

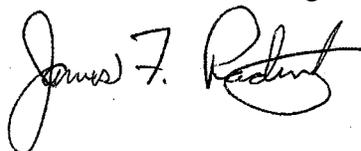
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Regular Direct Loan Servicing
4-FLP**

Amendment 26

Approved by: Acting Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 3 C has been amended to make reference to 1-FLP, subparagraph 3 C.

Subparagraph 3 D has been amended to make reference to 1-FLP, subparagraph 3 D.

Subparagraph 3 E has been amended to make reference to 1-FLP, subparagraphs 3 E and H.

Subparagraph 3 F has been amended to make reference to 1-FLP, subparagraph 3 F and H.

Subparagraph 3 G has been amended to make reference to 1-FLP, subparagraph 3 G.

Subparagraphs 96 C, 98 B, 100 A, 101 A, 146 A, 147 B, 181 A, 182 A, and 291 C have been amended to replace references to “running record”, “case file”, and similar references with “FBP”.

Subparagraph 116 A has been amended to update items that must be completed on revised FSA-2001 for subordination requests.

Subparagraph 147 A has been amended to clarify conditions for releasing valueless liens.

Subparagraph 231 B has been amended to remove a reference to FSA-2080.

Subparagraph 250 B has been amended to provide guidance for closing transfer and assumption.

Subparagraph 282 D has been amended to allow the use of a military power of attorney.

Exhibit 29 has been amended to provide for protection of PII.

Amendment Transmittal (Continued)

Page Control Chart		
TC	Text	Exhibit
	1-5, 1-6 6-1, 6-2 6-5, 6-6 6-13 through 6-16 6-31, 6-32 6-71 through 6-74 7-31 through 7-44 8-1, 8-2 9-13, 9-14 11-3, 11-4 12-1, 12-2	2, pages 3, 4 pages 7-10 29, pages 1, 2

3 FLP Forms (Continued)

B FSA-2029

All references to FSA-2029 within this handbook are intended as a reference to the applicable State-specific Mortgage or Deed of Trust. State-specific Mortgages or Deeds of Trust are available on the FFAS Employee Forms/Publications Online Website at <http://intranet.fsa.usda.gov/dam/ffasforms/forms.html> and are numbered FSA-2029 “ST”.

Notes: “ST” represents the appropriate State acronym.

SED is not required to issue a State supplement for the State-specific version of FSA-2029.

C Notary Acknowledgement

*--See 1-FLP, subparagraph 3 C.

D Applicant and Borrower Signatures

See 1-FLP, subparagraph 3 D.

E State-Modified National Forms

See 1-FLP, subparagraphs 3 E and H.

F State-Created Forms

See 1-FLP, subparagraphs 3 F and H.

G Other Sources of Forms

See 1-FLP, subparagraph 3 G.--*

Part 6 Protecting FSA's Security Interests**Section 1 General Security Preservation and Lien Protection****96 Servicing Policy****A Overview**

This Part describes FSA's policies on general security preservation and lien protection, subordinations, junior liens, severance agreements, and releases of liens without monetary consideration.

B General Policy

[7 CFR 765.201] All Agency servicing actions regarding preservation and protection of Agency security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.

C Security Inspections

*--Chattel security will be inspected annually, except in cases where the authorized agency official has justified in the assessment or analysis that no undue risk exists. However, all chattels will be inspected at least every 2 years. These security inspections shall be scheduled after a new loan has been closed by creating a new Farm Visit workflow in DLS.

After completing the Farm Visit workflow, followup security inspections shall be scheduled in DLS; thereafter, based on the applicable requirements of this section for the type of loan security and for the remainder of the loan term.--*

In times of limited resources, the authorized agency official may prioritize the completion of security inspections within the requirements of the applicable regulations.

Example: An FO borrower who has been current with FSA and has provided chattels only as additional security might not need an annual inspection.

96 Servicing Policy (Continued)

C Security Inspections (Continued)

The authorized agency official:

- will inspect real property security at least once every 3 years
- should conduct more frequent inspections for a delinquent borrower or a borrower who has been indebted to FSA for less than 1 full crop year.

The purpose of inspections is to:

- verify that the borrower possesses all the property listed in the security instruments
- determine that the borrower is maintaining security properly
- update security instruments.

--The authorized agency official will record all security inspections in borrower's FBP and-- in DLS by using the Farm Visit Scheduling, tracking and monitoring, workflow activities.

A field visit to complete a security inspection may be used to:

- review the accomplishments and goals (assessment) with the borrower
- emphasize any agreements that have been made
- discuss any concerns about the operation
- discuss any proposed changes.

For chattel secured loans, the following will be documented on the FSA-2028 work copy:

- individual security items that are inspected
- any revisions to the condition of the individual items
- number and condition of livestock and equipment
- any discrepancies from original livestock numbers that were discussed.

Note: See Part 7 for guidance on handling discrepancies.

D Documenting Reviews Not Completed As Scheduled

When the authorized agency official determines that a scheduled chattel inspection will not be completed as scheduled, the Farm Visit workflow in DLS shall be terminated. The terminated workflow must be documented as to why the workflow was not completed. A new Farm Visit workflow must be created and scheduled immediately as applicable.

97 Maintaining Debt Instruments (Continued)

B Conducting Yearly Debt Instrument Inventory (Continued)

- take necessary corrective action when the:
 - difference in the principal loan amount or noncapitalized interest amount is more than \$100
 - interest rate must be corrected

Note: Attach a copy of the letter changing the interest rate to the promissory note (it is **not** necessary to correct promissory notes when the rate on the promissory note does not match RC 830A as a result of the interest rate being modified based on a limited resource review).

- obtain guidance from the OGC regional attorney, through the State Office, about any necessary corrections to promissory notes, NRBRA's, or shared appreciation agreements
- ensure that copies of all instruments are filed in case files
- submit cases requiring corrections to the State Office coordinator on FSA-2446 and State *--Office coordinator's will send completed FSA-2446's to NFAOC, DLD by:--*
 - FAX to:
 - 314-679-6815 for States 01 through 32
 - 314-679-6816 for States 33 through 64

- mail to:

--USDA-FSA-NFAOC-DLD--
 PO Box 200003
 St. Louis, MO 63120

- Note:** State Office coordinators should track and monitor the submission and resolution of account corrections using FSA-2445.
- obtain guidance from OGC regional attorney, through the State Office, about the need to replace lost or missing debt instruments
 - advise SED of the review results by July 31 of each year and □retain RC 830A as a subdivided file under FLP 4-1, "Reports" according to 25-AS until the next year's report has been received and reviewed.

98 Maintaining Security Instruments**A Maintaining Security Documents**

Each County Office must maintain security instruments according to 25-AS.

B Maintaining Current Information

FSA must review or renew financing statements, security agreements, and other documents for each borrower periodically. County Offices shall 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 New FSA-2028's

FSA obtains new FSA-2028's when:

- a security interest is taken in crops
- FSA obtains additional security
- 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.

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

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

I Allotments Leases

[7 CFR 765.252 (e)] (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest in the allotment.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

J Lease Proceeds

[7 CFR 765.252 (d)] Lease proceeds are considered normal income security and may be used in accordance with § 765.303 (paragraph 163).

100 Borrower Noncompliance With Loan Agreements**A Documenting Noncompliance**

To be eligible for any kind of FSA loan servicing options, the borrower must be in compliance with loan agreements. The authorized agency official will fully document a borrower's noncompliance, such as the failure to report using security proceeds, in the borrower's FBP. Documentation must include, but is not limited to:

- type, nature, circumstances, and reasons for noncompliance
- any actions taken by the borrower to correct the noncompliance
- requirements of subparagraph 181 A for conversion.

Borrowers in noncompliance will be given the opportunity to correct the matter whenever possible. The borrower will be contacted and provided the opportunity to explain the potential noncompliance using Exhibit 28.5 or Exhibit 31 for conversion (Part 7, Section 2). Any response received from the borrower will be documented in FBP and any materials will be included in the case file. The authorized agency official will review the borrower's response and determine if the potential noncompliance has been satisfactorily resolved. If the issue is resolved, the case file will be documented and no further action will be taken.

According to paragraph 99, FSA may deny loan servicing actions to a borrower who has a significant noncompliance history, even if the borrower later resolved the issues.

B Nonmonetary Default

Except for third party foreclosures, failure to pay real estate taxes or insurance, and UCC renewal fees, where nonmonetary default decisions can be made in the local office, if the authorized agency official determines that the noncompliance has not been resolved and the borrower is in nonmonetary default, the account will be referred to SED for concurrence. FSA-2551 will be prepared by the local office and must include all pertinent information, evidence, and any responses provided by the borrower about the potential noncompliance. FSA-2551 and all documentation will be forwarded to SED for concurrence of nonmonetary default determination. OGC concurrence is not required.

C Lack of Good Faith

SED will determine if a lack of good faith determination will be pursued and must obtain OGC concurrence. Lack of good faith may only be pursued in conjunction with a submission of the case to OGC and/or OIG for civil or criminal action as described in 5-FLP, Part 11.

101 Making Protective Advances

A Allowed Protective Advance Uses

[7 CFR 765.203] When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:

FSA may act to protect its interest when the borrower fails to do so. If there is a prior lien, FSA will not make protective advances unless the prior lienholder refuses to take action. The authorized agency official must document evidence of the prior lienholder's refusal to take action in the borrower's case file. Further, the authorized agency official must document in *--FBP that advancing Government funds to protect FSA collateral is in FSA's best interest--* based on the equity available for FSA recovery or as determined through 5-FLP, Exhibit 37.

FSA will make protective advances according to 1-FLP, Part 7 on program loan expenses. Once a protective advance is made, that protective advance is a debt owing and immediately due and payable. Borrowers will immediately be notified of a nonmonetary default and serviced according to 5-FLP. According to 5-FLP, Part 4, only protective advances used to pay real estate taxes may receive primary loan servicing. All other protective advances cannot be restructured and must be immediately repaid by the borrower.

Borrower payments received will be applied first to annual operating loans and then to any advance made for protective advance purposes according to Part 5.

[7 CFR 765.203(a)] Maintain abandoned security property;

FSA may only make a protective advance for necessary emergency repairs, if the borrower abandons the property or the property is custodial property. Total expenditures for emergency repairs in excess of \$1,000 must have prior SED approval. The authorized agency official will determine if the borrower has abandoned the property according to 5-FLP, paragraph 701.

[7 CFR 765.203(b)] Preserve inadequately maintained security;

FSA may maintain security that the borrower has not adequately maintained, but has not *--abandoned. FSA must document in the borrower's FBP the borrower's failure to maintain--* the security adequately. Expenditures under this paragraph must receive prior approval from SED.

101 Making Protective Advances (Continued)**A Allowed Protective Advance Uses (Continued)****[7 CFR 765.203(c)] Pay real estate taxes and assessments;**

FSA may pay borrower real estate taxes and assessments. FSA will make protective advances to pay delinquent real estate taxes only if there is imminent danger that the property will be forfeited. SED will issue a State supplement on processing actions, procedures, and timing for the payment of a borrower's real estate taxes.

[7 CFR 765.203(d)] Pay property, hazard, or flood insurance;

FSA may make protective advances to maintain insurance coverage on security only to protect FSA's financial interests and with the express concurrence of the Administrator.

[7 CFR 765.203(e)] Pay harvesting costs;**[7 CFR 765.203(f)] Maintain Agency security instruments;**

FSA may make protective advances to maintain security instruments only when necessary to protect the interest of FSA.

[7 CFR 765.203(g)] Pay ground rents;**[7 CFR 765.203(h)] Pay expenses for emergency measures to protect the Agency's collateral; and**

The authorized agency official will determine when it is appropriate to make protective advances for the payment of harvesting costs, ground rents, or expenses for emergency measures to protect FSA's collateral on a case-by-case basis.

[7 CFR 765.203(i)] Protect the Agency from actions by third parties (5-FLP, paragraphs 602 and 603).**B Protective Advance Alternatives**

FSA may consider making a loan, releasing income, loan servicing, subordination, or transfer and assumption, if the borrower meets all applicable eligibility, feasibility, and security requirements instead of making a protective advance.

Section 2 Subordinations

116 Requesting Subordinations

A Borrower Application

[7 CFR 765.205 (a)] The borrower must submit the following, unless it already exists in the Agency's file and is still current as determined by the Agency:

[7 CFR 765.205 (a)] (1) Completed Agency application for subordination form;

*--FSA-2001 with the exact, full legal name in the following, as applicable:

- Part A, item 1, or
- Part B, items 1 and 13, or
- Part C, items 1 and 14, or
- Part D, items 4A and 4B, or
- Part F.--*

FSA-2060 will also be required for real estate subordination requests.

[7 CFR 765.205 (a)] (2) A current financial statement, including, in the case of an entity, financial statements from all entity members;

FSA-2037, FSA-2038, or any other format approved by FSA containing the same information.

[7 CFR 765.205 (a)] (3) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

AD-1026.

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

[7 CFR 765.205 (a)] (4) Verification of all non-farm income;

[7 CFR 765.205 (a)] (5) The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

[7 CFR 765.205 (a)] (6) Verification of all debts.

A credit report is required unless current credit information is already contained in the borrower's case file or is otherwise available. The credit report fee will be paid by FSA unless the borrower has also applied for an FLP loan.

See 3-FLP, subparagraph 42 A for the verification process of non-farm income and debts.

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.

Section 5 Release of Real Estate and Chattel Security Liens Without Monetary Consideration

146 Release Without Monetary Consideration

A 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.--*

B Release Because of No Evidence of Indebtedness

The authorized agency official may release a borrower's mortgage or lien, if the records of State and County Offices and NFAOC, DLD 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 Housing and Rural Development Finance Offices.

C Borrower Requested Chattel Security Release

[7 CFR 765.305(c)] The Agency will release its lien on chattel security without compensation, upon borrower request provided:

- (1) The borrower has not received primary loan servicing or Disaster Set-Aside within the last 3 years;**
- (2) The borrower will retain the security and use it as collateral for other credit, including partial graduation as specified in § 765.101 (Part 4);**
- (3) The security margin on each FLP direct loan will be 150 percent or more after the release. 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;**

146 Release Without Monetary Consideration (Continued)

***--C Borrower Requested Chattel Security Release (Continued)**

(4) The release is approved by the FSA State Executive Director; and

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

The authorized agency official will prepare a narrative 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. 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. State Office officials will review the request and if they concur, submit the request to the SED for approval.

D Borrower Requested Real Estate Security Release

[765.351(f)] Real estate security may be released by FSA without compensation 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:

(1) The borrower has not received primary loan servicing or Disaster Set-Aside within the last 3 years;

(2) The security is:

(i) To be retained by the borrower and used as collateral for other credit, including partial graduation as specified in § 765.101 (Part 4); or

(ii) No more than 10 acres, or the minimum size that meets all State and local requirements for a division into a separate legal lot, whichever is greater, and is transferred without compensation to a person who is related to the borrower by blood or marriage.

(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 Consideration (Continued)

D Borrower Requested Real Estate Security Release (Continued)

(6) The security margin on each FLP direct loan will be above 150 percent after the release. 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 the criteria have been met and a sound decision can be made without current appraisals;

(7) The release is approved by the FSA State Executive Director; and

(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 narrative 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. 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. State Office officials will review the request and if they concur, submit the request to the SED for approval.

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:

- **only** be exercised as follows:
 - 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.

147 Releasing Valueless Liens (Continued)

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
- 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.--

148-160 (Reserved)

Section 2 Unapproved Disposition of Security**181 Initial FSA Actions Upon Discovery****A Unauthorized Chattel Security Disposition Discoveries**

[7 CFR 765.304(a)] If a borrower disposes of chattel security without Agency approval, or misuses proceeds, the borrower must:

(1) Make restitution to the Agency within 30 days of Agency notification; or

(2) Provide disposition or use information to enable the Agency to consider post-approval within 30 days of Agency notification.

Borrower disposal of security or use of proceeds in a way not listed on FSA-2040 violates the loan agreement and FSA will not release its security interest.

Upon noting an apparent unauthorized disposition of security, FSA will notify the borrower using Exhibit 31.

The authorized agency official must document an unapproved disposition of chattel security *--on FSA-2045, FSA-2551, and in the borrower's FBP. A printed copy of the running--* record will be filed in the District Director Oversight Review file according to 25-AS, Exhibit 40.5. DD will review this information as a part of the Quarterly Review and ensure that all unauthorized dispositions are addressed according to this Section.

Note: 25-AS will be revised at a future date to include reference to filing the running record of unapproved disposition of security.

If the borrower does not make restitution or provide information necessary for FSA to post-approve the sale within 30 calendar days, the authorized agency official will notify the borrower of nonmonetary default according to 5-FLP, Part 3, and proceed according to 5-FLP, Part 11, Section 2.

181 Initial FSA Actions Upon Discovery (Continued)

B Notification to Third Party Purchasers

With SED concurrence, the authorized agency official will send Exhibit 32 * * * to third-party purchasers when the:

- disposition cannot be approved
- third party has purchased collateral for an FSA loan
- borrower is unable or unwilling to make restitution and has been notified according to 5-FLP, Part 3.

If the borrower's account is in liquidation, FSA will often attempt to liquidate remaining chattel security on which FSA holds a first lien before making demand or taking civil action against third-party purchasers. Exhibit 32 makes demand on the third-party purchaser to return the property or pay the value of the security to FSA within 30 calendar days.

If no response has been received within 30 calendar days, Exhibit 33 will be forwarded to the purchaser by SED. If satisfaction is not made within 15 calendar days, SED will forward the account to OGC according to 5-FLP, paragraph 421.

182 Post-Approval of Chattel Security Disposition**A Post-Approval of Unapproved Dispositions**

When FSA discovers that a borrower has disposed of all or some of the security property not listed on the agreement or has used funds for some purpose not listed on the borrower's agreement, FSA may post-approve the disposition if all of the requirements of paragraph 163 are met.

The authorized agency official must document the decision to post-approve an unauthorized *--chattel property disposition on the agreement and in the borrower's FBP.--*

B Denying Post-Approval Requests

The authorized agency official may not post-approve a disposition of chattel security if the use of proceeds does not comply with paragraph 163. Servicing will continue according to subparagraph 181 A.

C Determining the Disposed Security's Value

FSA will not release its lien if the security was sold for less than the market value, until the full value of the security is remitted to FSA.

FSA will determine the disposed security's value in each unapproved disposition case through either:

- the most recent appraisal
- a current value price listing for similar property
- an updated property value appraisal based on FSA-2028 information.

183 Requirements for Handling Borrower Noncompliance

A Future Eligibility Decisions

[7 CFR 765.304(b)] Failure to cure the first unauthorized disposition in accordance with paragraph (a) of this section (subparagraph 181 A), or a second unauthorized disposition, whether or not cured, constitutes a non-monetary default, will be considered by the Agency when making eligibility determinations for future requests for assistance, may adversely impact such requests, and may result in civil or criminal action.

--The authorized agency official will process the nonmonetary default according to 5-FLP,-- Part 3. The default can be corrected by post-approval, but will be considered by FSA in future eligibility decisions. If FSA does not post-approve the transaction or the borrower does not make restitution, FSA will proceed according to 5-FLP, Part 11, Section 2.

184-195 (Reserved)

Part 8 Withdrawing Existing Party**231 Withdrawal Requirements****A General**

If a jointly liable party requests FSA approval for withdrawal from an entity and conveyance of interest in the security to the remaining members in the entity, FSA considers this request according to this Part when all of the following conditions are met:

- a remaining spouse or entity member is already personally liable for the debt
- there is no change in the entity name (except in divorce cases when the account must be renamed to match the remaining spouse)
- FSA can issue FSA-2080 according to subparagraph B.

If a proposed action does not meet the requirements of this subparagraph, FSA will process the withdrawal as a transfer and assumption according to Part 9.

Note: For the purposes of this Part and Part 9, an entity is defined as a husband and wife, partnership, corporation, or any other entity in which more than 1 person is liable for the debt.

231 Withdrawal Requirements (Continued)

B FSA-2080's

[7 CFR 765.406(b)(4)] Except for loans in default being serviced under 7 CFR part 766 (5-FLP), if an individual who is jointly liable for repayment of an Agency loan withdraws from the farming operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:

- (i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;**
- (ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and**
- (iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.**

--When a transfer is not required under Part 9, and an existing party is requesting a release, the request must be submitted to the local FSA office detailing which members want to be-- released from liability and which members will remain liable for the debt. In addition, the borrower entity must both:

- file, with the proper authority, documentation that properly identifies and legally accomplishes the intended withdrawal and submit copies of this documentation to FSA

Note: This could include a divorce decree or documentation of a change in the corporation or partnership composition.

- submit:
 - a new FBP that projects the repayment ability of the remaining entity members or new entity that will be liable for the debt
 - any other documentation required by FSA in connection with the proposed withdrawal, such as individual financial statements and earning statements of the withdrawing party
 - a copy of the document transferring any security interest from the withdrawing party to the remaining borrower, and could include a new deed or bill of sale to the remaining members of the borrower entity.

250 Closing the Transfer**A Basic Policy**

[7 CFR 765.405] The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:

- (a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;**
- (b) The transferee's payoff of any junior liens does not exceed \$5,000;**
- (c) Fees are customary and reasonable;**
- (d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and**
- (e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.**

The authorized agency official will prepare closing documents according to 3-FLP, Part 16 and State and local requirements. Closing documents will be filed according to State law and as described in the State supplement.

B Final Processing

--The authorized agency official will following the flowchart in DLS Loan Servicing Users Guide, Section 5.2, to determine if a "1M", "4A", or "4D" transaction is needed in DLS to-- record the transfer and assumption of the loan or loans.

The signed documents in the transfer docket will be placed in the transferee's case file and the transferor's file shall be maintained according to 25-AS.

251 Determining Transferor Liability After Closing**A Full and Complete Transfer**

[7 CFR 765.406(b)(1)] The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

B Transfer and Assumption of a Portion of the Indebtedness

[7 CFR 765.406(a)] Agency approval of an assumption does not automatically release the transferor from liability.

[7 CFR 765.406(b)(2)] If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.

[7 CFR 765.406(b)(3)] If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request *--debt settlement in accordance with subpart B of 7 CFR part 1956. (7-FLP, Part 12)--*

If all security has been transferred, the remaining debt will be considered for debt settlement instead of release of liability under this Section.

In partial debt and partial security transfer cases, the transferee may pay any sale price or security shortfalls to resolve deficiencies as approved by the authorized agency official by any of the following:

- cash contribution
- participation credit
- subsequent FSA loans.

If only a portion of the indebtedness is to be assumed by the transferee, the authorized agency official must recommend and SED must approve or deny settlement of the remaining indebtedness.

282 Servicemembers Civil Relief Act of 2003 (Continued)**C Borrower Contact**

When the authorized agency official learns that a borrower plans to enter the Armed Forces on full-time active duty, the authorized agency official shall immediately contact the borrower to ensure that someone adequately cares for the borrower's loan security during their absence. The authorized agency official shall determine whether the borrower wants to:

- retain chattel or real estate security while on active duty
- lease real estate security while on active duty
- dispose of chattel or real estate security before reporting to active duty.

D Power of Attorney

If the borrower decides to retain ownership of the FSA loan security while on active duty and there are no other parties liable for the debt, the authorized agency official shall encourage the borrower to authorize a power of attorney. The borrower may designate a power of attorney before entering active duty. A person designated with a power of attorney has the responsibility to ensure both:

- proper use and maintenance of the borrower's chattel and real estate security
- timely payment on the borrower's insurance, taxes, and FSA loan.

--The borrower should be encouraged to use a military power of attorney prepared and executed pursuant to 10 U.S.C. 100b. No further legal review is required for a power of attorney prepared for the borrower by the military. SED's shall issue State supplements for all other acceptable power of attorney documents.--

E Real Estate Security Leases

The authorized agency official, when appropriate, may encourage a borrower, while on active duty, to lease real estate security in which FSA has a security interest when the rental income fully repays the borrower's:

- annual installment
- real estate taxes
- required hazard insurance.

If the borrower decides to lease the real estate security, the authorized agency official may encourage the borrower to enter into a written lease and obtain an assignment of rental income proceeds in an amount sufficient to cover the borrower's annual FSA installment using FSA-2044.

282 Servicemembers Civil Relief Act of 2003 (Continued)**F Disposal of Security**

If the borrower decides to sell the security before entering military service, the borrower may:

- dispose of the security with a voluntary sale and then apply the sale proceeds to the balance of the FSA loan according to Part 5
- transfer the security and the loan to another person according to Part 9.

G Borrower Default

If, while serving on active duty, the borrower becomes delinquent on payments or is otherwise in default, the authorized agency official will send the borrower and the person designated by the borrower with power of attorney notices as required by 5-FLP, Part 3. SED's will fully use the exception authority granted in 5-FLP when additional time is needed by the borrower for submitting a complete servicing application.

FSA may not sell or seize a borrower's property while the borrower is on active duty and 3 months thereafter, except by court order. OGC and SED must provide consent before an authorized agency official may accelerate an account.

If the account has been referred to DOJ, FSA must notify DOJ that the borrower is entitled to relief under the Servicemembers Civil Relief Act of 2003.

H Security Abandonment

If the borrower abandons the security, FSA will service the borrower's account according to 5-FLP, Part 18.

I Failure to Cooperate

*--The date a borrower is released from active duty may often be obtained from www.defense.gov/faq.

However, if the borrower fails to cooperate with FSA and the date cannot be obtained, the--* authorized agency official shall consult with the State Office for servicing guidance.

Part 12 Transferring Borrower Records, Security, and Servicing Responsibilities

291 Procedures and Servicing Responsibility

A General

When a borrower moves from 1 office jurisdiction to another, FSA will transfer loan records and servicing responsibilities. In general, the County Office for the borrower's old location should transfer borrower records when the farm headquarters is relocated to another jurisdiction.

When FSA has referred an account to DOJ or Treasury, borrower records will remain in the existing County Office location.

A County Office may not transfer a borrower's records to another County Office while FSA is considering a debt settlement application for that borrower.

B Borrower Responsibilities

When FSA receives notification that a borrower intends to relocate loan security, the authorized agency official must notify the borrower of his or her responsibilities arising from the move.

A borrower who moves or plans to move must:

- notify the County Office in which the security is currently located that they want to move FSA security and provide the intended new address or property location through FSA-2495
- arrange for the care and/or disposition of any loan-related security or properties that the borrower will not move
- promptly execute and provide recording and lien search fees for any new security instruments FSA may require.

For moves within a county, the borrower may apply verbally for approval to relocate security.

291 Procedures and Servicing Responsibility (Continued)

C File Transfer and Notification Procedure

When files or servicing responsibilities are proposed for transfer to another FSA jurisdiction within the same State, the transferring County Office must route FSA-2495, together with the borrower's case file, to SED for concurrence and processing guidance.

When the borrower proposes a move to another State, the transferring County Office must route FSA-2495 and the borrower's case file to the transferring SED. SED reviews the transfer material for relocation acceptability and route the transfer material to the receiving State's SED. In such cases, the receiving SED will then:

- contact transferring SED with any concerns or questions
- notify the transferring SED of the address of the receiving County Office
- forward the transferred material to the receiving County Office.

The transferring County Office should process the transfer by completing a "9G" transaction in DLS.

The transferring County Office:

- shall send the receiving office the original security and debt instruments along with the case file, using a carrier method that provides for protection of PII and documentation of delivery
- is responsible for notifying the borrower about whether the relocation of chattel security is authorized.

For moves within a county, the authorized agency official may verbally notify the borrower of FSA's decision. However, the authorized agency official should always document any *--decision in the borrower's FBP.--*

If FSA does not approve the transfer, the transferring County Office will service the case according to 5-FLP, Part 3.

Transferring and receiving FSA Offices may request each other's assistance as appropriate.

For special or problem circumstances accompanying a security or records relocation, SED should seek assistance from the Regional OGC.

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.

Borrower (or Debtor)

Borrower (or debtor) is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term "borrower" includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

Deed

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

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

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.

Direct Loan

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

Entity

An **entity** is 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.

Essential Family Living and Farm Operating Expenses

Essential family living and farm operating expenses:

- (1) Are those that are basic, crucial, and indispensable.
- (2) Are determined by the Agency based on the following considerations:
 - (i) The specific borrower's operation;
 - (ii) What is typical for that type of operation in the area; and
 - (iii) What is an efficient method of production considering the borrower's resources.
- (3) 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)

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 Buyout Recapture Agreement**

A net recovery buyout recapture agreement is an agreement that requires a borrower who bought out a loan at the net recovery value of the security to pay FSA any appreciation if the borrower sells or otherwise disposes of the security during the 10 years following the buyout.

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.

Nonmonetary Default

A borrower is in nonmonetary default when the borrower has broken the loan agreement for a reason other than being delinquent.

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.

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

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.

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.

Primary Loan Servicing Programs

Primary loan servicing programs include:

- **loan consolidation and rescheduling, or reamortization;**
- **interest rate reduction, including use of the limited resource rate program;**
- **deferral;**
- **write-down of the principal or accumulated interest; or**
- **any combination of the above.**

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.

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

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.

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.

Notification Letter to Potential Purchasers

A Example of Notification Letter

In States without CFS, FSA follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. FSA will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses listed by the borrower on FSA-2040 that buy or sell chattels or crops. The notification to potential purchasers will be mailed using the following letter. Go to <http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html>, CLICK "Find Current Forms Using Our Form Number Search", in the "Form Number" block, type, "4-FLP Exhibit 29", and CLICK "Submit".

*--

4-FLP, Exhibit 29

(Use Agency Letterhead format with local return address.)

NOTIFICATION LETTER TO POTENTIAL PURCHASERS

To : _____ Date: _____

Dear Buyer,

The United States of America, through the Farm Service Agency, has made loans to borrowers living in your vicinity to enable them to carry on their farming operations. As security for such loans, the borrowers have executed in favor of the United States, (1) mortgages on crops, livestock, and farm equipment in chattel mortgage states, or (2) financing statements and security agreements on crops, livestock, supplies, other farm products, farm equipment and inventory and on the proceeds and products thereof in Uniform Commercial Code States. The appropriate instruments are filed or recorded in the place and manner prescribed by law. As you are a buyer of certain types of property on which the Farm Service Agency takes liens, we are attaching a list of the names and addresses of some of the borrowers, residing in the County indicated on the list, who have executed security instruments on such property in favor of the United States.

This list is sent to you to comply with the notification requirements under 7 U.S.C. 1631 (protection for purchasers of farm products). It does not relieve you of any responsibility you may have of keeping informed of recorded lien instruments covering the property you purchase. It should be treated as confidential.

If you have questions concerning any particular transaction involving any of the property on which the Farm Service Agency holds a lien, please contact _____.

Sincerely,

[Authorized Agency Official's Title]

Attachment

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited basis will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotope, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov. USDA is an equal opportunity provider and employer.

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Notification Letter to Potential Purchasers (Continued)

B List of FSA Borrowers

Complete the following list and attach to the Notification Letter to Potential Purchasers.

***--Note:** As required by the Food Security Act, 7 U.S.C. 1631(g), the full SSN of each debtor or, in the case of a debtor doing business other than as an individual, the full IRS TIN is required when completing this notification. Follow applicable directives providing for the protection of PII when providing this notification to potential purchasers.--*

4-FLP, Exhibit 29		
LIST OF FARM SERVICE AGENCY BORROWERS		
1. Name and Address of Person Indebted to Secured Party		2. Debtor's Tax I.D. or Social Security Number (9 Digits)
3A. Description of Farm Product(s)		
3B. Approximate Quantity	3C. Crop Year	3D. County Where Located
4. Checks Jointly Payable Any check you may draw in payment for the farm products described in this notice must be made payable both to: FARM SERVICE AGENCY (FSA) AND _____		
5. Any Other Payment Obligations		
1. Name and Address of Person Indebted to Secured Party		2. Debtor's Tax I.D. or Social Security Number (9 Digits)
3A. Description of Farm Product(s)		
3B. Approximate Quantity	3C. Crop Year	3D. County Where Located
4. Checks Jointly Payable Any check you may draw in payment for the farm products described in this notice must be made payable both to: FARM SERVICE AGENCY (FSA) AND _____		
5. Any Other Payment Obligations		
1. Name and Address of Person Indebted to Secured Party		2. Debtor's Tax I.D. or Social Security Number (9 Digits)
3A. Description of Farm Product(s)		
3B. Approximate Quantity	3C. Crop Year	3D. County Where Located
4. Checks Jointly Payable Any check you may draw in payment for the farm products described in this notice must be made payable both to: FARM SERVICE AGENCY (FSA) AND _____		
5. Any Other Payment Obligations		
<p><i>The information on the list of Farm Service Agency borrowers contains personally identifiable information (PII) that is protected from unauthorized use and/or unauthorized disclosure by Federal statutes to include the Privacy Act of 1974 (5 U.S.C. § 552a - As Amended). Unauthorized use and/or unauthorized disclosure of protected data may result in civil or criminal penalties for failure to comply with Federal statutory requirements and/or for wrongful use/disclosure of confidential information.</i></p>		
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