Payment by check authorizes us to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please contact your local FSA farm loan official.

Please note: Late payments will result in a reduction in the portion of the payment applied to principal.

| | | |
|-------------------------------------|---------------|-----------|
| 7A. Authorized Agency Official Name | 7B. Signature | 7C. Title |
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NEW: Customer Online FSA Account Access Now Available!

Customers now have access to a new dashboard through Farmers.gov that provides 24/7 access to farm loan information, making it easier for customers to track loan transactions and payments, while saving time on trips and telephone calls to the office. Agricultural producers with FSA active or past farm loans can now view the following information and features on farmers.gov:

- Check your loan balances and payment history.
- View your paid-in-full and restructured loans.
- Receive your applicable account alerts.
- Download your loan interest paid statement for the year, plus five years of historical data (Interest Paid Statement).
- Make a payment on your active loans through Pay My Loan.

Please note: A Level 2 USDA eAuthentication (eAuth) or Login.gov account is required to access your loan information online. To create a new account, here's how:

1. Verify Email: Confirm your email with your local FSA Service Center.
2. Login.gov: Create a Login.gov Account here: <https://secure.login.gov/>.
3. Link Account: Contact your local FSA Service Center to confirm your Login.gov is linked with your USDA customer record.

Please contact your local FSA Service Center or email usdafpacbc@servicenowservices.com for assistance.

Privacy Act Statement: A Privacy Act statement required by 5 U.S.C. §552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (<http://www.fms.treas.gov/otcnei/index/html>), or call toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.