

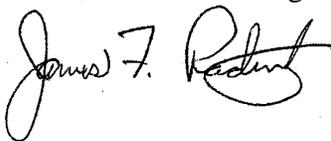
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Regular Direct Loan Servicing
4-FLP**

Amendment 17

Approved by: Acting Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 1 C has been amended to update regulations quoted in the reference example.

Subparagraph 4 C has been removed because it is no longer applicable.

Subparagraph 61 E has been amended to provide instructions for handling FSA-2425 without borrower's signature.

Subparagraph 65 B has been amended to provide instructions for canceling undisbursed funds before making a final payoff.

Subparagraph 99 D (d) has been amended to remove the lease requirement if the borrower ceases to operate.

Subparagraphs 99 E and G have been amended to update regulation requirements for leasing of real estate security and mineral leases.

Subparagraphs 100 A and B have been amended to provide additional references for documenting borrower noncompliance and to clarify the exhibit sent to borrowers for potential conversion.

Subparagraph 117 A has been amended to update regulation requirements for subordination of FSA real estate security.

Subparagraph 118 A has been amended to update regulation requirements for subordination of FSA chattel security.

Subparagraphs 146 C and D have been added to provide regulation requirements for releasing chattel security liens and real estate security liens without compensation.

Subparagraph 161 A has been amended to update regulation requiring borrowers to account for chattel security.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Paragraph 162 has been amended with updated regulation requirements for:

- executing an annual agreement for the disposition of chattel security and how dispositions are reported and recorded
- ensuring that borrowers provide information to update the annual agreement for the use of proceeds.

Subparagraph 181 A has been amended to clarify how a borrower is notified of a potential unauthorized disposition of security.

Subparagraph 196 B has been amended to update regulation requirements for partial releases of real estate security.

Subparagraph 196 C (1) (ii) has been amended to update regulation requirements for the sale of security mineral products.

Subparagraph 266 B has been amended to remove the requirement to provide a primary loan servicing packet to estates of deceased borrowers.

Subparagraph 267 D has been amended to provide instructions on compliance with subparagraph 100 B before notifying a deceased borrower’s account of primary loan servicing options.

Exhibit 2 has been amended to:

- include a definition for “Agreement for the Use of Proceeds”
- modify the definition of “Subordination”.

Note: The Page Control Chart for Amend. 16 should have listed Exhibits 52 and 53, page 1. Ensure that Exhibits 52 and 53 currently filed are dated 5-10-13.

Page Control Chart		
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Part 1 Introduction and Purpose

1 Purpose and Sources of Authority

A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- regulations governing direct loan regular or routine servicing
- roles and responsibilities in implementing regulations and other responsibilities in direct loan regular or routine servicing.

B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 765 and other regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress, including CONACT.

C Regulation References

Text in this handbook that is published in CFR is printed in **bold** text. CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement spelled out in CFR
- may be used to support FSA adverse decisions.

Note: Cross-references printed in bold are citing a section of CFR. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in non-bold text in parenthesis (within the bold text).

Example: Subparagraph 118 A provides “[**7 CFR 765.205(c)**] (1) **For loans secured by chattel, the subordination must meet conditions contained in paragraphs *(b)(3)(i) through (b)(3)(xiii) of this section** (subparagraph 117 A).”

The text “**paragraphs (b)(1)(i) through (b)(3)(xiii) of this section**” refers to 7 CFR 765.205 (b)(3). The nonbold reference indicates that 7 CFR 765.205(b) is included in subparagraph 117 A.--*

2 Related References

A Related FSA Handbooks

The following FSA handbooks concern FLP.

IF the area of concern is about...	THEN see...
appeals and mediation	1-APP.
civil rights compliance and administration for FSA programs	18-AO.
common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX	1-CM.
direct loan making	3-FLP.
direct loan special servicing and inventory property management	5-FLP.
employee development and training	6-PM.
environmental requirements	1-EQ.
--general and administrative regulations governing FLP, and implementing NAD final determinations--	1-FLP.
guaranteed loan making and servicing	2-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan *--Program, Land Contract Guarantee Program, and servicing of minor--* loan programs	6-FLP.
personnel management, such as employee conflict of interest	3-PM.
policies and procedures for the acquisition of supplies, equipment, and services	27-AS.
procedures for collecting, maintaining, or disclosing data or information concerning an individual	3-INFO.
procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
processing collections and canceling loan checks and payments	3-FI.
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
State and county records management	25-AS.

Note: RD Instruction 1940-G must be used along with 1-EQ.

B Helpful Links

The Helpful Links web site at

<https://indianocean.sc.egov.usda.gov/flp/InformationalLinks?Action=HelpfulLinks&caller=index> provides links to useful web sites.

4 FSA Exception Authority

A General

[7 CFR 765.501] On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(i) The exception is not inconsistent with the authorizing statute or other applicable law; and

(ii) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Agency's financial interest.

*--Except as provided in subparagraph C, authority for granting approval of an exception is held only by the Administrator and DAFLP.

A decision as to whether an exception request will be submitted will be at FSA's discretion and is not appealable.

A request for an exception to program regulations should not be pursued under normal servicing conditions. Except under subparagraph C, FSA considers requests submitted under extraordinary circumstances only.

B Submitting Exception Requests

For exception requests that cannot be approved under subparagraph C, SED must submit an exception request to DAFLP by e-mail to **RA.dcwashing2.FSA-AdmException**. The e-mail subject should read "Administrator's Exception to (cite 4-FLP subparagraph) – (Borrower's Name and State)." An **encrypted** attachment must fully describe the status of the account,--* including:

- a brief background on the case
- total outstanding FSA indebtedness; loan types and amounts
- current status of the account; if it is delinquent, where it is in Primary Loan Servicing
- type of security (chattel or real estate) and estimated value
- prior liens
- proposed plan of action that warrants the exception request

4 FSA Exception Authority (Continued)

B Submitting Exception Requests (Continued)

- what procedure is to be waived
- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- discussion of graduation
- how the action is in the best interest of the Government
- additional information that SED thinks will be needed to review the case.

* * *

61 General (Continued)**E Canceling Undisbursed Loan Funds**

After a loan has been closed, FSA-2425 will be used to cancel the obligation of funds that will not be used by the borrower. No interest accrues, since the funds were obligated, but not advanced.

FSA-2072 must also be prepared and submitted with a copy of FSA-2425 to FSC, FLOO at the following address:

USDA, FSA, FSC, FLOO, FC-533
PO BOX 200003
ST LOUIS MO 63120-0003.

The original FSA-2425 with the borrower's signature will be stapled to the original promissory note in the locking-type, fire-resistant file cabinet. A copy of FSA-2425 will be placed in the borrower's file in position 2 with the note and an ADPS Unclosed (UN) Screen screen-print, after completion of the deobligation by FLOO.

--If it is clear that the unused funds will not be used, but the borrowers will not sign FSA-2425, States Offices shall contact LSPMD for directions.--

FSC, FLOO's record of the loan will indicate the loan amount was reduced after deobligation. Keeping the FSA-2425 with the promissory note (both original and copy) is the paper trail evidence that the loan amount was reduced after closing and the borrower consented.

DLS will be updated as required.

62 Regular Payments**A Applying Regular Payments**

[7 CFR 765.153(a)] A regular payment is credited to a scheduled installment on FLP direct loans and Non-program loans. Regular payments are applied to loans in the following order:

- (1) Annual operating loan;**
- (2) Delinquent FLP installments, paying least secured loans first;**
- (3) Non-delinquent FLP installments due in the current production cycle in order of security priority, paying least secured loans first;**
- (4) Any future installments due.**

Regular payments received will be credited by FSC, FLOO to loans in the order provided in subparagraph 64 A, beginning first with administrative costs and protective advances plus interest. Administrative costs and protective advances will only add on to FO's, SW's, and *-CL's. For other loan types, a new loan account is established. The loan number for these-* loans is generally between 75 and 99. Any protective advance or administrative cost charged back to a borrower's account is immediately due and payable.

65 Final Payments

A Calculating the Final Payment

When FSA is notified of the date the borrower will make the final payment, the authorized agency official calculates the final payoff amount by checking the “TPOF” field of the ADPS AI and PF Status Screens.

The authorized agency official shall verify that no other accounting transactions are pending that would affect the payoff amount. This may include, but is not limited to, payments that may not yet have been applied, loan costs that may not be posted on the account yet, interest rate changes, accounting corrections, and shared appreciation recapture.

Final payoffs shall be verified by 2 agency officials to lessen the possibility of an incorrect payoff amount being provided. Both officials will initial the AI and PF Status Screens and any other documentation to certify the amount. Exhibit 26 will be sent to the borrower only if the request for payoff is made before the day of payment in full.

-B Supervised Bank Accounts and Undisbursed Loan Funds--

If a borrower has a supervised bank account, the authorized agency official may apply any remaining funds in the account to the final payoff, or release the remaining funds in the supervised bank account to the borrower after they have paid the account in full.

See 1-FLP, Part 4 for more information on supervised bank accounts.

-If a borrower has undisbursed loan funds, they must be canceled according to subparagraph 61 E before the account is paid off.--

C Overpayment

[7 CFR Part 765.155(c)] If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than \$10, the borrower must request a refund from the Agency in writing. Overpayments of \$10 or more automatically will be refunded by the Agency.

The authorized agency official sends any borrower requests for refund of overpayments to FSC, FLOO and forwards refunds issued by FSC, FLOO to the borrower.

65 Final Payments (Continued)

D Underpayment

[7 CFR Part 765.155(d)] If an Agency miscalculation of a final payment amount results in an underpayment, the Agency may collect all account balances resulting from its error. If the Agency cannot collect an underpayment from the borrower, the Agency will attempt to settle the debt in accordance with subpart B of 7 CFR part 1956.

If the authorized agency official discovers that the borrower underpaid FSA in an amount that exceeds \$10, the account will be serviced according to 5-FLP, Part 10.

If the promissory notes or security instruments have been released, the authorized agency official will immediately request guidance from the State Office, who will consult OGC.

If voluntary payment is not made to pay the debt in full, if a compromise offer is not made or accepted, or if court action is not initiated to collect the debt, the account will be referred for collection under TOP and cross-servicing after appropriate notice, if the remaining debt exceeds \$100.

Debt cancellations over \$10 will only be processed after all other attempts to collect the debt have been exhausted.

99 Borrower Responsibilities for Complying With Loan Instruments**A General Policy**

[7 CFR 765.202] The borrower must:

--(a) Comply with all provisions of the loan agreements;--

(1) Noncompliance with the provisions of loan agreements and documents, other than failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default on FLP loans by the borrower;

(2) Borrower non-compliance will be considered by FSA when making eligibility determinations for future requests for assistance and may adversely impact such requests;

B Borrower Responsibilities

***--[7 CFR 765.202] The borrower must:**

(b) Maintain, protect, and account for all security;

(c) Pay the following, unless State law requires the Agency to pay:--*

(1) Fees for executing, filing, or recording financing statements, continuation statements or other security instruments; and

Note: Exhibit 28 will be used to inform the borrower of any fees required.

(2) The cost of lien search reports;

(d) Pay taxes on property securing FLP loans when they become due;

(e) Maintain insurance coverage in an amount specified by the Agency;

(f) Protect the interests of the Agency when a third party brings suit or takes other action that could affect Agency security.

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

C Requirement to Operate Security

[7 CFR 765.251] (a) A borrower is required to be the operator of Agency security in accordance with loan purposes, loan agreements and security instruments.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan agreements and security instruments.

(c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253 (subparagraphs D and E).

D Conditions for FSA Consent to Borrower Ceasing to Operate

[7 CFR 765.253] If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

(a) Such action is in the Agency's best interests;

(b) The borrower is unable to graduate on any program except for CL;

(c) The borrower is not ineligible as a result of disqualification for Federal Crop Insurance violation according to 7 CFR part 718;

*** * ***

99 Borrower Responsibilities for Complying With Loan Instruments (Continued)

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

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

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

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

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

***--E Real Estate Surface Leases**

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

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

(2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage. Or

The term of surface leases for farm property no longer in use, such as old barns, or for nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

Note: Surface leases of farm property no longer in use or nonfarm purposes must be approved by the SED.--*

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

***--(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met (subparagraph D); and**

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

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

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

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

G Mineral Leases

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

***--(1) For FO loans secured by real estate on or after December 23, 1985, and loans other than FO loans secured by real estate and made from December 23, 1985, to December 16, 2013, the value of the mineral rights must have been included in the original appraisal in order for the Agency to obtain a security interest in any oil, gas, and other mineral associated with the real estate security.**

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

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

(i) The Agency's security interest; or

(ii) Compliance with any applicable environmental requirements of subpart G of 7 CFR part 1940.

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

H Chattel Security Leases

[7 CFR 765.252 (c)] Lease of chattel security is not authorized.

FSA immediately notifies the borrower of nonmonetary default according to 5-FLP, paragraph 66.

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 case file. 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.--*

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 Borrower's Noncompliance Notification

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. Any response--* received from the borrower will be documented in the case file 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.

Except for third party foreclosures, failure to pay real estate taxes or insurance, and UCC renewal fees, if the authorized agency official determines that the potential noncompliance has not been resolved, 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 according to 5-FLP, paragraph 66 and notification according to 5-FLP, subparagraph 67 A. SED concurrence is also required before any civil action or criminal action is considered according to 5-FLP, Part 11.

C Lack of Good Faith

If loan servicing is to be denied based on "lack of good faith", a determination must be made by OGC as explained in detail on FSA-2551. OGC only needs to concur with nonmonetary defaults that involve "lack of good faith". FSA-2551 will be prepared by the local office and must include all pertinent information, evidence, and any responses provided by the borrower. FSA-2551 and all documentation will be forwarded to SED for concurrence and submission to OGC.

117 Conditions for Real Estate Subordinations

A Real Estate Security

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

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

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

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

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

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

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

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

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

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

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

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

117 Conditions for Real Estate Subordinations (Continued)

A Real Estate Security (Continued)

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

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

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

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

(xiii) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in part 1940, subpart G of this title;

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

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

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

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

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

B Releasing and Refiling Lien Instruments Instead of Subordination

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

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

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

117 Conditions for Real Estate Subordinations (Continued)

B Releasing and Refiling Lien Instruments Instead of Subordination (Continued)

- the borrower agrees to execute new security instruments

Notes: The new security instruments will be refiled immediately after the refinancing is completed.

SED will consult OGC, as needed, to obtain instructions in protecting FLP's lien position.

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

Note: See subparagraph 197 B for customary costs.

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

118 Conditions for Chattel Subordinations

A Chattel Security

***--[7 CFR 765.205(c)] The requirement for chattel subordinations are as follows: (1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(1)(i) through (b)(3)(xiii) of this section (subparagraph 117 A). Multi-year subordinations may only be approved according to State supplements.**

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

- borrower's inability to obtain credit without subordination, including guarantee
- borrower's inability to partially graduate
- borrower's inability to pay debt before funds are released for each production cycle.--*

B Second Subordinations on Chattel Security

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

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

118 Conditions for Chattel Subordinations (Continued)**B Second Subordinations on Chattel Security (Continued)**

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

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

C CCC Loans

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

119 Appraisal Requirements**A Appraisals**

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

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

- loan for which the borrower requests the subordination is:
 - to refinance an existing prior lien and the resulting prior lien will **not** be increased
*--except for customary costs appropriate to the transactions

Note: See subparagraph 197 B for customary costs.--*

- for an essential repair that is needed to restore the value of the security and complies with subparagraph 117 A
- borrower's case file contains an existing appraisal that is less than 1 year old and FSA determines the appraisal to still be sufficiently accurate.

FSA does **not** require an appraisal for chattel security when the:

- proposed subordination is for annual operating and family living expenses only and the projected income from farm production exceeds the subordination amount
- existing FSA appraisal is less than 1 year old and the authorized agency official determines it to be adequate (the authorized agency official must consider property additions to, and deletions from, the latest FSA appraisal) and fully document the decision.

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 case file.

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 FSC, FLOO 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
 - if the Government is liquidating the security
 - because of litigation.
- **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 case file and submit it to SED for review.

148-160 (Reserved)

Part 7 Disposition of Security**Section 1 Disposition of Normal Income and Basic Chattel Security****161 General Requirements****A Security Accounting**

***--[7 CFR 765.301(a)] The borrower must account for all chattel security, and maintain records of dispositions of chattel security and the actual use of proceeds. The borrower must make these records available to the Agency upon request.**

The authorized agency official may require that the borrower provide receipts or other documentation to verify the chattel security sale.--*

B Fair Market Value

[7 CFR 765.301(b)] The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.

[7 CFR 765.301(b)(1)] The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.

The authorized agency official may consult readily and commonly available sources of price information to assess the adequacy of the price.

[7 CFR 765.301(b)(2)] The market value for basic security is determined by an appraisal obtained in accordance with § 761.7 of this chapter (1-FLP, Part 6).

FSA may require an appraisal to determine the fair market value of basic chattel security, unless the security is sold through a legitimate public auction.

C FSA Lien Release

[7 CFR 765.301(c)] When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.

161 General Requirements (Continued)

D Consent of Lienholders for Release of Proceeds

[7 CFR 765.301(d)] The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.

The authorized agency official may permit the borrower to use proceeds from the sale of normal income security for payment of transaction costs before application to FSA loan balances if:

- costs incurred are considered routine and customary marketing costs for the transaction
- the borrower cannot pay the costs
- the purchaser will not pay the costs.

The authorized agency official may require:

- that the borrower provide receipts or other documents that can be used to verify the type and amount of transaction costs
- the borrower to reimburse FSA, if it is determined that any of these conditions have not been met.

E Disruption of Farming Operation

[7 CFR 765.301(e)] The transaction must not interfere with the borrower's farming operation or jeopardize the borrower's ability to repay the Agency loan.

When reviewing the borrower's proposal for disposition of basic security and use of proceeds, the authorized agency official must determine if and how the proposed disposition and use of proceeds will affect:

- the financial viability of the borrower's operation, including the borrower's ability to repay obligations to FSA and non-FSA creditors
- the management of the borrower's operation
- FSA's security interest.

The authorized agency official may approve the transaction after determining that it will improve the borrower's financial position or structure in such a way that improves the borrower's ability to repay FSA loans or improves the financial basis of the operation.

161 General Requirements (Continued)

F Furthering FSA Program Objectives

[7 CFR 765.301(f)] The disposition must enhance the program objectives of the Agency loan.

G Security Exchange or Replacement

[7 CFR 765.301(g)] When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the farming operation as well as meet the program objectives, purposes, and limitations for the type of loan.

H Proceeds Payable to Both the Borrower and FSA

[7 CFR 765.301(h)] All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency. If all Agency loan installments and any past due installments, for the period of the agreement for the use of proceeds have been paid, however, these payments from the sale of normal income security may be payable solely to the borrower.

162 Annual Agreement for Disposition of Normal Income and Basic Chattel Security**A Annual Agreement**

***--[7 CFR 765.302(a)] The borrower and the Agency will execute an agreement for the use of proceeds.** FSA, in consultation with the borrower, will complete the FSA-2040 to describe plans for disposition of security and use of proceeds. Borrower will review the FSA-2040, initial and sign it in the designated places. For borrowers with:

- normal income security, the agreement shall be updated at least annually, as necessary, to reflect changes in the operation
- basic income security only, the agreement shall be updated as part of a scheduled annual review (1-FLP, paragraph 223) or as necessary to reflect changes in the operation.

B Using the Annual Agreement

[7 CFR 765.302(b)] The borrower must report any disposition of basic or normal income security to the Agency as specified in the agreement for the use of proceeds.

[7 CFR 765.302(c)] If a borrower wants to dispose of normal income security in a way different than provided by the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition unless all FLP payments planned on the agreement have been paid.

[7 CFR 765.302(d)] If the borrower sells normal income security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.--*

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

B Using the Annual Agreement (Continued)

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

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

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

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

* * *

C Government Payments and Insurance

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

**162 Annual Agreement for Disposition of Normal Income and Basic Chattel Security
(Continued)****D Modifying and Updating Annual Agreements**

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

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

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

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

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

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

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

166 Releasing Security Interest**A Lien Release General Requirements**

[7 CFR 765.305(a)] When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.

B Specific Security Item Releases

When releasing specific items that must be recorded under UCC or chattel mortgage laws, the authorized agency official will use FSA-2470 or other form approved by OGC and required by State law. However, FSA may not deliver the actual release until 15 calendar days after receiving the payment unless the payment is made in cash, money order, certified check, or check from a known and reputable lender. When SED's must approve a transaction or when FLM, SFLO, or DD want advice on approval of a transaction, the borrower's case folder and any other information pertinent to the transaction will be sent to the State Office. The authorized agency official must ensure that only specific items are released.

Note: When specific items are listed on FSA-2028, the authorized agency official **must** ***--record the disposition on the working copy of FSA-2028 and FSA-2045.--***

166 Releasing Security Interest (Continued)**C Releasing Wool and Mohair Lien Conditions**

[7 CFR 765.305(b)] Security interests on wool and mohair may be released when the security is marketed by consignment, provided all of the following conditions are met:

- (1) The borrower assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs;**
- (2) The borrower assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair; and**
- (3) The borrower and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the borrower and the Agency.**

The authorized agency official may execute releases of FSA's lien on wool and mohair on FSA-2465. As FSA-2465 is not a binding agreement until executed by all parties in interest, including the borrower, the broker, and FSA. The authorized agency official may execute it before other parties.

167-180 (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 case file running record. A copy of the--* running record will be filed in the District Director Oversight Review file according to 25-AS, Exhibit 40.5. The 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.

Section 3 Real Estate Security Partial Releases

196 Requirements

A General

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

Note: Borrowers must use FSA-2060 to request partial release of real estate security.

B Conditions for Approval

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

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

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

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

***--[7 CFR 765.351(a)] (3) Except for releases in paragraph (f) of this section (subparagraph 196 H), the amount received by the borrower for the security being disposed of, or the rights being granted, is not less than the market value and will be remitted to the lienholders in the order of lien priority;**

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

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

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

196 Requirements (Continued)

B Conditions for Approval (Continued)

***--[7 CFR 765.351(a)] (6) The environmental requirements of subpart G of 7 CFR part 1940 must be met;**

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

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

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

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

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

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

*** * ***

D Compensation for Damage to Real Estate Security

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

E Disposition of Security for Outstanding ST's

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

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

196 Requirements (Continued)

F Exchange of Security Property

[7 CFR 765.351(c)] (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352 (paragraph 197).

(2) Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.

G Sale Under a Contract for Deed

[7 CFR 765.351(d)] A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:

(1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;

(2) Payments will not exceed 10 annual installments of principal plus interest or the remaining term of the FSA loan, whichever is less. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;

(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;

(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder's approval, used in accordance with § 765.352; (paragraph 197)

(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;

(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;

(7) All other requirements of this section are met.

196 Requirements (Continued)

***--H Release Without Compensation**

[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;**
- (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).--***

197 Allowable Use of Proceeds From the Release of Real Estate Security

A Applying Proceeds to Liens

[7 CFR 765.352(a)] Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

B Use of Proceeds for Paying Costs

[7 CFR 765.352(a)(2)] To pay customary costs appropriate to the transaction, which meet the following conditions:

(i) Are reasonable in amount;

(ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

Examples of customary costs may include:

- abstracts
- judgment liens
- real estate broker's commissions
- real estate taxes that must be paid to complete the transaction
- reasonable attorney's fees
- surveys
- title examination
- title insurance.

Part 10 Deceased Borrowers**266 General****A Overview**

This Part describes the procedures FSA follows upon learning of the death of an FLP borrower.

B Contacting the Deceased's Family, Heirs, or Other Liable Parties

The authorized agency official will contact the family, heirs, or liable parties as soon as practical after the death of a borrower to discuss plans for the farm.

The authorized agency official will complete FSA-2490 to:

- determine how to proceed with the deceased borrower's account
- assess FSA's security position
- ensure FSA's security is adequately protected and maintained.

If no liable party remains, the heirs/representatives contacted will be informed that:

- the loan can be paid in full or assumed on eligible or ineligible rates and terms, if all requirements are met
- estates cannot be FSA program or NP borrowers.

* * *

266 General (Continued)

C Consulting SED

To complete FSA-2490 and determine an appropriate course of action, the authorized agency official will refer to State supplements, as appropriate; however, SED's will always be notified when:

- determining claim priority
- filing a proof of claim
- withdrawing a proof of claim
- initiating, participating in, or contributing to a probate or administrative hearing
- servicing a borrower's account when no will exists.

SED's will consult with OGC, as appropriate.

When necessary, the authorized agency official will forward the following information to SED:

- FSA-2490
- the borrower's case file
- a recommendation on how FSA should proceed with the borrower's account.

267 Servicing Options for Program Loan Accounts**A Continuation**

[7 CFR 765.451(a)] Following the death of a borrower, the Agency will continue the loan with any individual who is liable for the indebtedness provided that the individual complies with the obligations of the loan and security agreements.

The authorized agency official will process applicable changes to SCIMS and DLS to change any name, account number, or case number.

B Transfer and Assumption

[7 CFR 765.451(b)] The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

See Part 9 for more information on transfer and assumptions.

C Net Recovery Buyout Agreements and FSA-2543's

If an unmatured net recovery buyout agreement or FSA-2543 exists at the time of the borrower's death, see 5-FLP, subparagraph 342 A or 361 B.

D Liquidation

If a deceased borrower's farm loan accounts cannot be paid in full, voluntarily liquidated, resolved through continuation with existing obligors, or transferred to a third party, the *--authorized agency official will comply with subparagraph 100 B before proceeding--* according to 5-FLP, paragraph 66.

268 Servicing Options for NP Accounts

A General Policy

When a borrower with only NP's dies, FSA shall determine whether the borrower's NP's may be continued or assumed by another party. If NP's cannot be continued or assumed, FSA shall liquidate NP's according to 5-FLP, Part 16.

B Continuation with a Jointly Liable Borrower

[7 CFR 765.452(a)(1)] The Agency will continue the loan with a jointly liable borrower if the remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.

--The authorized agency official shall process applicable changes to SCIMS and DLS to--
change the borrower's name and case number.

C Transfer and Assumption

[7 CFR 765.452(b)] A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part (Part 9).

[7 CFR 765.452(a)(2)] The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower according to the loan and security instruments.

See subparagraph 248 C for information on continuing or assuming a loan.

D Security Transfer Beyond Heirs

[7 CFR 765.452(c)] (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements *--listed in subpart I of this part (Part 9).--*

269-280 (Reserved)

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None.

Forms

This table lists all forms referenced in this handbook.

Form Number	Title	Display Reference	Paragraph Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		116
CCC-679	Lien Waiver		118
FSA-1956-22	Update to TOP and Cross-Servicing Information		282
FSA-2001	Request for Direct Loan Assistance		116, 126
FSA-2025	Notification of Approval Terms and Conditions and Borrower Responsibilities		247-249
FSA-2026	Promissory Note		3, 247, Ex. 2, 20
FSA-2028	Security Agreement		Text, Ex. 2, 4
FSA-2029	Mortgage/Deed of Trust		3
FSA-2037	Farm Business Plan – Balance Sheet		116
FSA-2038	Farm Business Plan – Income and Expenses		116
FSA-2040	Agreement for the Use of Proceeds and Security		61, 162, 181, 212
FSA-2044	Assignment of Income		281
FSA-2045	Record of the Disposition of FSA Security/Release of Proceeds		162, 166, 181
FSA-2060	Application for Partial Release, Subordination, or Consent		Text
FSA-2065	Annual Statement of Loan Account		64, Ex. 25.5
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		61
FSA-2080	Release From Personal Liability		231, 247, 251

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

Forms (Continued)

Form Number	Title	Display Reference	Paragraph Reference
FSA-2425	Request to Cancel Undisbursed Loan Funds		61
FSA-2429	Request for Change in Application		61
FSA-2433	Satisfaction of Lien		65
FSA-2434	Consent and Release of Interest of United States		65
FSA-2445	Control Log PLAS/GLAS Account Corrections		97
FSA-2446	PLAS/GLAS Account Correction		97
FSA-2450	Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Proceeds		162
FSA-2455	Subordination by the Government		120
FSA-2465	Assignment, Acceptance, and Release (Wool and Mohair)		166
FSA-2470	Partial Release		166, 212
FSA-2476	Transfer of Real Estate Security		247
FSA-2489	Assumption Agreement		247
FSA-2490	Deceased Borrower Report		266
FSA-2495	Application to Move Security Property		291
FSA-2543	Shared Appreciation Agreement		3, 97, 267
FSA-2551	Request for Nonmonetary Default Determination		100, 181
FSA-2585	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1098	Mortgage Interest Statement		Ex. 25.5
IRS 1099-A	Acquisition or Abandonment of Secured Property		Ex. 25.5
IRS 1099-C	Cancellation of Debt		Ex. 25.5
IRS 1099-G	Certain Government Payments		Ex. 25.5
IRS 1099-INT	Interest Income		Ex. 25.5
IRS 1099-MISC	Miscellaneous Income		Ex. 25.5
UCC1	National Financing Statement		247, 291, Ex. 2

Definitions of Terms Used in This Handbook (7 CFR 761.2(b))**Abandoned Security Property**

Abandoned security property is security property that a borrower is not occupying, or is not in possession of, or has relinquished control of, and has not made arrangements for its care or sale.

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.

Additional Security

Additional security is any property which provides security in excess of the amount of security value equal to the loan amount.

Agency

Agency is FSA, an agency of USDA, including its personnel and any successor Agency.

Agency Official

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

***--Agreement for the Use of Proceeds**

Agreement for the use of proceeds is an agreement between the borrower and the Agency for each production cycle that reflects the proceeds from the sale of normal income security that will be used to pay scheduled FLP loan installments, including any past due installments, during the production cycle covered by the agreement.--*

Approval Official

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

Assumption

Assumption is the act of agreeing to be legally responsible for another party's indebtedness.

Authorized Agency Official

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

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

Basic Security

Basic security is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

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.

* * *

Chattel

Chattel is any property that is not real estate.

Chattel Security

Chattel security 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.

Civil Action

Civil action is a court proceeding to protect the Agency’s financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt’s assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.

Collateral

Collateral is property pledged as security for a loan to ensure repayment of an obligation.

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

Shared Appreciation Agreement

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

Subordination

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

Subsequent Loan

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

Transfer and Assumption

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

Trust

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

Unauthorized Disposition Of Chattel Security

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

VRU

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

State Supplements

The following table lists required State supplements.

Subparagraph	Required State Supplement
3 C	Guidance on notary acknowledgement.
3 D	Guidance on signature requirements.
3 F	Using State-specific and State-created forms.
65 F	Loan security instruments releases.
98 C	Obtaining new FSA-2028's.
98 D	Continuing financing statements.
98 E	Obtaining assignments.
98 F	Obtaining real estate security instruments.
101 A	Payment of a borrower's real estate taxes.
102 B	Potential purchaser notification.
--118 A	Multi-year subordinations.--
120 A	Real estate subordinations.
136 C	Severance agreements.
250 A	Closing documents for transfer and assumptions.
266 C	Guidance for deceased borrower processing.
282 D	Establishment of power of attorney.
291 D	Transfer of borrower's records and lien searches.

Note: SED's shall:

- issue State supplements according to 1-AS, paragraph 216
- obtain approval of State supplements according to 1-AS, paragraph 220.

