

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Direct Loan Servicing – Special
and Inventory Property Management
5-FLP**

Amendment 37

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 67 A has been amended to provide guidance on notification of nonmonetary default when identified after PLS notification is sent.

Subparagraph 403 C has been amended to provide new proof of claim information.

Subparagraph 708 B has been amended to

- change references from NFAOC, PRD to NFAOC, PRB
- provide e-mail contact information for NFAOC, PRB
- revise reporting requirements.

Exhibit 17 has been amended to remove reference to the administrator’s exception for a longer holding period.

Exhibit 50 has been amended to conform with other ACL letters.

Page Control Chart		
TC	Text	Exhibit
	3-3, 3-4	1, pages 5, 6
	11-5, 11-6	17, pages 39, 40
	18-7, 18-8	50, pages 1, 2

67 Providing Loan Servicing Notification Package

A Forms for Notifying Borrowers

[7 CFR 766.101(b)] The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement programs and homestead protection as follows:

[7 CFR 766.101(b)] (1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA-2512 (Appendix A to this subpart) (appendix only in CFR);

Notification will be hand-delivered or sent by regular mail to borrowers who are current and requesting servicing.

[7 CFR 766.101(b)] (2) A borrower who is 90 days past due will be sent FSA-2510 (Appendix B to this subpart) (appendix only in CFR);

The authorized agency official must send FSA-2510 within 15 calendar days of the determination of the default. Notification will be sent by certified mail. The account will be flagged “PLS” (Exhibit 11), using FSA-2562, until the primary loan servicing process has been completed or the account accelerated.

--If nonmonetary default is subsequently identified, the borrower’s noncompliance must be determined and notification sent according to 4-FLP, paragraph 100. The borrower will not be sent FSA-2514 and a new PLS packet. The nonmonetary default will be addressed in the appropriate pre-acceleration notice unless it is resolved.--

[7 CFR 766.101(b)] (3) A borrower who is non-monetary or both monetary and nonmonetary default will receive FSA-2514 (Appendix C to this subpart) (appendix only in CFR);

If a potential nonmonetary default cannot first be resolved through the steps in subparagraph 66 A, FSA-2514 will be sent by certified mail. The account will be flagged “PLS” (Exhibit 11), using FSA-2562, until the primary loan servicing process has been completed, the default resolved, or the account accelerated.

[7 CFR 766.101(b)] (4) A borrower who has only delinquent SA will be notified of available loan servicing;

The borrower will be sent FSA-2547 within 15 calendar days of the missed payment. The borrower must submit the items specified in subparagraphs 81 C through I within 60 calendar days of the date on the notice. If a complete application has not been received within 30 calendar days FSA-2548 will be sent.

[7 CFR 766.101(b)] (5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G (Part 11) of this part.

Note: Part 11 only addresses who would be sent notification. The appropriate form used for notification is established by this subparagraph based on the borrower’s status as current, financially distressed, 90 calendar days past due, or nonmonetary default.

67 Providing Loan Servicing Notification Package (Continued)**B Using DLS Special Servicing**

The authorized agency official must track all notification and servicing activity through DLS Special Servicing and FSA-2580.

C Methods of Notifying Borrowers

[7 CFR 766.101(c)] Notices to delinquent borrowers or borrowers in non-monetary default will 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. The appropriate response time will begin 3 days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand delivered.

If the notification package is returned “address unknown”, the authorized agency official will verify the borrower’s current postal address using FSA-137 according to 5-AS, paragraph 77. If no new address can be obtained, the authorized agency official will continue to use the last known address.

Once the address verification process is completed, the authorized agency official will:

- record the date the original package was returned and the date the contents are re-mailed on the original envelope and file the original envelope in position 4 of the case file
- resend the contents of the loan servicing notification package in a new sealed envelope.

The timeframe for a complete application will be determined according to subparagraph 83 B.

D Requests for Copies of Regulations

A borrower may request copies of regulations at any time. When asked, the authorized agency official must provide a borrower 1 free copy of a regulation within 10 workdays of the request. See 2-INFO for further guidance.

403 Filing Proof of Claim**A Role of the State Office**

In a bankruptcy case, the State Office will determine whether FSA has security for the debt and whether the debtor has other assets from which FSA could make a substantial collection. In making this determination, the State Office should request additional information as needed from the authorized agency official.

B Actions for Borrower Under Chapter 7 With No Loan Security or Other Assets

Unless otherwise advised by OGC, if FSA cannot make a substantial recovery from the security and other assets, the State Office will return the file and related material to the authorized agency official. The State Office will provide the authorized agency official with a memorandum indicating SED's determination and advising that FSA will not file a proof of claim unless the authorized agency official learns that the debtor has assets not previously identified.

The deadline for filing claims in a bankruptcy proceeding is 90 calendar days from the first date set for the meeting of creditors, except governmental units, such as FSA, shall be timely filed if the Proof of Claim is filed 180 calendar days after the date of the order of relief. If FSA learns before the deadline that the borrower has previously unreported assets, the authorized agency official will resubmit the case to the State Office.

C Actions for Borrower Under Chapters 7, 11, 12, or 13 With Potential for Substantial Recovery

When working with a borrower under Chapter 7, 11, 12, or 13 and there is potential for substantial recovery, the State Office will prepare Proof of Claim (B10) found at ***--<http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0> or other form approved by OGC to submit a proof of claim. The proof of claim covers all of the borrower's indebtedness to FSA and any SAA's. When the mortgage secures the borrower's principal residence, Attachment A must be filed with the Proof of Claim. Attachment A can be found at <http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-attachment-0>--***

The identification of FSA security and Proof of Claim will be submitted to OGC and the U.S. Attorney. Central Intake Facilities will be used if required.

If the proof of claim is submitted to OGC, SED will identify in a memo the security that FSA took for each FLP loan.

If SED knows that the U.S. Attorney has obtained a judgment against the borrower, SED will notify OGC even though the debt has been charged off.

SED, on OGC's advice, will instruct the authorized agency official about actions to take with respect to meetings of creditors.

SED will take no other actions without OGC's or DOJ's approval.

403 Filing Proof of Claim (Continued)**D Chapter 13 Bankruptcies When FSA Has a Lien on the Debtor's Principal Residence**

Because of Federal bankruptcy rule notification requirements in Chapter 13 bankruptcies where FSA has a lien on the debtor's principal residence and the case is still under court jurisdiction, OGC will be specifically notified when 1 of the following occurs:

- FSA plans on making any changes in the planned payments or interest rate on the account
- FSA plans on charging any recoverable cost items to the account
- FSA receives a notice from the trustee or debtor that payment has been made in full.

The Federal bankruptcy rules require FSA to serve upon the debtor, debtor's counsel, and trustee a notice of any payment changes, including any changes resulting from interest rate or escrow account adjustments, at least 21 calendar days before the new amount is due.

FSA must also serve upon the debtor, debtor's counsel, and trustee a notice of any fees, expenses, or charges incurred after the bankruptcy petition was filed that are recoverable against the borrower, within 180 calendar days of the date that the fees, expenses, or charges were incurred.

If FSA receives a notice that payment has been made in full, the Government must, within 21 calendar days, file and serve the debtor, debtor's counsel, and trustee a notice for either of the following:

- agreeing that full payment has been made
- itemizing any required cure or post-petition amounts that are unpaid.

Notices must be cleared through OGC unless other arrangements have been made.

404 Adjustment of Debts When Borrowers Are in Bankruptcy**A Referral and Recommendation to SED**

The authorized agency official will send to SED any plans submitted by debtors. SED will refer the plans to the U.S. Attorney through OGC.

SED will provide OGC with a recommendation to accept or reject any debtor's plan that calls for adjustment of FSA debt.

B FSA Actions After Court Confirms Plan

Upon receiving notification of the bankruptcy reorganization plan confirmation, SED will *--notify NFAOC, DLD of the terms and conditions of the plan including any adjustment of--* the FSA debt, using FSA-2574. SED should attach to FSA-2574 a copy of the reorganization plan, signed order of confirmation, and discharge order if applicable.

707 Disposal of Personal Property From Inventory Real Property (Continued)**C Applying Proceeds From Sale of Personal Property**

[7 CFR 767.52(c)] Proceeds from the public sale of personal property will be distributed as follows:

- (1) To lienholders in order of lien priority less a pro rata share of the sale expenses;**
- (2) To the inventory account up to the amount of expenses incurred by the Agency in connection with the sale of personal property;**
- (3) To the outstanding balance on the Agency loan; and**
- (4) To the borrower, if the borrower's whereabouts are known.**

D Personal Property Remaining After Public Sale

If personal property is not sold, FSA may pay a mover or hauler to dispose of the items. The authorized agency official will contact the State Contracting Officer for guidance on hiring a mover or hauler.

E Reclaiming Personal Property

[7 CFR 767. 52(b)] The owner or lienholder may reclaim personal property at any time prior to the property's sale or disposal by paying all expenses incurred by the Agency in connection with the personal property.

F Removing Abandoned Motor Vehicles From Inventory Property

The authorized agency official will comply with applicable State laws concerning the removal of abandoned motor vehicles from inventory property. SED will, upon advice from OGC, issue a State supplement outlining the method FSA will follow.

708 Reporting Acquisition or Abandonment of Secured Property to IRS**A Overview**

Federal law requires that acquired and abandoned property, as described in subparagraph C, be reported to IRS. IRS will use this information to determine whether a tax liability has been created for the borrower through abandonment or acquisition of the property.

B Reporting Requirements

The authorized agency official shall complete FSA-2585 within 10 calendar days of the date of acquisition or the date the property was determined to be abandoned, unless liquidation will be initiated by FSA or another lender within 3 months. In that case, no report is required until liquidation is completed. The original (Copy A) will be sent to NFAOC, PRB by e-mail to **RD-MOSTL-NFAOC-PRB@stl.usda.gov**. Contact information is available in 1-FLP, subparagraph 5 E. Copy B and Exhibit 66 will be sent to the borrower when Copy A is sent to NFAOC, PRB and Copy C will be retained in the borrower's file. NFAOC, PRB will use information supplied to notify IRS.

Corrections of transactions occurring in the previous calendar year should be aggregated and filed as soon as possible but no later than October 1 of the filing year. For example, if an error was made in reporting a transaction that occurred in 2014 and was reported in February 2015, the correction must be submitted not later than October 1, 2015. The year entered on the form must be the calendar year of the abandonment or acquisition.

C Transactions That Must Be Reported

The following transactions must be reported:

- real property acquired by FSA by any means
- abandoned property when liquidation action will not be initiated within 3 months
- real property that was security for a FSA loan but was purchased by a third party at a foreclosure sale initiated by FSA or another lender
- sale or transfer of real security property.

D Redemption Rights

Any property required to be reported to IRS that is subject to redemption rights or dwelling redemption rights of the former borrower will not be reported until the end of the redemption period. This is the year that will be entered on FSA-2585.

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

Forms (Continued)

Number	Title	Display Reference	Reference
IRS Form 1099-C	Cancellation of Debt		409
NRCS-CPA-026 NRCS-CPA-026E	Highly Erodible Land and Wetland Conservation Determination		81, 801
RD 1956-1	Application for Settlement of Indebtedness		Text

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ACL	Accelerated	534, Ex. 11
BAP	Bankruptcy Action Pending	401, Ex. 11
CAP	Court Action Pending	421, Ex. 11
CL	Conservation Loan	41, 131, 145, Ex. 2, 17
CONACT	Consolidated Farm and Rural Development Act	1, 193, 537, Ex. 2
DEF	Deferral	248, Ex. 11
DLD	Direct Loan Division	Text, Ex. 80
eDALR\$	electronic Debt and Loan Restructuring System	Text, Ex. 17
FAP	Foreclosure Action Pending	567, Ex. 11
FLMAC	Farm Land Market Advisory Committee	Ex. 17
HML	high, medium, low	901
ISA	installment set-aside	46, 48, 131
ITLAP	Indian Tribal Land Acquisition Program	2, 537
LR	limited resource	132, 146
NFAOC	National Financial and Accounting Operations Center	Text, Ex. 11, 80
NP	nonprogram loan	Text
NRBRA	Net Recovery Buyout Recapture Agreement	321, 361, 363, 365
NRV	net recovery value	102, 321
PLS	primary loan servicing	67, 68, 401, Ex. 11
PRB	Program Reports Branch	708
RH	rural housing	Ex. 79

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

Abbreviations Not Listed in 1-CM (Continued)

Approved Abbreviation	Term	Reference
SA	shared appreciation loan	66, 67, 102, 145, 146, 191, 346
SAA	shared appreciation agreement Note: When reference is made to a signed agreement as a condition of receiving debt writedown.	197, 249, 343, 344, 346, 403, Ex. 2, 4, 25, 26
SAA	subject to approved adjustment Note: When reference is made to the financial “flag”/designation for an account where FSA has approved a borrower’s debt settlement offer as documented on RD 1956-1.	172, 249, 343, 404, 406, Ex. 11
SCRRG	State Civil Rights Review Group	533
SEC	State Environmental Coordinator	802, 821, 837, 839
SI	Security Instrument	344, 346
SOL	Statute of Limitations	126, 127
ST	softwood timber loan	41
TPJ	third party judgment	421, Ex. 11
YL	youth loan	41, 42, 68, 132

Redelegations of Authority

None.

Instructions for Using eDALR\$ (Continued)

5 Periodic Data (Continued)

D Real Estate Costs

The analysis for liquidation and disposition costs should, as a minimum, address the following items and considerations.

- “Months Held in Inventory” - The average holding period will be 5.5 months (165 days).
* * *
- “Sales Commission Rate” - A study will be conducted to determine the typical method for disposition of FSA inventory farms in the state. The findings will be used to determine whether FSA normally disposes of inventory farms without the assistance of brokers or auctioneers. If a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will always be included at the rate specified on the listing agreements or contracts in effect for the County Office.
- “Cost Per Advertisement” - Authorized agency official will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with paragraph 781.
- “Rate of Change in Value” - Yearly percentage decrease or increase in value is the rate of change in value. To provide a fair assessment of projected trends in farm land values, SED will utilize FLMAC.

Note: See subparagraph E for FLMAC composition and purpose.

- “Management Charges” - In situations where state or district-wide contracts for management of inventory farms are in effect, the SED will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no area-wide contract rates for some or all counties, State Office guidance should be given on how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

Instructions for Using eDALR\$ (Continued)

5 Periodic Data (Continued)

E FLMAC

FLMAC will consist of the following members or representatives:

- FSA, SED
- NRCS, State Conservationist
- Extension Specialist from a land grant university, if available, or the National Institute for Food and Agriculture employee with knowledge of the farm real estate market.

Data obtained from EIP-51R and FSA-326 may be useful to FLMAC in determining the annual percentage of decrease or increase in land values.

FLMAC will meet at least annually, and will consider the following information:

- The actual change in farm land values in the state during the previous year, as indicated in the most recent “Agricultural Land Values and Market Situation Outlook Report” issued by the USDA Economic Research Service.
- Current conditions in the state and national agricultural economics.
- Availability and cost of credit to purchase farm land.
- The amount of repossessed farm land held by FSA, the Farm Credit System, and other private sector lenders.
- Any special conditions which would affect farm land values in the state.
- Any studies or research conducted by the state agricultural university or similar scholarly source.

If the state has agricultural regions with discernable differences, FLMAC should, if possible, determine anticipated value changes on a regional basis. FLMAC’s meetings and decisions, including the basis for those decisions, will be documented, retained in the State Office as part of the State supplement file and provided to interested parties upon request. Prior to providing the FLMAC determinations to FSA field offices, SED will contact SED’s in surrounding states to determine if FLMAC’s findings are fairly consistent with those of surrounding states. If there are significant differences, SED may reconvene FLMAC to reconsider its findings.

Notice of Intent to Foreclose on Your Property Serving as Security for the United States of America and Acceleration of Your Loan Accounts

Note: Exhibit 50 is available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK “FFAS Employee Forms/Publications Site” and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “5-FLP Exhibit 50”.

5-FLP, Exhibit 50

This Exhibit may only be revised by SED with concurrence of OGC.

(Use Agency Letterhead format with local return address.)

CERTIFIED MAIL

[Date]

(Borrower)
(Co-Borrower)
(Address)
City, State Zip code

NOTICE OF INTENT TO FORECLOSE ON YOUR PROPERTY SERVING AS SECURITY FOR THE UNITED STATES OF AMERICA AND ACCELERATION OF YOUR LOAN ACCOUNTS

Dear (Borrower):

The United States of America intends to enforce its (real estate mortgages, deeds of trust, security agreements, etc.) given or assumed by you as security for your loans. The security instruments referred to above as described below were perfected as follows:

Security Instrument	Date	Recording Office	Recording Information

The security instruments executed by you in favor of the UNITED STATES are not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debt, although a discharge under the Bankruptcy Code does render any debt discharged unenforceable as your personal obligation. If the proceeds from the sale are not sufficient to pay off the debt, the UNITED STATES will not seek a personal judgment against you for any deficiency. This letter is not intended as an act to collect or recover any debt from you for which your personal obligation has been discharged, but rather is intended to inform you that the UNITED STATES intends to collect as much of the secured debt as possible from the property which serves as security for the loans made to you. In order to do so, it is necessary for your loans to be accelerated. Therefore, pursuant to the terms of the debt instruments, the United States is now exercising its option to declare your entire debt immediately due and payable.

The reasons for taking this action are as follows:

[If the loan account is in monetary default, list this as one reason for accelerating. If the loan account is not in monetary default, OGC must advise.]

Notice of Intent to Foreclose on Your Property Serving as Security for the United States of America and Acceleration of Your Loan Accounts (Continued)

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5-FLP, Exhibit 50

The debt instruments are described as follows:

Debt Instrument	Date of Instrument	Original Amount

The UNITED STATES will not file its foreclosure action or liquidate its security, under the authority granted in the above-described instruments, for 30 days. During that period you may purchase the property for the market value, which the Farm Service Agency has appraised to be \$____. Payment should be made by cashier’s check, certified check, or postal money order payable to the Farm Service Agency and delivered to the county official at _____.

If your account is referred to the Department of Justice for foreclosure and/or other collection activity after foreclosure, such as a deficiency judgment or enforcing a judgment lien, attorney’s fees may be added to your debt as well as a Department of Justice fee of 3 percent.

*You may not stop the foreclosure by paying an amount less than the market value.

** The above-described security instruments provide that the UNITED STATES may foreclose without court action by selling the property at public sale after _____. The Government intends to sell the property in this manner.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FSA DEBTS.

UNITED STATES OF AMERICA

BY: _____
District Director
Farm Service Agency
United States Department of Agriculture

Notice to Customers Presenting Checks

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquires, please contact your local office.

Privacy Act – 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/otcnet/index.html>), or call toll free at (1-866-945-7920) to obtain a copy by

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