

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

<b>Direct Loan Servicing – Debt Collection and Resolution 7-FLP</b>	<b>Amendment 14</b>
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**Approved by:** Deputy Administrator, Farm Loan Programs



**Amendment Transmittal**

**A Reason for Amendment**

Exhibit 2 has been amended to update the definitions of:

- Debt Forgiveness
- Feasible Plan
- Good Faith
- Non-Essential Assets
- Personal Property.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
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## Definitions of Terms Used in This Handbook

**Note: Definitions in bold are from 7 CFR 761.2 unless otherwise noted.**

### **Acceleration**

Acceleration is a demand by a lender for immediate repayment of the entire balance of a debt if the security instrument or promissory note is breached. When FSA accelerates an account, the entire loan balance is due in 30 calendar days.

### **Account – from 7 CFR 3.3**

Account means a record of transactions involving the debt, claim, or loan for a particular person or entity, including the name, address, taxpayer identification number, other information necessary to establish the person's or entity's identity, the balance, status, history of the debt, and program under which the debt or claim arose.

### **Adjustment**

Adjustment means the settlement of an FLP debt for less than the total amount owed. The adjusted amount is collected through a series of payments that are scheduled over time. An adjustment is not a final settlement until all scheduled payments have been made. After applying all payments pursuant to the adjustment agreement, any remaining balance is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

### **Administrative Charges – from 7 CFR 3.3**

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, and costs of selling collateral or property to satisfy the debt.

### **Administrative Offset – from 7 CFR 3.3**

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt. This definition is consistent with 31 U.S.C. 3701(a)(1).

### **Administrative Wage Garnishment (AWG)**

AWG is a garnishment program used to collect delinquent nontax Federal debt from borrowers who have private sector jobs. AWG is:

- authorized by DCIA
- administered by Treasury.

**Definitions of Terms Used in This Handbook (Continued)****Agency – for general purposes**

Agency is the Farm Service Agency (FSA), including its employees, State and area committee members, and any successor Agency.

**Agency – for DCIA purposes, from 7 CFR 3.3**

Agency means an agency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

**Agency Official**

Agency official is any employee within FSA. This term is used when the action does not require inherent or delegated authority.

**Alternative Repayment Agreement**

Alternative repayment agreement is a written repayment agreement accepted by both the borrower and the Agency as specified in §§ 3.42(b) (Parts 3 and 4) and 3.80 (Part 5) of this title. The agreement may allow for payments to be made from the borrower to the Agency as an alternative to collecting the payment amounts through administrative offset, or Federal salary offset.

**Approval Official**

Approval official is the specific employee who has the authority to approve or deny the described action.

**Authorized Agency Official**

Authorized agency official is an employee who has either inherent or delegated authority to complete the described action.

**Automatic Stay**

Automatic stay refers to the prohibition of collection activities against the debtor or efforts to obtain possession of the debtor's property or security interest in the debtor's property during the course of bankruptcy.

**Bankruptcy Trustee**

A Bankruptcy Trustee is a court-appointed person who oversees execution of the confirmed bankruptcy plan. A trustee is less frequently used in Chapter 7 and Chapter 11 bankruptcies than in Chapter 12 and 13 bankruptcies.

## Definitions of Terms Used in This Handbook (Continued)

## Debt Forgiveness

**Debt forgiveness** means the reduction or termination of a debt under the Act in a manner  
\*--that results in a loss to the Agency:

## (i) Debt forgiveness includes:

- (A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;--\*
- (B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;
- (C) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency;
- (D) Discharging a debt as a result of bankruptcy; or
- (E) Releases of liability which result in a loss to the Agency.

## (ii) Debt forgiveness does not include:

- (A) Debt reduction through a conservation contract;
- \*--(B) Any write-down provided as part of the resolution of a discrimination--\*  
complaint against the Agency;
- (C) Prior debt forgiveness that has been repaid in its entirety;
- (D) Consolidation, rescheduling, reamortization, or deferral of a loan; and
- (E) Forgiveness of YL debt, due to circumstances beyond the borrower's control.

The Agency will use the criteria in 7 CFR 766.104(a)(1) to determine if the circumstances were beyond the borrower's control.

## Debtor – from 7 CFR 3.3

**Debtor** means a person who owes a delinquent, nontax debt to the United States.

## Debt Record – from 7 CFR 3.3

**Debt record** means the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to any Federal agency with respect to which collection action is being pursued.

**Definitions of Terms Used in This Handbook (Continued)****Debt Settlement**

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

**Delinquent – from 7 CFR 3.3**

**Delinquent** means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made, or as otherwise defined by program specific statutes or regulations.

**Delinquent Borrower**

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

**Discharge**

A **discharge** is a court order, which relieves the debtor's obligation to pay the creditor any amounts unless already accounted for in a bankruptcy plan.

**\*--Discharged debt – from 7 CFR 3.3**

**Discharged debt** means any debt, or part thereof, that an agency has determined is uncollectible and has closed out or, in the case of FSA FLP, means the amount of debt that was discharged through bankruptcy proceedings where no further collection actions may be taken on that debt.

**Dismissed**

**Dismissed** usually refers to when the court makes the determination that the bankruptcy petition is not necessary, or the debtor fails to perform according to an established bankruptcy plan. It is the creditor's or Trustee's responsibility to bring nonperformance of a plan to the court's attention. When a bankruptcy is dismissed, the creditors' original security positions, payment schedules, and amounts owed are re-established, as if bankruptcy was never filed.

**Disposable Pay – for general DCIA purposes, from 7 CFR 3.3**

**Disposable pay** means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld including social security taxes and other withholding taxes, but not including any amount withheld pursuant to a court order.--\*

**Definitions of Terms Used in This Handbook (Continued)****Disposable Pay - for AWG purposes, from 7 CFR 3.52**

**Disposable pay** means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, “amounts required by law to be withheld” include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

**Disposable Pay - for Federal Salary Offset purposes, from 7 CFR 3.71**

**Disposable pay** means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

**Down Payment Loan**

**Down payment loan** is a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

**Economic Emergency Loan**

**Economic Emergency loan** is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded; however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.

**Definitions of Terms Used in This Handbook (Continued)**

**\*--Employer - for AWG purposes, from 7 CFR 3.52**

**Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local governments, but does not include an agency of the Federal government.**

**Entity**

**Entity means a corporation, partnership, joint operation, cooperative, limited liability company, trust, or other legal business organization, as determined by the Agency, that is authorized to conduct business in the state in which the organization operates. Organizations operating as non-profit entities under Internal Revenue Code 501 (26 U.S.C. 501) and estates are not considered eligible entities for Farm Loan Programs purposes.**

**Entity member**

**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.--\***

**Equity**

**Equity is the money value of a property or of an interest in a property in excess of claims or liens against that property.**

**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 Loan Programs**

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

**Farm Program**

**Farm Program payments are benefits received from FSA for any commodity, disaster, or cost share program.**



## Definitions of Terms Used in This Handbook (Continued)

**Feasible Plan**

**\*--Feasible plan means when an applicant or borrower's cash flow budget or farm operating--\***  
**plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval**  
**or servicing action exceeds one production cycle and the planned cash flow budget or farm**  
**\*--operating plan is atypical due to an interest-only or otherwise unequal installment, cash--\***  
**or inventory on hand, new enterprises, carryover debt, atypical planned purchases,**  
**important operating changes, or other reasons, a cash flow budget or farm operating plan**  
**must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible**  
**\*--plan for only that production cycle is required for approval.--\***

**Financial Statement – from 7 CFR 3.3**

**Financial statement means a statement of financial condition at a given date that accurately reflects the debtor's assets, liabilities, income, and expenses.**

**Fiscal Service – from 7 CFR 3.3**

**Fiscal Service means the United States Department of the Treasury's Bureau of the Fiscal Service.**

**Foreclosed**

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

**Foreclosure Sale**

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

**Garnishment - for AWG purposes, from 7 CFR 3.52**

**Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.**

**Garnishment Order (or Withholding Order) – from 7 CFR 3.52**

**Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”**

## Definitions of Terms Used in This Handbook (Continued)

### Good Faith

**\*--Good faith means 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 agreements, 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 of fraud, waste, or conversion that are substantiated by a legal opinion from OGC constitute an independent basis for determination of not having acted in good faith.--\***

### 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.**

### Hearing Official

**Hearing official. For the purposes of salary offset, the hearing official is an Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA. For the purposes of administrative wage garnishment, the hearing official is selected pursuant to part 3, subpart E of this title.**

**Note:** At this time, hearing officials for Federal Salary Offset and AWG are provided by Treasury.

### Household Living Expenses

**Household 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.**

### Individual-Type Minor Program loans (IMP) – from 7 CFR 772.2

**Individual-type Minor Program loans (IMP): Non-Farm Enterprise or Recreation loans to individuals.**

### 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.**

**Definitions of Terms Used in This Handbook (Continued)****Judgment (or Judgment Debt)**

Judgment debt is established by a lender after a judgment is obtained through a legal process. A deficiency judgment can be obtained in cases where the liquidated security was not sufficient to pay the FLP debt in full and there are other assets from which collection can be made. A criminal, or restitution, judgment can be obtained in cases where security was sold and the monies were not submitted to FSA to be applied to the FLP debt. A criminal/restitution judgment can be obtained against the seller of the security (generally the FLP debtor, or other person who has access to the security), or the buyer of the security. A judgment obtained against the buyer of the security is generally referred to as third party judgment. The judgment debt accrues interest and other fees or costs according to the judgment order issued by the court.--\*

**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.

**Liquidated**

Liquidated is the completed act of selling security pledged as collateral.

**Loan Servicing Programs**

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

**\*--Loss claim**

Loss claim is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

**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.

**Minor Program – from 7 CFR 772.2**

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA--\*

## Definitions of Terms Used in This Handbook (Continued)

### 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.”**

### Non-Centralized Administrative Offset – from 7 CFR 3.3

**Non-centralized administrative offset means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. The creditor agency and paying agency can be the same.**

### 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 is 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 required borrower training are not considered non-monetary defaults. See 3-FLP, subparagraph 474 C.

### Non-Program 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.**

## Definitions of Terms Used in This Handbook (Continued)

### Office of the General Counsel (OGC)

OGC is the OGC of the U.S. Department of Agriculture. Unless otherwise indicated, OGC refers to the Regional Attorney or Attorney-in-Charge in an OGC Field Office.

### Offset – from 7 CFR 3.3

Offset means withholding funds payable by the United States to or held by the United States for a person to satisfy a debt owed by the payee.

### OGC – from 7 CFR 3.3

OGC means the USDA Office of the General Counsel.

### Past Due

Past due is when a payment is not made by the due date.

### Payee – from 7 CFR 3.3

Payee means a person who is due a payment from a payment authorizing agency and includes a person who is entitled to all or part of a payment.

### Payment Authorizing Agency – from 7 CFR 3.3

Payment authorizing agency means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

### Person – from 7 CFR 3.3

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

### 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”.--\*

### Prior Lien/Lienholder

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

### Private Collection Agency – from 7 CR 3.3

Private Collection Agency means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.

## Definitions of Terms Used in This Handbook (Continued)

**Program Loans**

**Program loans** include CL, FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.

**Promissory Note**

**Promissory note** is a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms “promissory note” and “note” are interchangeable.

**Recoverable Cost**

**Recoverable cost** is a loan cost expense chargeable to either a borrower or property account.

**Reviewing Officer - from 7 CFR 3-3**

**Reviewing officer** means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

**Salary Offset – for general DCIA purposes, from 7 CFR 3.3**

**Salary offset** means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514 to satisfy a debt that person owes the Government.

**Salary Offset – additional clarification for Federal Salary Offset purposes, from 7 CFR 3.71**

**Salary offset** means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

**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 giving the Agency a security interest on real or personal property.

**Definitions of Terms Used in This Handbook (Continued)****Settlement or Debt Settlement – from 7 CFR 3.3**

**Settlement or debt settlement** means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the cancelled amount to the IRS as specified in § 3.90, and applicable IRS requirements.

**Softwood Timber Program Loan**

**Softwood Timber Program loan** was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

**Soil and Water Loan**

**Soil and Water loan** is a loan that was made to an eligible applicant to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.

**Third Party Converter – from 7 CFR 761.402(b)(1)**

**Third party converter** means an individual or entity who:

- (i) Is in possession of agency security property, or money from the sale of security, in relation to a loan or other debt that the individual or entity was not liable for; or
- (ii) Assists, or participates knowingly or unknowingly, in the transportation or sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for; or
- (iii) Assists, or participates knowingly or unknowingly, in temporarily or permanently relocating or concealing the location of agency security property, or money from the sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for.

## Definitions of Terms Used in This Handbook (Continued)

**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.

\*--Treasury Offset Program (TOP) - from 7 CFR 3.3

**TOP** means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

**Note:** TOP is a required by DCIA and is conducted according to:--\*

- 7 CFR Part 3, Subpart D
- 31 CFR Part 285, Subpart A
- 31 CFR 901.3(b).

**Unaccounted for Security**

**Unaccounted for security** is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.

**U. S. Attorney**

**U. S. Attorney** is an attorney for the United States Department of Justice.

**Veteran**

**Veteran** is any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

\*--Waiver – for Federal Salary Offset purposes, from 7 CFR 3.71

**Waiver** means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

**Withholding of Payment – from 7 CFR 3.3**

**Withholding of payment** means the action taken to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.--\*



**Definitions of Terms Used in This Handbook (Continued)**

**Withholding Order – for AWG purposes, from 7 CFR 3.52**

**Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”**

**Youth Loan**

**Youth loan is an operating type loan made to an eligible \* \* \* youth applicant to finance a modest income-producing agricultural project.**

