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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 761, 762, 764, 765, 766, 768, 769, 770

RIN 0560-AI61

[Docket No. FSA-2023-0003]

Enhancing Program Access and Delivery for Farm Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; with request for comment.

SUMMARY: The Farm Service Agency (FSA) is amending the Farm Loan Programs (FLP) regulations to implement the Distressed Borrower Set-Aside (DBSA) Program and other changes. DBSA will provide a new loan servicing program for financially distressed borrowers that will allow for the deferral of one annual loan installment at a reduced interest rate. DBSA will provide a simpler option to resolve financial distress than existing loan servicing programs. In addition to helping borrowers by adding DBSA as a new loan servicing program, FSA is amending the FLP regulations to revise loan making and servicing to improve program access and delivery. This rule is part of FSA's ongoing efforts for farm loans to remove barriers to capital access and increase opportunities for borrowers to be successful.

DATE: *Effective date:* September 25, 2024**.**

Comment date: We will consider comments on the information collection requirements under the Paperwork Reduction Act that we receive by: **[Insert date 60 days after publication in the *FEDERAL REGISTER*]**. We will also consider comments on the rule and may conduct additional rulemaking in the future based on the comments.

ADDRESSES: We invite you to submit comments on the information collection requirements. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to: www.regulations.gov and search for docket ID FSA-2023-0003. Follow the instructions for submitting comments.

Comments will be available for viewing online at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Houston Bruck; telephone: (202) 650-7874; email: houston.bruck@usda.gov. Individuals who require alternative means of communication for program should contact USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

FSA makes and services a variety of direct and guaranteed loans to farmers who are unable to obtain commercial credit sufficient to meet their needs at reasonable rates and terms. FSA also provides direct loan borrowers with credit counseling and supervision, to increase the borrowers' chance for success. FSA loan applicants are often:

- beginning farmers (BF) and socially disadvantaged (SDA) farmers who do not meet the underwriting requirements of commercial lenders because of insufficient net worth; or
- established farmers who have suffered financial setbacks due to natural disasters or economic downturns.

FSA loan applicants are also often farmers whose short- and long-term operational and personal goals are not well met by commercial lending products. FSA

loans are tailored to a farmer's needs and may be used to buy farmland and to finance agricultural production.

The Consolidated Farm and Rural Development Act (CONACT, Pub. L. 87-128, as amended; 7 U.S.C. 1921–2009cc–18) provides the authority for most FLP loans, including farm ownership, operating, and emergency loans.

After FSA provides a loan to a farmer, FSA continues to work with the borrower to monitor the progress of their operation, provide guidance on budgetary issues, and ensure loan repayment. If FSA loan borrowers become financially distressed and are unable to make loan installments as scheduled, or if the borrowers' plans change requiring reconsideration of original terms, FSA staff work with borrowers to explore options to improve profitability. A common solution to resolving financial distress is providing the distressed loan with more flexible rates or terms to improve profitability. These loan servicing options are commonly referred to as the Primary Loan Servicing Program (PLS) and the Disaster Set-Aside Program (DSA).

Section 22006, Farm Loan Immediate Relief for Borrowers with At-Risk Agricultural Operations, of the Inflation Reduction Act of 2022 (IRA, Pub. L. 117–169) authorized $3.1B in funds for FSA to create and provide certain additional assistance opportunities for distressed farm loan borrowers of FLP loans authorized under the CONACT. To date, FSA has provided historic assistance under IRA Section 22006 to assist distressed borrowers, including 6 different rounds of payments addressing both long-term and immediate sources of distress. To complement PLS, DSA, and previous IRA assistance, FSA is implementing a new loan modification option, the DBSA Program. DBSA is similar to DSA and will provide a new loan servicing option for financially distressed borrowers that will allow for the deferral of one annual loan installment per loan at a reduced interest rate under certain conditions. DBSA has three important distinctions compared to DSA:

- the deferred payment will accrue at a reduced interest rate,
- the loan must have been outstanding as of September 25, 2024, and
- the borrower does not have to suffer a loss from a declared disaster to qualify for DBSA.

This rule implements DBSA and makes other changes as the next step in FSA's ongoing effort to remove barriers to capital access and increase opportunities for borrowers to be successful. The COVID-19 pandemic highlighted the need for FSA to undertake a culture shift in its approach to farm loans to expand virtual opportunities and implement loan processes to improve turnaround times on financial assistance. For example, for loans overall, recent investments in online education and application platforms are making the loan process simpler to navigate virtually, and new underwriting techniques based on financial benchmarking of FSA's portfolio are expediting the loan process.

FSA is also clarifying and amending information throughout the FLP regulations to make it easier for borrowers to understand program requirements. These changes were developed with significant input from employee associations and the gathering of important insights from lending industry partners and agricultural advocacy groups. Advice and recommendations from agricultural advocacy groups on potential program improvements were carefully considered as FSA developed some of the more substantial changes, including improvements to the direct loan security requirements, cash flow budgeting process, and flexible repayment terms offered on direct loans.

While most of the amendments are not substantially altering existing policy, or are anticipated to impact a relatively small number of farmers, some changes are substantial, impacting nearly all direct loan customers, including changes that amend requirements for farm assessments, budget development, and loan security. These substantial changes will encourage borrower profitability by expanding opportunities for

borrowers to leverage asset equity, and by establishing opportunities to budget for a reasonable amount of cash flow margin to increase working capital reserves and savings, including savings for retirement and education, including the use of flexible repayment terms to achieve essential short- and long-term operational growth goals. These program enhancements reflect FSA's commitment to furthering strong partnerships with commercial lenders, as the borrower growth opportunities from the changes in this rule will result in more financially stable borrowers that are better prepared to transition to commercial banking. The enhancements will also be reflected in the subsidy rates for the respective FLP loan types, per Federal Credit Reform Act (FCRA, 2 U.S.C 661) and OMB Circular A-11 section 185.

The CONACT requires that all FLP applicants and loans meet certain requirements related to eligibility, security, and feasibility. The changes in this rule ensure FLP regulations continue to align with the CONACT and better reflect the needs of farmers, industry trends, historical data, and modernization of underwriting standards. Although many of the amendments in this rule are technical corrections or clarifications, there are several changes to FLP policy that better reflect customer needs and modernized standards in the greater agricultural lending industry.

This rule marks the most recent example of FSA's dedication to increase equity, improve customer service, and provide opportunities for customers to maximize their financial success.

Throughout this rule, any reference to "farm" or "farmer" also includes "ranch" or "rancher," respectively.

DBSA Program Implementation

This rule is implementing the DBSA Program to assist distressed borrowers whose operations are at financial risk and face the possibility of bankruptcy, liquidation, or foreclosure. Using available funds under section 22006 of IRA, DBSA is a payment

deferral program for financially distressed or delinquent borrowers with outstanding direct loans administered under subtitle A (Farm Ownership Loan (FO) Program, Conservation Loan (CL) Program, and Soil and Water Loan (SW) Program), subtitle B (Operating Loan (OL) Program), or subtitle C (Emergency Loan (EM) Program) of the CONACT.

While the DBSA Program will operate similarly to the existing DSA Program, there are important eligibility distinctions. Specifically, deferral under DBSA is only available for eligible direct loans outstanding as of September 25, 2024, and a borrower does not need to have been affected by a declared disaster to qualify. Importantly, and similar to both DSA and PLS eligibility requirements, borrowers requesting DBSA assistance must demonstrate that a set-aside of their current direct loan payment(s) would resolve their financial distress and result in a feasible operating plan.

Payments deferred under DBSA will be repaid at the time of loan maturity and will carry a reduced interest rate of 0.125 percent. This is the lowest interest rate the CONACT authorizes to be applied to loans. The CONACT authorizes the Secretary certain discretion in determining interest rates for the FO, SW, CL, OL, and EM Programs. For FO, CL, SW and OL Programs, the rate must not be in excess of the average yield for Treasury notes with similar maturities to the FO or OL Programs, plus an amount not to exceed 1 percent. The EM Program interest rates determined by the Secretary must be below 8 percent. This reduced interest rate on DBSA:

- is being used to mitigate the adverse impacts of additional interest accrual on the deferred payment for borrowers, and
- increases the likelihood for the long-term success and improves long-term repayment ability of the operation.

DBSA was created in part in response to input from borrowers, FSA staff, and other stakeholders noting that DSA works well to help resolve financial distress without

requiring PLS, and that a similar set-aside program would also help many borrowers in financial distress who have not been affected by a natural disaster.

Before this rule, FSA could only offer a deferral on direct loans through PLS or DSA. PLS is different from DBSA because PLS requires a series of loan servicing options to be considered and typically results in the loan being restructured; PLS can also be time consuming for the borrower.

DBSA is expected to be selected by many customers as a viable alternative to DSA and PLS. If a customer does not qualify for a DBSA, for example, if their financial distress cannot be resolved by deferring the current installment to the end of the loan, they may need the more complex loan servicing solutions and formal loan restructuring that is available through PLS.

As a result of the subsidy rate analysis, FSA determined that since the loan modifications costs of DBSA are funded by section 22006 of IRA, that only those loans that are outstanding as of September 25, 2024, which is the effective date of this rule, will be eligible. The rationale for that is to comply with the statutory authority as FSA paid for the loan modification costs up front based on the current loan portfolio. Borrowers may request DBSA on those loans at any time over the loan period, but may only have 1 DBSA outstanding per loan.

DBSA will provide existing FSA direct loan borrowers who are financially distressed or delinquent with an option to request a one-time deferral of a delinquent or upcoming annual installment instead of using PLS or DSA to address loan repayment issues. A delinquent borrower is defined in 7 CFR 761.2(b) as "a borrower who has failed to make all scheduled payments by the due date," and a financially distressed borrower is defined as "a borrower unable to develop a feasible plan for the current or next production cycle." The amount of the deferral will be limited to the lesser of the amount of the annual installment or the unpaid balance remaining on the installment at

the time the DBSA is approved. The deferred amount will have a reduced interest rate of 0.125 percent. The amount deferred, plus interest, will be due at the end of the loan term.

To request DBSA, borrowers must submit a request for DBSA in writing to FSA. The borrower will be required to submit actual production, income, and expense records for the current production cycle, and an operating plan for the upcoming production cycle, unless FSA already has that information on file for the borrower. This information will be analyzed by FSA to validate that a profitable cash flow budget for the current production cycle cannot be developed without deferring the next loan installment due on their outstanding FLP loans. FSA will notify the borrower in writing within 30 days if their request for DBSA is approved or denied, and the borrower must provide required DBSA closing documents within 45 days of approval notification.

DBSA will be implemented in a new subpart J of part 766, with conforming changes in parts 761, 765, and 766.

FLP Regulatory Improvements

In addition to helping borrowers by adding DBSA as a new loan servicing program, throughout the FLP regulations FSA is making discretionary changes to clarify and amend existing delivery processes and program requirements to increase access to FLP, including making several technical corrections. The various regulatory amendments are listed below, categorized by type as either a clarification, technical correction, non-substantial change, or substantial change.[1] Changes are discussed based on what changes are the most broadly applicable. For example, changes in the definition of "Family Farm" are discussed first along with changes in related terms, followed by the remaining definitions in alphabetical order.

[1]To assist in navigating the various changes in this rule, FSA categorized the amendments as either clarifications, technical corrections, non-substantial changes, or substantial changes. A substantial change is an amendment to FLP policy that is anticipated to impact the majority of applicants or borrowers, while a non-substantial change is a change that is anticipated to impact a relatively small number of customers.

The rule is making clarifications, which are in response to input from borrowers, staff, and other stakeholders. FSA has determined that clarifying the information in the regulation will make it easier for borrowers to understand program requirements. These clarifying amendments do not constitute a change in policy. The specific changes are discussed later in this document. Specifically, this rule clarifies:

- the definitions in 7 CFR 761.2 of Agricultural Commodity, Family Farm, Feasible Plan, Good Faith, Non-Eligible Enterprise, Participated in the Business Operations of a Farm, Related by Blood or Marriage, Relative, and Youth Loan;
- the financial analysis and document submission requirements for existing borrowers in 7 CFR 761.105 and 765.101;
- copies of real estate and equipment leases are required as part of a complete direct loan making or servicing application upon request in 7 CFR 764.51 and 766.102;
- the requirements in 7 CFR 764.51 and 764.101 to determine reasonableness of available credit elsewhere;
- direct loan eligibility credit history requirements in 7 CFR 764.101 apply to all entity members;
- guaranteed loan eligibility credit history requirements in 7 CFR 762.120 when there is previous debt forgiveness;
- the general direct loan managerial eligibility requirement in 7 CFR 764.101 and aligns it with the direct FO requirement;
- the EM requirements in 7 CFR 764.353 to ensure duplicate benefits are not provided;

- the special interest rate for beginning and veteran farmers obtaining a direct Microloan (ML)-OL in 7 CFR 764.254 and for the Indian Tribal Land Acquisition Program (ITLAP) 7 CFR 770.6;
- the application, eligibility, and loan security requirements for transfer and assumption requests in 7 CFR 765.402, 765.403 and 765.404; and
- equitable relief provisions in 7 CFR 768.1.

In addition to the clarifying amendments, FSA is making technical corrections to existing regulatory requirements that do not constitute a change in policy. Specifically, this rule corrects minor grammatical or typographical errors throughout 7 CFR 761 to 769, including correcting both "writedown" and "write down" to "write-down."

The majority of amendments in the rule are changes in policy, most of which are non-substantial changes to existing regulatory requirements. Those amendments that are policy changes, but considered non-substantial in nature, include:

- in 7 CFR 761.2, revising the "family farm" definition to include commercial foraging operations for the purposes of operating loan assistance where commodities are foraged on Indian land, and adding definitions for "commercially foraged", "Indian land" and "Indian Tribe;"
- requiring all guaranteed lenders to receive FSA approval of a transfer and assumption to ensure applicants satisfy eligibility requirements in 7 CFR 762.142;
- authorizing subordinations of loan security for a guaranteed lender to refinance its own debt in 7 CFR 762.142;
- removing borrower production training requirements throughout 7 CFR part 764 that are often waived, but maintaining the important borrower financial training requirements;

- authorizing direct OL security to be a junior lien on real estate in 7 CFR 764.251 when the purpose of the loan is to finance minor real estate repairs or improvements, and establishing lease terms for those circumstances;
- increasing the direct youth operating loan limit in 7 CFR 764.303 from $5,000 to $10,000;
- the experience eligibility requirements for direct FOs in 7 CFR 764.152;
- changing the EM formula for production loss used for determining the EM amount in 7 CFR 764.352;
- in 7 CFR 765.102, allowing direct loans that are only in non-monetary default for failure of the borrower to comply with graduation requirements to be converted to non-program loans instead of FSA proceeding with foreclosure action;
- providing specific response timeframes and FSA notification requirements for direct loan subordination requests in 7 CFR 765.205;
- changing the requirements in 7 CFR 765.252 for the lease of FSA security to provide borrowers additional flexibility;
- in 7 CFR 765.352 authorizing a portion of the proceeds from the sale of loan security to be retained by the borrower to pay capital gains taxes;
- establishing a State Executive Director's authority to extend PLS application deadlines in extraordinary circumstances in 7 CFR 766.101;
- expanding reasons that a delinquency may be due to circumstances beyond the control of a borrower for the purposes of PLS in 7 CFR 766.104 to include catastrophic medical expenses for the care of family member of a borrower or entity member;

- establishing timeframes in 7 CFR 766.115 for a borrower to obtain an independent appraisal if they dispute an FSA appraisal;
- making minor adjustments and edits to the form for the Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due in 7 CFR 766, Subpart C, Appendix A (form FSA-2510) and the related form for Iowa in Appendix B, to reflect the changes implemented in this rule and make minor technical corrections (the changes are not intended to change the information being collected); and
- making changes in 7 CFR 769 to the Heirs' Property Relending Program (HPRP), including expanding the application period.

The most substantial changes to the Farm Loan Programs regulations are those that apply to all borrowers and are intended to promote profitable farming operations. These changes will be incorporated into the subsidy rate for the relevant loan programs per FCRA. Specifically, this rule:

- establishes requirements for the development of farm operating plans and farm assessments in 7 CFR 761.103, 761.104, and 762.124, to ensure consideration of a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education;
- provides all eligible applicants the option to receive flexible repayment terms, including maximum direct loan repayment terms and an option for interest-only payments during the first year for certain types of direct loans in 7 CFR 764.154, 764.254, and 764.354;
- modifies direct FO, OL, and EM additional loan security requirements in 7 CFR 764.103, 764.106, 766.56, and 766.112, specifically by reducing the additional security requirement for all loan making and servicing

requests, removing the additional security requirement for all MLs and FOs with a down payment, removing the requirement that non-real estate assets be used as additional security for FOs, removing the requirement that a personal residence be provided as additional security, and removing the requirement for a lien on all assets to be provided to receive PLS assistance, DSA assistance, or for guaranteed loans being restructured with a balloon payment in 7 CFR 762.145;

- adds 7 CFR 766.120, which provides an alternative to PLS, allowing for a simplified extension of repayment terms when a balloon payment comes due; and
- expands opportunities in 7 CFR 765.305 and 765.351 for the release of a limited amount of direct loan security without compensation in certain circumstances.

Discussion of Substantial Changes

The following discussion provides additional detail on the amendments identified as substantial changes. Below that, non-substantial changes, clarifications, and technical corrections are discussed, in that order.

Farm Operating Plan Development and Farm Assessments

Developing a reasonable farm operating plan is essential for a farming operation to be successful. An important component of developing a farm operating plan includes considering the amount of reserves and cash flow margin necessary to support operational stability and growth. This will benefit farmers by providing the opportunity to create farm operating plans with budgets that include a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education. This rule amends 7 CFR 761.103 and 761.104(f) to provide opportunity for FSA's farm assessments and borrowers' farm operating plans to allow for

savings to support long-term operational financial stability and growth, including savings to ensure personal financial stability. Amendments to 7 CFR 761.103 also build consideration of borrowers' short- and long-term goals for their operation into annual farm assessments, as required by the CONACT, including progress towards graduation to commercial credit or eventual self-financing. This encourages farmers to consider customized FSA loan repayment terms that may better meet the goals of their proposed farming plan, including equal, unequal, interest-only, and balloon payments, as part of developing that plan. This rule amends 7 CFR 762.124 to clarify that flexible repayment terms may also be necessary to support guaranteed loan customers.

Farm operating plans that are unable to adequately fund working capital reserves and savings often indicate financial distress, which can lead to the need for additional loans or for FSA to provide loan servicing options. Flexible repayment terms help to ensure that adequate working capital reserves and savings are available for investments as opportunities arise. Through the promotion of flexible repayment terms, FSA is providing the best terms available to a borrower up front that maximize the opportunity to achieve adequate reserves and savings, as opposed to waiting for the operation to become distressed under the weight of excessive debt service obligations before a loan can be restructured with reduced payment requirements. Rather than the traditional approach of equity growth through accelerated debt repayment, flexible repayment terms support borrower equity growth by allowing borrowers the freedom to accumulate working capital reserves to make strategic investments in a timely manner, resulting in substantially more equity growth than would otherwise be realized through accelerated debt repayment.

Direct Loan Repayment Terms

The maximum repayment term for direct loans is 40 years for an FO and 7 years for an OL. Determining the appropriate repayment term within those limits has

historically required FSA to apply its discretion based on an individualized analysis of the applicant's ability to repay and the useful life of the security, which can result in inconsistency in the terms offered to applicants. This rule will standardize all repayment schedules offered to applicants to provide a greater opportunity to build operational stability and be successful. Updates to 7 CFR 764.154(b)(1), 764.254(b)(2), 764.354(b)(4) and (5) require all FOs, OLs, and EMs for purposes other than family living and farm operating expenses, to be scheduled over a term equal to the lesser of the useful life of security or the maximum term authorized by law, unless the applicant otherwise requests a shorter term in writing. This rule does not affect the repayment term provided on Down Payment Loans, which is established by the CONACT to be 20 years or less. FSA will continue to offer Down Payment Loans to customers with a repayment term of 20 years unless the applicant desires a shorter term to be considered.

Additionally, this rule amends the standard repayment term for the ML-FO Program. FSA developed ML to better serve the unique financial operating needs of new, niche, and small family farm operations. MLs offer more relaxed application requirements and serve as an attractive loan option, particularly for smaller and non-traditional farm operations that often face limited financing options.

While there is no difference between the maximum repayment term for an OL or an ML-OL (7 years), the ML-FO has been limited by regulation to a 25-year maximum repayment term, substantially less than the 40-year term of an FO. Since the ML-FO is targeted to small, start-up, and niche farming operations, the more restricted repayment term may put additional financial constraint on applicants who may already have limited financial resources. This rule amends 7 CFR 764.154(b) to allow for a maximum repayment term of 40 years for an ML-FO. Should a ML-FO applicant determine it to be in their best interest to receive a loan term less than 40 years, for example, to benefit from paying less total interest over the life of their loan, the applicant may request a shorter

term in writing. Additionally, borrowers may reduce their interest cost over the life of a loan by making additional payments if they are able and desire to do so as FSA loans carry no pre-payment penalty.

In addition, FSA emphasizes the use of flexible repayment terms to ensure adequate working capital reserves and savings can be accumulated by the borrower. As mentioned above, to ensure all borrowers have an opportunity to grow adequate working capital reserves and savings, all applicants will be offered an opportunity for a repayment plan on new term loan requests that includes an interest-only installment during the first year of the loan. An interest-only installment the first year of a loan can result in a substantial boost to reserves and savings, enabling the borrower to make strategic investments to grow their operation without having to take on additional debt. For borrowers who elect the first-year interest-only installment plan, principal reduction will typically begin after the sale of crops or livestock produced during the second year of the loan. This rule makes these changes in 7 CFR 764.154(b)(2) and (3), 764.254(b)(3) and (4), and 764.354(b)(6) and (7).

Prior to this rule, FSA structured most loans using equally amortized installments to repay a loan, which can put undue stress on already strained operating budgets. As a result, a borrower was more likely to become distressed and request PLS, a time-consuming process for both borrowers and FSA, which typically resulted in outcomes similar to those available through flexible repayment terms. Under flexible repayment terms for loans other than Down Payment FOs where the CONACT requires equally amortized payments, scheduled loan installments can be structured to reflect the expected cash flows used to analyze repayment, providing borrowers with greater financial flexibility over the life of the loan and enabling cash flow budgets to include projections for reasonable working capital reserves and savings. Flexible repayment terms for these loans can include interest-only installments, partial principal payments, and balloon

installments. This rule clarifies that flexible repayment terms may include interest-only installments for up to 3 years, which can be used if FSA determines it necessary to reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education. While principal reduction on loans is important to begin to support borrower growth and ensure FSA loans remain fully secured, interest-only payments beyond 3 years remain an option only when FSA determines that interest-only payments are necessary to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal.

Providing the option of flexible repayment terms at the time of loan approval enables all borrowers to receive the benefits of a deferral of principal without having to first become financially distressed or defaulting on their loan in order to access the loan servicing options of PLS, DBSA, or DSA. Providing more flexible repayment terms allows borrowers to make timely and strategic investments to grow their operations. As specified above, flexible repayment terms have the potential to reduce program delinquency and will provide borrowers with more options to meet the short- and long-term goals of the farm business, and to generate reasonable working capital reserves and savings, including savings for retirement and education.

For loans with balloon installments scheduled, borrowers have been required to go through the process of applying for PLS to extend the repayment schedule of their loan. This process is not customer-friendly and makes little sense for a borrower who has repaid as agreed throughout the initial loan term. Accordingly, this rule adds 7 CFR 766.120 to enable a borrower to receive a simple extension of repayment terms for up to an additional 8 years from the date the balloon payment comes due. This will provide the borrower with repayment terms similar to what they would receive through PLS, but without needing to go through the PLS process. Under PLS, an operating loan can be rescheduled for a term up to 15 years. Accordingly, this option aligns with that PLS

provision by permitting an extension of up to 8 years for repayment of the ballooning loan where the original maturity date was no more than 7 years from the date of loan closing.

To ensure this option is adequate to meet the borrower's needs, it is available only to borrowers who have a history of successful repayment of their loans, including making full installments for the last 3 years on the ballooning loan. For other borrowers, PLS will continue to be available. Additionally, this option is not available on loans where repayment terms have already been altered by PLS, or that have an outstanding DSA or DBSA, as the terms of those updated repayment agreements cannot be accommodated with a basic extension of the original loan terms.

Loan Security

This rule amends additional direct loan security and collateral servicing requirements to better enable borrowers to leverage assets and make strategic investments in their operations. This rule does not amend guaranteed loan security requirements. Additional loan security is collateral in excess of what is needed to fully secure the loan. Specifically:

- Additional direct loan security requirements in 7 CFR 764.103(c) requires a 125 percent loan security margin when available for direct loans, which is a change from the current requirement of 150 percent. The amendment also requires that real estate assets only be provided as additional security for direct FOs. Consistent with the current regulation and policy, if the borrower does not have the additional security available to pledge, FSA may still be able to make the direct loan if the loan is fully secured; additional security will only be taken "when available."
- This rule also amends 7 CFR 764.103(c) to expand the circumstances in which no additional security is required, to now include all Microloans

and FOs for which a cash down payment has been provided (similar to the existing Down Payment Loan Program, which does not require additional security).

- This rule removes direct loan making requirements for a personal residence to be used as additional security for direct loans in 7 CFR 764.106(d) under certain conditions.
- The reduced additional security requirement of 125 percent security margin, where available, is also being applied to PLS in 7 CFR 766.112(a); however, a lien on the personal residence will still be required during PLS if necessary to achieve a 125 percent security margin.
- This rule also amends the DSA additional security requirement by removing 7 CFR 766.56 so that additional security will not be required to be pledged if a customer requires DSA Program assistance, consistent with the new DBSA Program.
- This rule removes a requirement in 7 CFR 762.145(b)(7) that required guaranteed lenders to take a lien on all assets when restructuring a loan with a balloon installment.
- This rule provides processes for an expedited release of certain direct loan security in 7 CFR 765.305(c) and 765.351(f) after a period of successful loan repayment, further promoting borrower growth and saving significant staff time monitoring loan security that is not essential to loan repayment.

These fiscally responsible data-driven changes ensure that FSA is not overcollateralized and allows borrowers to leverage the equity in their assets to grow their operations. Since 1994, the regulation has required direct loans to be secured by not only the assets purchased or improved with loan funds, but also an additional amount of security equal to 50 percent of the direct loan amount, if available. FSA determined that

this requirement created a significant cost in both time and resources to perfect a lien on additional property, which has been determined to not be necessary for FSA to be fully secured, and also constrained borrowers from using equity to acquire capital needed for expansion for other business purposes.

A lien on assets purchased or improved with direct loan funds will still be required to provide adequate security for FSA farm loans. However, FSA recognizes that excessive additional security requirements that are unnecessary to significantly mitigate losses to the Government can ultimately restrict a borrower's ability to grow their operation by accessing asset equity. While this rule removes certain additional security provisions where FSA has determined taxpayer resources remain adequately protected (see following analysis), all loans will continue to be sufficiently collateralized. The existing additional security requirements also result in an ineffective use of FSA resources, as staff are required to monitor and service the often-unnecessary additional security liens. These changes are estimated to reduce administrative time by over 8,000 hours annually as staff will realize a reduced number of on-site inspections to evaluate collateral and less time updating security documents, including renewals of expiring liens.

Revising the direct loan security margin in 7 CFR 764.103(c) to 125 percent, reduces the amount of additional security required for a direct loan by half, from 50 percent of the loan amount down to 25 percent. FSA has determined that security at least equal to 125 percent of the loan amount, where available, will provide adequate assurance of repayment. In fact, since fiscal year (FY) 2000, the average security margin for loans that experienced a loss was 120 percent at the time the loan was made, which is below the revised threshold. Accordingly, this revised amount of additional security aligns not only with historic portfolio performance data, but also with the loan security expectations by other government lending regulators. Furthermore, in the infrequent

situation where FSA does liquidate security (approximately 4.1 percent of all accounts since FY 2000), the average administrative cost to FSA is less than 10 percent of the security value. This is substantially below the 25 percent additional security amount required in this rule, which provides an amount sufficient to cover estimated FSA administrative costs in the majority of liquidation circumstances. The requirement for additional security can be particularly important to protect the government from program losses for higher-risk direct OLs where primary security is often crops, livestock, or equipment with security values that are more volatile than real estate. However, for direct loans where real estate serves as adequate security, such as FOs, the additional security provision can result in FSA initially requiring more security than is necessary to protect the government's interests.

Prior to this rule, FSA perfected additional security lien interests on short-term non-real estate security items such as crops, livestock, and equipment, even if the loan was secured by more robust forms of collateral—such as real estate—as in the case of an FO. Requiring a lien on short-term assets for long-term debt significantly hinders a borrower's ability to leverage those assets to obtain reasonable rates and terms through commercial lenders for operating purposes, thereby delaying graduation to commercial credit or making progress towards self-financing, which are primary FLP objectives.

For FSA direct loans, additional non-real estate security assets are rarely relied upon for repayment of debt primarily secured by real estate, even in cases of foreclosure. The FSA data show losses on direct real estate loans are reduced when the loan-to-value at the time of liquidation is below 95 percent, as demonstrated in the Down Payment Loan Program. In the Down Payment Loan Program, applicants are required to provide a 5 percent cash down payment, and additional security is not required to be pledged. The FSA Down Payment Loan Program has an average historical loss rate from 2000 through 2023 of less than 0.14 percent, which is significantly lower than the average FO Program

loss rate of 0.96 percent. This further demonstrates that additional security is generally unnecessary for successful repayment of real estate debts when even a small amount of equity exists in the real property security.

Accordingly, this rule changes the additional security required for direct FOs to only be other real property. As discussed, when a loan is secured by real estate it is rare that FSA would rely on non-real estate assets to avoid a loss. This change to 7 CFR 764.103(c) will improve FSA internal processes by removing the need for FSA staff to maintain security interests that are unnecessary to adequately safeguard taxpayer resources, saving the time and cost of security inspections, and allowing borrowers to leverage asset equity to improve their operation.

This rule extends the list of existing exemptions from additional security requirements in 7 CFR 764.103(c) to include any direct FO where the applicant supplies a 5 percent cash down payment of the purchase price. This exemption has historically been available only for the Down Payment Loan Program, where the CONACT limits the security required. As discussed, the Down Payment Loan Program was a significant success, with the lowest delinquency and loss rate of any current FLP loan. Where a similar down payment is provided by an applicant of a regular FO, FSA expects similar low delinquency and loss rates. This expanded exemption will provide increased incentive for applicants to provide a cash down payment that improves the FSA security position without additional security needing to be pledged by the applicant.

This rule further extends the list of existing exemptions from additional security requirements in 7 CFR 764.103(c) to include any ML. This exemption will improve access to MLs, which are predominantly made to small and beginning farmers. Prior to this rule, only term MLs (such as direct loans for equipment or real estate purchases) were exempt from additional security requirements. This rule extends the exemption to any ML, including those for annual operating expenses. The average ML delinquency

rates for 2017 through 2021 (13 percent for operating ML-OL and 3.6 percent for ML-FO) are approximately half that of their regular OL or FO counterparts. The annual ML-OL delinquency rate is also approximately 5 percent lower than the regular annual OL delinquency rate. Overall, the ML Program has a solid history of stronger repayment performance compared to most other farm loan programs. ML historical performance supports that program integrity can be maintained while extending the additional security exemption to all MLs.

This rule specifies in 7 CFR 764.106(d) that the personal residence will not be required for direct loans provided that the loan is fully secured by assets that have a value equal to the loan amount and the residence is on no more than 10 acres or the minimum amount able to be parceled into a separate legal lot. Reducing the frequency of personal residences to serve as additional security improves a borrower's ability to provide for basic housing needs in the event of financial distress. FSA has rarely relied on equity in a borrower's home pledged as additional security to ensure repayment, even in situations of distress. However, a lien on the personal residence will be required should the borrower ultimately require PLS.

Additionally, the rule applies the revised direct loan making security levels to the servicing of the loan by requiring additional security of up to 25 percent of the loan amount to be taken as a requirement of PLS, which is a reduction from the existing requirement for a lien on all assets. These changes in 7 CFR 766.112(a) will result in improved program delivery by reducing the administrative burden of maintaining and tracking unnecessary additional security as noted above, while furthering program objectives by improving the prospects of borrower graduation as borrowers are able to leverage asset equity to accelerate financial growth. Historical portfolio performance data reflect that the average security margin on accounts that experience a loss is 120 percent, which is below the 125 percent threshold provided by this change. In addition,

less than a third of any of the approximately 4.1 percent of farm loans with losses had a security margin of greater than 125 percent. Therefore, there is only a limited pool of loans in the portfolio (less than 1.5 percent) that are estimated to be potentially vulnerable to increased losses when requiring less security at the time of loan making.

This rule removes 7 CFR 766.56, which previously required that borrowers provide a lien on all assets in order to receive DSA. All loans are originally made with adequate security to fully secure the FSA debt, so the requirement for a lien on all assets typically results in the FSA debt being more than adequately secured, which may prohibit the borrower from leveraging equity in assets, or preventing the sale of assets, if necessary to fully recover from a disaster.

A similar requirement in 7 CFR 762.145(b)(7) is also being removed that previously required a lien to be taken on all assets by a guaranteed lender when restructuring a loan with a balloon installment.

Release of Security Interest and Partial Release of Real Estate Security

The regulations in 7 CFR 765.305 specify the conditions that must be met for FSA to release its security interest. The regulations in 7 CFR 765.351 specify that the borrower must obtain prior consent from FSA for any transactions affecting the real estate security, including when a borrower sells, exchanges, or requests a partial release of security. FSA has historically authorized the release of a limited amount of security without compensation in limited circumstances.

This rule is amending 7 CFR 765.305(c) and 765.351(f) to allow a borrower to receive a lien release of certain security items if they have a demonstrated history of making all payments as scheduled with FSA for the previous 36 months and the loan will be adequately secured after the release. Unencumbering security in excess of 125 percent of the outstanding loan balance allows the borrower to sell the property and improve the borrower's cash position, make the asset available to pledge as collateral for other loans

or purposes, or allow the borrower to leverage equity attributed to the a rise in the appraised value of the asset for other investments. In order to provide greater flexibility to borrowers, FSA is removing the requirement that the borrower retain the security and use it as collateral for other credit; however, the transaction must still enhance the program objectives of the FLP loan under 7 CFR 765.301(f) and 765.351(a)(1). A borrower who has made timely payments over the most recent 36 months demonstrates a likely ability to meet scheduled loan payments going forward. Data from FY 2000 to 2023 reflect that accounts with a recorded loss were in financial distress within the first 3 years of loan closing 76 percent of the time. Accordingly, while this policy change may result in an increase in losses, all FSA loans will remain fully secured even after a partial release, and historical data reflect that the vast majority of the time a customer who successfully repays for 3 consecutive years does not incur a loss to the government. The release of security in excess of 125 percent of the outstanding FSA loan balance, will support a borrower's ability to grow their operation by accessing asset equity and will also save significant staff time maintaining liens on assets that are not needed to adequately safeguard taxpayer resources.

Discussion of Non-Substantial Changes

The following discussion provides additional detail on the amendments identified as non-substantial changes.

Definition of Family Farm, Commercially Foraged, Indian Land, and Indian Tribe

This rule revises the definition of "Family farm" in 7 CFR 761.2(b) to include commercial foraging operations as an eligible family farm for the purposes of operating loans where commodities are commercially foraged on Indian land. This rule adds corresponding definitions for "commercially foraged", "Indian land" and "Indian Tribe." While the commercial foraging space has limited participation nationwide, the industry has unique cultural relevance in certain regions. For example, commercial foraging is an

important aspect of several Native American Tribal cultures, with a rich history stretching back for generations. Foraging is often done on Indian land managed by an Indian American Tribe. Opening FLP assistance to these operators is a significant step in supporting USDA's commitment and trust responsibility to federally recognized Tribes. While assistance is not limited only to Native American producers, applicants that commercially forage must comply with all local rules and regulations pertaining to foraging on Indian land. The new definitions of "Indian land" and "Indian Tribe" are only used for the commercial foraging provisions established in this rule, and are based on existing definitions of "Indian land" and "Indian Tribe" used in Federal programs to cover commercial foraging on lands owned by an Indian Tribe, restricted fee land owned by an Indian Tribe, and land held in trust for an Indian Tribe. The definition of "Indian land" excludes land held in trust for or owned by individuals.

Guaranteed Servicing Related to Collateral

FSA may subordinate its security interest on a direct loan for many purposes, including when a new guaranteed loan is being considered to refinance the debt of another lender. When the lender requesting the guarantee is limited only to refinancing the debt of another lender, and not its own non-guaranteed debt, the lender faces the risk of the borrower going to a different lender to refinance the non-guaranteed debt of the current guaranteed lender. The new lender could then apply for an FSA guarantee and a subordination of the direct loan, while the existing lender will lose its borrower. This amendment to 7 CFR 762.142(c) allows a subordination of direct loan debt when a lender requests a guarantee on a loan to refinance any debt, including its own.

Similarly, FSA may allow a lender to subordinate its interest in basic security which secures a guaranteed loan in cases in which the subordination is required to allow another lender to refinance an existing prior lien. When the lender requesting the refinance is limited only to refinancing the existing debt of another lender, and not its

own debt, the lender faces the risk of the borrower going to a different lender to refinance the debt. The existing lender will lose its borrower, while the new lender will be granted the subordination on the guaranteed loan debt. This rule allows a subordination of guaranteed loan debt when a lender requests to refinance any debt, including its own.

Guaranteed Loan Transfer and Assumption Requirements

Standard Eligible Lender and Certified Lender Program lenders are required to obtain FSA concurrence to process a transfer and assumption of a guaranteed loan. This rule amends 7 CFR 762.142(d) to require Preferred Lender Program lenders to also obtain FSA concurrence to ensure transferee eligibility and ensure that FSA records accurately reflect the transferee as operator and debtor.

Borrower Production Training

Section 359 of the CONACT requires the educational training needs of each direct loan applicant to be evaluated, with training options provided when needed. Under this authority, FSA evaluates the need of each direct loan applicant to complete borrower training. The borrower then contracts with an approved third-party vendor to provide the training deemed necessary by FSA. This is an important component of FSA's process for granting direct FLP assistance and is consistent with FSA's focus on progression lending.

While borrower financial training has ample training vendors available, and has been essential to the success of many producers, borrower production training options are limited, and efforts to improve borrower production knowledge via mandated training courses are generally ineffective. While most financial training concepts are applicable across all farm types and regions, applicable production training material is specific to agricultural regions and enterprises. There is a substantial lack of vendors providing production training because most organizations that request FSA approval to be an authorized training vendor lack the effective resources to provide production training specific to the varied regions and enterprises. Due to a lack of viable industry-specific

production training vendors, FSA provides nearly all direct loan customers a waiver of production training requirements, with less than 5 percent of direct loan customers required to complete borrower production training.

While borrower production training lacks authorized vendors and is generally ineffective at improving borrower production knowledge, private mentorships and relationships built by the borrower themselves are typically the most beneficial production training a producer receives. Therefore, this rule removes all references to borrower production training in 7 CFR 764. However, borrower financial training requirements remain unchanged.

FSA Lien Position on Real Estate Repaired or Improved with Direct OL Funds

FSA uses direct OL funds to finance minor real estate repairs or improvements, provided the loan can be repaid within 7 years. Construction or improvements amortized over periods longer than 7 years generally align better with direct FO purposes and are not financed with direct OL funds.

While smaller repairs or improvements can be financed by either an OL or FO, an applicant may find it beneficial to apply for an OL in certain instances, such as when FO funds are limited, or when an applicant has reached FO term limits. However, security requirements vary slightly for an FO and OL.

For any OL, security must be a first lien on assets purchased or improved with direct loan funds, while an FO may be secured by real estate in a junior lien position. FSA is amending the OL security requirements in 7 CFR 764.255 for loans where the purpose is to make minor repairs or improvements to allow a lien in junior lien position to serve as adequate security.

In 7 CFR 764.251(a)(11), FSA is requiring that for improvements on leased property, the lease must allow the borrower full use of the improvement over the life of

the security or have a provision compensating the borrower for any remaining economic life in the event the lease is terminated.

Increase Loan Limit of the Youth Loan Program

This rule is amending 7 CFR 764.303(b) to allow FSA to double the direct Youth Loan (YL) limit on the total principal balance owed by an applicant on all YLs at any one time from $5,000 to $10,000. FSA makes direct loans to applicants 10 through 20 years old to finance income-producing projects of modest size in connection with their participation in 4-H, Future Farmers of America (FFA), Tribal youth groups, or similar agricultural youth organizations. The project being financed with an FSA YL provides an opportunity for the young person to acquire experience and education in agriculture-related skills.

YL application activity has steadily fallen in recent years, with YL applications totaling 3,795 in FY 2017, 3,201 in FY 2018, 2,788 in FY 2019, 2,451 in FY 2020, 1,568 in FY 2021, and 1,370 in FY 2022.

An important factor affecting decreased application activity for YL is the relatively small maximum outstanding loan limit of $5,000 per individual. The $5,000 limit has been unchanged since 1988, without adjustment for the significant inflation since that time. The rate of inflation of agricultural inputs is considered to be approximately equal to the Consumer Price Index (CPI). CPI figures indicate that the buying power of $5,000 in 1988 equals more than $10,000 today. The $5,000 loan limit is often not adequate to provide the young person enough to finance their intended projects. During FY 2017 through 2022, the average amount requested per YL applicant was $4,578, which supports the need for this increase above the previous $5,000 limitation.

Direct FO Eligibility – Farm Experience

As specified in the CONACT, one of the eligibility requirements for direct FOs is that an applicant must have participated in the business operations of a farm or ranch, or possess other adequate experience as determined by the Secretary. In the rule published March 9, 2022, (87 FR 13117 - 13127) that implemented provisions of the 2018 Farm Bill, FSA provided eight specific areas of experience that may be allowed as substitutes for 2 of the 3 years of actual experience. In some combinations, the experiences may meet the requirement for all 3 years.

FSA amends 7 CFR 764.152(d) to require that in the case of an entity, at least one member who will be the operator of the farm must meet these experience requirements. Prior to this rule, the majority of entity members needed to meet the experience requirement, which can limit participation for certain entities whose membership includes individuals with minimal actual farming experience. This amendment expands credit opportunities for applicants.

Emergency Loan Loss Calculations

The EM Program is triggered when a qualifying disaster or emergency is designated by the Secretary of Agriculture or declared by the President. These direct loans help producers recover from disaster-related physical and production losses.

The maximum amount FSA is able to lend for a production loss EM is determined according to 7 CFR 764.353(c); it is determined in part by reducing the calculated production loss by any compensation or insurance payments related to the disaster. This reduction is required so that the applicant will not receive duplicate payments from both an EM and Federal Crop Insurance indemnity payment, or other government payment, as stated in 7 CFR 764.352(k).

In recent years, the USDA Risk Management Agency's Revenue Protection policies have become more popular, and many Federal crop insurance policies sold today

provide some form of revenue protection. Revenue Protection policies insure producers against certain yield losses, as well as against revenue losses caused by a reduction in the harvest price compared to a projected price.

Indemnity payments triggered by a Revenue Protection policy do not differentiate between the amount of the payment generated from production or price loss. Since FSA is unable to provide duplicate Federal benefits due to crop losses under 7 CFR 764.352(k) and 42 U.S.C. 5155, this rule amends 7 CFR 764.353(c)(4) to clarify that any compensation or insurance indemnities related to the loss will be subtracted in the calculations to arrive at FSA's maximum EM production loss loan amount.

Prior to this rule, producers who suffered a production loss but were made whole by a Revenue Protection insurance policy could still qualify for an EM since only specific disaster-related insurance payments were reduced. Now, any insurance indemnity payments are deducted from the formula to determine the EM amount, thereby better protecting against duplicate payments.

This rule amends the production loss threshold necessary to qualify for the EM Program in 7 CFR 764.352(h) to allow EM eligibility if a producer sustains a disaster yield that is below the normal production yield of the crop. By default, the CONACT provides eligibility for EMs based on production losses if an applicant has sustained at least a 30 percent production loss. However, the CONACT provides the Secretary discretion to set a lesser percent of production loss as the threshold for eligibility. The production loss threshold has historically been set at the maximum 30 percent threshold, which can prohibit producers from accessing EM assistance necessary to adequately recover from a disaster. FSA is removing the 30 percent threshold such that to qualify for EM assistance the disaster yield must have simply been below the normal production yield of the crop. This change will expand EM opportunities for customers who have a demonstrated loss and are in a financially vulnerable position. Establishing a specific

threshold restricts the opportunities for recovery aid, and thus it is reasonable to expand potential program benefits to any eligible producer who has suffered a demonstrated production loss as a result of the declared disaster. FSA notes that the 7 CFR 764.353(b)(3) limitation remains in place that ensures loan amounts do not exceed 100 percent of the total actual production loss sustained by the applicant.

Borrower Graduation Requirements

An existing direct loan borrower must refinance their direct loans with a commercial lender at reasonable rates and terms when they have the financial ability to do so. Failure to graduate to commercial credit is considered non-monetary default and the account is referred for acceleration and foreclosure action. While these cases are not frequent, with only 68 instances since FY 2010, final action on these accelerated, non-monetary default loans to full foreclosure and loan settlement is often delayed for years. In these cases, during that delay, the farm loan borrower continues to receive the excess benefit which they are no longer qualified for. For example, the borrower continues to receive a reduced interest rate by not refinancing, even though the financial review reflects that refinancing is an option. As an alternative to non-monetary foreclosure on accounts that would otherwise be in good standing, this rule amends 7 CFR 765.102 to provide for accounts to be converted to non-program status if the borrower fails to comply with graduation requirements or to submit requested financial documents necessary to evaluate a borrower's ability to graduate. Conversion of such loans to non-program status with higher interest rates and restrictive loan terms ensures appropriate use of taxpayer resources, with subsidized program loan benefits being provided only to borrowers in compliance with program requirements. This rule is applicable to all future accounts as it requires a borrower to acknowledge this alternative as a condition of the FSA direct loan. For existing customers to take advantage of this provision, they must acknowledge and accept the conditions separately.

Subordination of Liens

FSA has a clearly defined process for direct loan making and special servicing applications to provide an applicant written notice if additional information is required to make an application complete. A complete subordination application request also includes multiple documents, and borrowers need to be afforded the same opportunity to be notified of any outstanding information necessary to have a subordination request processed. This rule amends 7 CFR 765.205(b) to specify that FSA will process incomplete subordination requests in the same manner as is required for incomplete direct loan making requests.

Lease of Security

The lease of non-real estate security can often be in the best interest of FSA. For example, an apiary with beehives that serve as security may desire to lease beehives to other farms for pollination purposes, thereby generating income to ensure success of the operator with minimal deterioration to the security. This rule amends 7 CFR 765.252(c) to allow the lease of non-real estate security in certain situations that are in the best interest of FSA.

Additionally, the regulation in 7 CFR 765.252(a) requires borrowers to obtain approval to lease the surface of real estate security. In August 2021, this provision was amended to limit leases for nonfarm enterprises. This rule amends the wording in 7 CFR 765.252(a)(4) to correctly reference "significant acreage of the security." Consent is only required for surface leases on the portions of a farm operation that serve as FSA security.

Use of Proceeds from Sale of Security

When borrowers sell basic security, they are often subject to capital gains taxes. FSA does not allow proceeds from the sale of basic security to be used for family living or farm operating expenses, which leaves borrowers with limited options to pay capital gains taxes. While historic exception requests for this purpose have been limited, with

less than three requests typically made each year, this can be a significant hardship for borrowers with limited financial means to cover the taxes. This rule adds 7 CFR 765.352(a)(4) to allow a borrower to use a portion of proceeds from the sale of basic security to pay capital gains taxes in limited circumstances. Specifically, retention of a portion of proceeds necessary to pay capital gains taxes will only be authorized if the FSA debt remains fully secured and the borrower is not otherwise able to adequately cover the tax liability through reasonable means or obtain non-FSA credit to cover the amount of the taxes.

Borrower Loan Servicing Deadline Extension

The 2018 Farm Bill amended section 331D of the CONACT to permit State Executive Directors to extend the 60-day PLS application deadline in extraordinary circumstances. This flexibility is added to the regulation in 7 CFR 766.101(e).

Borrower Eligibility Requirements for PLS

The rule amends 7 CFR 766.104(a)(1)(vi) to add catastrophic medical expenses for a family member in the household of a borrower or entity member, in the case of an entity borrower, as circumstances beyond the control of the borrower leading to delinquency or financial distress for the purposes of PLS eligibility.

Deadline for Disputing an Appraisal

Borrowers requesting PLS who do not agree with the FSA appraisal are provided the opportunity to appeal the valuation by submitting their own independent appraisal. This rule amends 7 CFR 766.115(a) to establish a deadline of 90 days for the borrower to obtain and submit an independent appraisal to FSA. FSA has extensive experience in coordinating, contracting, and obtaining a completed agricultural real estate appraisal, with the process traditionally taking anywhere from 30 to 60 days. Accordingly, 90 days is a reasonable amount of time for a borrower to obtain a new valuation and this amount of time ensures that all servicing appeal requests are processed timely.

Notification for PLS

FSA will provide, by certified mail, the PLS notice to borrowers who are at least 90 days past due; this notice is included in the regulation as required by the CONACT, section 331D (7 U.S.C. 1981d). The FSA-2510 "Notice of Availability of Loan Servicing to Borrowers who are 90 days past due" is included as Appendix A and B to Subpart C of 7 CFR part 766.

FSA is amending FSA-2510 to incorporate the following changes:

1. Add copies of real estate leases (if applicable to the farm operation) as items necessary for a complete application;
2. Remove references to "good faith;"
3. Add "catastrophic medical expenses for the care of a family member of a borrower or entity member, in the case of an entity borrower" as a circumstance causing delinquency or financial distress beyond the borrower's control for qualification for PLS;
4. Replace the reference to obsolete form SCS-CPA-026 with NRCS-CPA-026e;
5. Remove reference to several forms for a complete loan servicing application as the forms have been consolidated into a single form FSA-2001;
6. Add verification of nonfarm income as a requirement for a complete loan servicing application, which has always been a requirement but was erroneously not included in this form previously;
7. Add a required statement to advise borrowers of the potential tax liability after FSA cancels debt, which may be realized after a write-down, current market value buyout, or debt settlement; and
8. Remove the words "writedown" and "write down" throughout the document and add "write-down" in their places.

Heirs' Property Relending Program Technical Corrections

The initial regulation for HPRP was published on August 9, 2021 (86 FR 43381 - 43397), implementing HPRP, which was authorized in the 2018 Farm Bill. In processing the initial HPRP applications, FSA found several areas in need of correction to address the intermediary's HPRP cash accounts, remove barriers to program usage, and encourage intermediary lender participation. FSA is making these changes in 7 CFR part 769, including removing the previous deadline for an intermediary lender to request a loan and to provide for the use of a deposit agreement to securitize HPRP cash accounts in 7 CFR 769.162(a)(1). Additionally, FSA is amending 7 CFR 769.164(d)(9)(ii) to clarify that funds advanced to an intermediary lender that are unused for 6 months must be returned to FSA unless FSA provides a written exception.

Discussion of Clarifications

The following discussion provides additional detail on the amendments identified as clarifications.

Definition of Agricultural Commodity

This rule amends the "Agricultural commodity" definition in 7 CFR 761.2(b) to clarify that ornamental plants are an eligible commodity. The definition of "Agricultural commodity" has included, and continues to include, "nursery crops." When ornamental plants are produced commercially in a typical nursery setting, FSA considers ornamental plants an eligible commodity. Ornamental plants are now specifically named as a separate eligible commodity to clarify that ornamental plants are an eligible commodity. To be considered an ornamental plant, the plant must still be produced commercially in a nursery setting that may include both covered and open-air growing facilities.

Definition of Family Farm and Non-Eligible Enterprise

This rule revises the definition of "Family farm" in 7 CFR 761.2(b) to clarify that for FLP purposes, a farm must not be a non-eligible enterprise, which includes those farms that do not produce agricultural commodities for uses associated with human

consumption, fiber, or draft[2] use. Some operations may be agricultural in nature, but the intended use of the commodity is not for human consumption, fiber, or draft use. Those operations are not eligible for FLP assistance as they are considered a "non-eligible enterprise" as defined in 7 CFR 761.2(b). For example, a rancher who raises primarily rodeo livestock for sport purposes is not eligible for FLP assistance as it is considered a non-eligible enterprise. This rule revises the definitions of family farm and non-eligible enterprise to clarify that the agricultural commodities must be produced for the use of food, fiber, or draft.

Definition of Feasible Plan

This rule amends the definition of "Feasible plan" in 7 CFR 761.2(b) to clarify that when unequal or interest-only installments are scheduled during the initial year(s) of the farm operating plan, a cash flow budget or farm operating plan must be prepared that reflect a typical cycle. This change is consistent with the requirement for other situations in which the planned cash flow budget or farm operating plan is atypical, for example, due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, or important operating changes.

Definition of Good Faith

This rule amends the definition of "Good faith" in 7 CFR 761.2(b) to clarify that instances of fraud, waste, or conversion, if substantiated by a legal opinion from the Office of General Counsel (OGC), are an additional independent basis when determining if an applicant or borrower has acted in good faith. To demonstrate good faith an applicant or borrower must adhere to all written agreements with FSA, including any loan agreements, security instruments, farm operating plans, and agreements for use of proceeds. Many actions that qualify as fraud, waste, or conversion also constitute a clear

[2]Draft use means domesticated animals used for working purposes, most typically in drawing heavy loads and heavy labor.

violation of FSA's loan agreement, security instruments, farm operation plans, and agreements for use of proceeds, in which case substantiation by a legal opinion from OGC will not be needed.

Definition of Participated in the Business Operations of a Farm

This rule amends the definition of "Participated in the business operations of a farm" in 7 CFR 761.2(b) to clarify that owning a farm does not necessarily mean an individual has participated in the business operations of a farm. For example, an absentee landowner who has not been involved in operating, producing, laboring, or making decisions related to operating a farm may not possess the necessary experience to ensure a reasonable prospect of loan repayment. A landowner without experience related to managerial or operational responsibilities of a farm or specific farm training does not satisfy the definition. This definition applies only to the direct loan eligibility, which requires certain managerial experience and direct farm ownership experience from applicants in order to ensure a reasonable prospect of success in the proposed farming operations and, therefore, a reasonable prospect of loan repayment.

Definitions of Related by Blood or Marriage and Relative

The CONACT requires that loans be provided to operators of family farms, and allows for applications from entities, provided that the majority interest is held by members that will operate the farm or are related by blood or marriage, as defined by the Secretary. Family farms often consist of familial relationships beyond traditional immediate family members, for example, parent and child, and increasingly include cousins, half-siblings, and in-laws. To clarify that farm loan assistance is available to family farms comprised of a variety of familial relations, this rule amends the definitions of "Related by Blood or Marriage" and "Relative" in 7 CFR 761.2(b) to include additional familial relationships. These expanded definitions will allow FSA to expand program access and support generational transfers and succession planning.

Definition of Youth Loan

The 2014 Farm Bill removed requirements that an individual must reside in a rural location to be eligible for a "Youth loan." While FSA has administratively adopted this change since 2014, FSA will formally recognize the updated definition in 7 CFR 761.2(b) with this clarification. Furthermore, FSA removes the term "Rural youth," as it is no longer a requirement after the 2014 Farm Bill change.

Clarify Analysis Requirements

In the FSA final rule published on August 9, 2021, FSA amended analysis requirements in 7 CFR 761.105(a). The process for completing the analysis in 7 CFR 761.105(b) was not amended consistent with those changes at that time so FSA is clarifying in this rule how the analysis will be completed. A typical analysis includes a review of the prior production cycle's actual income, expense, and production performance, as well as a farm operating plan for the new operating cycle. These financial documents should be prepared by the borrower, with FSA assistance when necessary. Under the regulation, a financial analysis is required if a new direct loan or subordination request is made, or if the account is, or was recently, financially distressed or delinquent. However, an analysis may also be required if FSA believes it is necessary to assist with developing an operation or to address concerns regarding borrower compliance with agreements. FSA also removes references to "year-end" analysis in 7 CFR 761.105 to avoid confusion regarding the potential timing of a required analysis.

The regulation in 7 CFR 765.101(c) requires a borrower to submit all information that FSA requests in conjunction with the routine review of the borrower's financial condition. A review of Federal income tax returns is an important component to ensure that FSA can complete an accurate analysis. This rule clarifies that, in alignment with current practice, borrowers should expect and be prepared to comply with a request for Federal income tax returns as part of the review of the borrower's financial condition.

Credit Elsewhere Determinations

With the exception of conservation loans, direct farm loan eligibility criteria require applicants to be unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms. FSA does not specifically require written denial letters from area lenders for an applicant to qualify for assistance, except in unique circumstances, such as to comply with statutory requirements for EMs.

Some applicants are able to obtain credit from other sources, but the rates and terms offered by those creditors may be at excessive interest rates with unreasonable fees, terms, or collateral requirements that are inconsistent with regional agricultural lending standards and do not meet the needs of the applicant. To aid in determining whether or not available credit elsewhere is reasonable, this rule clarifies 7 CFR 764.51(b)(6) and 764.101(e)(1) to require FSA approval officials to analyze the rates and terms of available credit to ensure they support the generation of a reasonable amount of cash flow margin to increase working capital reserves and savings necessary for operational stability and growth, including reasonable savings for retirement and education. This rule clarifies that for the rates and terms of external credit to be reasonable it must provide a reasonable opportunity for long-term growth. FSA approval officials will determine a reasonable amount of cash flow margin to increase working capital reserves and savings by referencing available resources, including regional lending standards and farm financial and classification ratios.

Direct Loan Making and Servicing Application Requirements

A complete analysis of a farming operation often requires a review of existing and proposed real estate and equipment leases. Additionally, FSA has regularly required submission of documents such as contracts or purchase options, especially when the contract or option is related to property for which the loan is requested. This rule adds 7 CFR 766.102(a)(8) and revises 7 CFR 764.51(b)(10) to clarify that an applicant

must provide leases, contracts, options, or other agreements to FSA, upon request, as part of a complete direct loan making or servicing application. Additionally, this rule revises 7 CFR 764.51(b)(10) to clarify that the requested documents are those that are associated with the borrower's "operation."

This rule also amends 7 CFR 766.102(a) to correct a reference to an obsolete regulation, and to remove the requirement for borrowers to sign an acknowledgement form to request direct loan servicing, as the acknowledgement has been consolidated into the FSA-2001 application for direct loan servicing, which is required for all such requests.

Direct Loan Eligibility – Entity Credit History

An applicant's credit history is considered in nearly every lender's analysis of risk associated with the extension of credit. FSA also considers credit history when determining an applicant's eligibility for direct loans. To qualify for a direct loan from FSA an applicant must demonstrate acceptable credit history. However, unlike many commercial lenders, FSA does not base an ultimate eligibility decision on the applicant's credit score. FSA does not find an applicant's credit history to be unacceptable if the applicant has no record of past credit, or if an applicant has a history of failure to repay past debts due to circumstances outside of the applicant's control.

Since family farms do not always obtain debt that demonstrates relevant credit history in the name of the applicant entity, FSA must assess the credit history of the underlying entity members in order to adequately assess credit worthiness requirements. FSA is amending 7 CFR 764.101(d) to clarify the current and historic requirement that in the case of an entity, all individual entity members must satisfy credit history requirements. The clarification will more closely align the credit history eligibility standard with other eligibility criteria that more clearly specify the individual entity member requirements.

Guaranteed Loan Eligibility – Credit History

All guaranteed loan applicants must meet basic eligibility criteria. Two of the existing criteria require that an applicant must not have caused FSA a previous loss (except in limited circumstances), and the applicant must meet creditworthiness requirements by demonstrating a successful history of repaying debts as they come due. Applicants sometimes repay previous losses to the government, but creditworthiness requirements still must be assessed to ensure the applicant represents a good prospect of loan repayment. This rule amends 7 CFR 762.120 to clarify even if a previous loss is repaid, the applicant must still satisfy creditworthiness requirements in order to receive new guaranteed loan assistance.

Direct Loan Eligibility - Managerial Ability

Farmers experience significantly different challenges compared to other business operators. To assist direct loan applicants to be successful and to manage FSA's credit risk, eligible direct loan applicants must demonstrate that they possess sufficient managerial ability to ensure reasonable prospects of loan repayment. Applicants may demonstrate the required managerial ability in a variety of ways, including through education, on-the-job training, and actual farming experience (7 CFR 764.101(i)).

Entity applicants are required to demonstrate managerial experience. Entity structures cannot possess experience, but rather it is the individual entity members who possess the managerial ability necessary to satisfy the requirements. FSA is clarifying the CONACT requirement that for an entity applicant to satisfy the managerial ability eligibility requirement, the individuals holding a majority interest in the entity must possess the required experience.

FSA is clarifying that a history of an entity applicant simply owning a farm does not necessarily satisfy managerial ability requirements. As discussed above, amendments to the definition of "Participated in the Business Operations of a Farm" clarify that

simply owning a farm does not necessarily mean an individual has participated in the business operations. Consistent with this definition change and the reasons discussed above, the word "owner" has been removed from 7 CFR 764.101(i)(3).

FSA is also clarifying the lookback period for FSA to consider prior farming experience for an applicant to meet the eligibility requirement based on farming experience prior to the date of the direct loan application in 7 CFR 764.101(i)(3). There has been confusion among applicants due to the use of two different lookback periods for similar experience requirements in the regulations. For certain specific direct FO experience requirements, the lookback period is 10 years, yet the lookback period for farming experience to meet the general managerial ability requirement has been 5 years. FSA is amending the lookback period for farming experience to meet the general managerial ability requirement from 5 years to 10 years to align more closely with the farm experience eligibility requirement specific to direct FO applicants, as provided in 7 CFR 764.152(d). FSA recognizes that increasingly available online education resources and mentorship opportunities can ensure applicants have a reasonable prospect for success, even if their actual farming managerial experience was gained more than 5, but less than 10, years ago. Accordingly, FSA is confident that expanding the general managerial ability experience lookback period to align with the FO lookback period will expand opportunity for applicant access to credit.

Microloan (ML)-OL and Indian Tribal Land Acquisition Program (ITLAP) Interest Rate Clarification

The CONACT provides a special interest rate for ML-OL in Section 316(a)(2). ITLAP is authorized outside of the CONACT, but loans made under ITLAP are subject to the interest rate provisions under the CONACT applicable to the low-income farm ownership loan program at Section 307(a)(3)(B) that provides a reduced interest rate for limited resource applicants. In both cases, the interest rate formula is inherently

ambiguous, making it difficult to determine the appropriate interest rate for these direct loans. FSA is amending 7 CFR 764.254(a)(4) and 770.6(b) to clarify that the interest rate for ML-OLs and ITLAP is equal to the existing OL rate and FO rate, respectively, but not to exceed 5 percent. This change will resolve the existing confusion about the requirements and benefit applicants by providing a rate ceiling that is consistent with the reasonable historic interpretation of the CONACT interest rate formula. The CONACT does not provide for a special interest rate for ML-FOs. FSA will continue to determine the ML-FO rate using the same methodology as a regular FO.

Transfer and Assumption Application Requirements

This rule adds 7 CFR 765.402(f) and (g), 765.403(f) and (g), and 765.404(g) to clarify that transfer and assumption requests require a complete application from transferees to ensure borrower eligibility and the feasibility of the operation, and to clarify that all direct loan security must be transferred to the new borrower as a condition of approval.

Equitable Relief Technical Corrections

The equitable relief provisions published in 7 CFR 768.1 on March 9, 2022 (87 FR 13117 - 13127) require minor technical correction to clarify in 7 CFR 768.1(a) that equitable relief may be considered for the borrower or borrower's loan due to noncompliance with either legal or regulatory requirements.

Notice and Comment, Effective Date, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rule involves a program for loans and thus falls within the exemption for rules related to loans. FSA is requesting comments on this rule to determine if additional improvements need to be made in the future to the regulations.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) requires a delay in the effective date for 60 days from the date of publication to allow for Congressional review of rules that meet the criteria specified in 5 U.S.C. 804(2). The Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria in 5 U.S.C. 804(2).

Therefore, this rule is effective September 25, 2024.

Executive Orders 12866,13563, and 14904

Executive Order 12866 (as amended by Executive Order 14904), "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Cost Benefit Analysis Summary

The cost benefit analysis covers implementation of an improved approach to loan servicing for FSA farm loan programs that is designed to remove barriers to capital access and increase flexibilities for borrowers. This new approach includes a newly

created DBSA Program that can be used by both distressed and delinquent borrowers. In addition, numerous modifications to existing programs are being made that offer borrowers greater flexibility and improve their amount of working capital—regardless of whether they are distressed or delinquent.

All changes to the loan programs that are anticipated to impact the net present value of the cost of providing loans, loan guarantees, or modification therefore, will be incorporated into subsidy cost for each relevant risk category and cohort year of loans or loan guarantees.[3] While the effective date for this final rule is September 25, 2024, USDA's ability to modify outstanding loans and loan guarantees, and enter into obligation for new loans and loan guarantees with the revised provisions specified in this final rule are subject to 2 U.S.C. 661(D) and 661b(a), and OMB Circular A-11 section 185.3(s).

The changes in this final rule are consistent with numerous aspects of FSA's ongoing efforts to remove barriers to capital access and increase opportunities for FLP borrowers to be successful. The subsidy rate and cost impact of the changes in this final rule vary across the types of changes, including some increases and decreases. Specifically, introducing more flexible repayment terms is expected to increase income receipts and reduce program subsidy costs for several direct loan programs. Several changes, such as reduced security requirements and flexible repayment terms are also expected to increase subsidy costs as a result of increased losses or decreased recoveries. FSA anticipates administrative savings from reduced workload in processing primary loan servicing and monitoring security instruments and an overall reduction in burden. burden.

[3]The definition of subsidy cost and other relevant guidance to Federal agencies regarding the calculation of subsidy rates, modification costs estimates, and other aspects of FCRA implementation are specified in OMB Circular A-11 section 185.

Prior to this rule, only PLS and the DSA Program were available to help distressed borrowers on an ongoing basis. PLS involves restructuring the loan, usually by deferring some or all of the borrower's upcoming installment payments to the end of the loan term. Alternatively, if the borrower is operating in a county that is declared a major disaster, they can apply for loan servicing through the DSA Program. If the borrower selects PLS, they must provide a significant amount of financial information and develop a projection of income and expenses for the next year.

With this rule, DBSA offers both distressed and delinquent direct borrowers—along with FSA field staff—a more streamlined opportunity to help navigate financial difficulties. DBSA allows financially distressed or delinquent direct loan borrowers—with FOs, OLs, CLs, SWs, or EMs—to request a one-time deferral of a delinquent or upcoming annual installment. The amount of the deferral is limited to the lesser of the amount of the annual installment or the unpaid balance remaining on the installment at the time the DBSA is approved. The amount deferred has a reduced interest rate of 0.125 percent, the lowest interest rate authorized by the CONACT.

DBSA only applies to outstanding loans as of September 25, 2024, the date the rule becomes effective, and as a result, the cost of implementing the regulation (loan modification cost) reflects:

1) the reduction in the present value of interest receipts (due to the 0.125 percent noted above), and
2) the reduction in the present value of principal installments over the life of DBSA.

Consequently, FSA will pay the for the modification cost of DBSA upfront using funds from section 22006 of the Inflation Reduction Act.

In addition to DBSA, the rule contains interrelated provisions that provide borrowers with expanded opportunities to allocate working capital toward long-term

financial goals. For example, the rule provides all direct loan applicants the option to receive flexible repayment terms for most loan requests (including interest-only payments during the first year, partial principal payments, and longer loan maturity terms). These flexibilities free up some of the borrowers' funds that would otherwise have been used to make larger loan payments. Funds can be used to ensure that their farm operating plan budgets have additional funding to increase working capital reserves and savings, including reasonable savings for retirement and education. These changes are expected to increase interest payments to USDA, which would reduce program subsidy costs, but the changes are also expected to result in an increase in defaults and would increase subsidy costs. Implementation of the changes in this rule are subject to FSA reflecting subsidy costs in accordance with 2 U.S.C. 661(D) and 661b(a), and OMB Circular A-11 section 185.3(s).

Further, the rule lowers the security margin required of the borrower from 150 to 125 percent at the time of loan origination, while still requiring all loans to be fully secured. If the applicant does not have sufficient assets to achieve this security margin, FSA still provides the loan as long as there is adequate security to ensure a 100 percent security margin. However, if additional security is available, FSA currently requires a lien on additional security assets in order to achieve a 150 percent security margin. A requirement this high, however, can hinder the ability of customers to leverage assets into additional growth opportunities. In addition, FSA will no longer take the primary residence as additional security and will not require non-real estate assets to be pledged as additional security for real estate loans. The rule also expands the opportunity for a borrower to request a partial release of certain security if they have a demonstrated history of positive repayment with FSA for the previous 36 months (including scheduled principal reductions) and the loan will still be adequately secured after the release. FSA currently allows for the release of unnecessary security in limited circumstances, but this

provision will facilitate the process for all borrowers who have several years of successful loan repayment. While these security changes can have significant benefit to borrowers, they are expected to result in a reduction in recoveries, which would increase subsidy costs. Implementation of the changes in this rule are subject to FSA reflecting subsidy costs in accordance with 2 U.S.C. 661(D) and 661b(a), and OMB Circular A-11 section 185.3(s).

In addition to the more significant items above, the rule is making changes to other direct and guaranteed loan provisions. For example, the rule clarifies that catastrophic medical expenses for the care of a family member of the borrower or entity member could be a justification for financial distress and makes them eligible for PLS; the maximum value of youth loans is increased from $5,000 to $10,000 to account for inflation; and other minor changes. The cost impact from these smaller changes is expected to be de minimus.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). The DBSA Program is being implemented as a servicing tool to help financially distressed borrowers. In addition to adding DBSA, FSA is making discretionary changes throughout the FLP regulations to clarify and amend existing delivery processes, program requirements, and technical corrections or clarifications.

The provisions of this rule regarding DBSA is covered by the Categorical Exclusions, found in 7 CFR part 799.31(b)(1)(iii) for debt set-asides when no Extraordinary Circumstances (§ 799.33) exist. The discretionary changes to the regulations are covered by the Categorical Exclusions, found in 7 CFR 799.31(b)(3)(i) for

issuing minor technical corrections to regulations, handbooks, and internal guidance, as well as amendments to regulations when no Extraordinary Circumstances (§ 799.33) exist.

Through this review, FSA has determined that neither the implementation of the DBSA Program and the participation in the DBSA Program, nor the discretionary changes to the regulations, constitutes major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR part 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have significant Tribal implications that require ongoing adherence to Executive Order 13175 at this time. Tribal governments are not eligible for FSA direct and guaranteed loans, so the reach of this rule and impact with Tribes is somewhat limited. Tribes are eligible for FSA's Highly Fractionated Indian Land Loan Program (HFIL) and ITLAP. USDA and FSA have conducted a series of Tribal consultations to obtain input from Tribes and Native producers on our FSA loan programs.

Specifically, we received considerable feedback in 2021, 2022, and 2023 on how USDA can better incorporate traditional foods into FPAC programs as a whole. In fact,

one of the top four tribal barriers in 2021 USDA Tribal Consultations was the need to improve and expand support for traditional foods and food ways into FSA and FPAC programs.

In response, in 2022, Administrator Zach Ducheneaux formalized an advisory group of the leadership team to address recommendations by Tribal leadership in USDA Tribal Consultations, reduce barriers to program participation and implement priorities for Indian Country. In the 2022 and 2023 USDA Tribal Consultations, USDA requested more specific input from Tribal leaders on traditional food ways and crops, including wild rice, that Tribal Nations seek to be added into USDA programs.

As a result, this rule includes wild rice and other Tribal foraging practices in Indian Country where it was previously excluded. This is one of the actions FSA has made to be more inclusive to Tribal agricultural producers in indigenous ways in broadly applicable loan programs by improving the interpretation of the authorizing law in the regulation. If a Tribe requests further consultation, FSA will coordinate with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA for State, local, or Tribal governments,

or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing[4] to which this rule applies are:

10.099 Conservation Loans;

10.404 Emergency Loans;

10.406 Farm Operating Loans; and

10.407 Farm Ownership Loans.

Paperwork Reduction Act

For the various regulatory changes being made by this rule, FSA will continue to use some forms that already are currently approved under the OMB control number of 0560-0233, 0560-0237 and 0560-0238.

This rule does not change the following approved information collection under OMB control numbers:

- 0560-0155, Guaranteed Farm Loan Programs, OMB Expiration Date of November 2026;
- 0560-0233, Farm Loan Programs - Direct Loan Servicing, OMB Expiration Date of October 2024;
- 0560-0237, Farm Loan Programs - Direct Loan Making, OMB Expiration Date of January 2026;
- 0560-0238, Farm Loan Programs - General Program Administration, OMB Expiration Date of October 2026; and

[4]See https://sam.gov/content/assistance-listings.

- 0560-0317, Online Loan Application, OMB Expiration Date of November 2026.

For the information collection changes related to the existing approvals under 0560-0155, Guaranteed Farm Loan Programs, and 0560-0317, Online Loan Application, there are no new forms, no changes in the per response time for the information collection activities, and not changes in the number of respondents.

For the information collection changes related to the existing approval under 0560-0233, operationally, there is a potential increase of approximately 2,000 in the number of respondents, related to an increase in the requests for DBSA and DSA. The approved burden estimates for 0560-0233 includes 8,692 DSA applications annually. Actual requests over the last 5 years have averaged 786 applications, so the anticipated increase in requests is well within the existing approved burden estimate.

For the information collection changes related to the existing approval under 0560-0236, operationally, there is a potential increase in requests for security releases and leasing of property. The approved burden estimates for 0560-0236 includes 455 requests for lease security annually. Actual lease security requests have averaged less than 100, so the anticipated increase in requests is well within the existing approved burden estimate. As explained below, the form used for requesting security releases is expected to increase in the number of respondents beyond what is currently approved for the form under 0560-0236.

For the information collection changes related to the existing approval under 0560-0237, operationally, FSA expects an increase in the actual number of respondents due to increasing the youth loan limit. This might increase the youth loan demand by a few hundred applications. The approved burden estimates for 0560-0237 includes 4,410 applications annually. The 5-year average has only been 2,056 applications, so the anticipated increase in youth loans is well within the existing approved burden estimate.

This rule does increase the expected number of respondents who will request a release of security using form FSA-2061- Application for partial release or consent. That form is approved under OMB 0560-0236, Farm Loan Programs: Direct Loan Servicing, Regular. FSA requested an emergency approval from OMB to cover the increase of the borrowers in using a release of security (Form FSA-2061- Application for partial release or consent). The rest of this section provides the information related to the requests for comments for these changes.

Information Collection Request; Request for Comments

FSA is requesting comments from all interested individuals and organizations on a new information collection associated with the release of security (the form FSA-2061) for the Direct Loan Servicing – Regular information collection activity. This rule expands opportunities to release liens on additional collateral for borrowers with a demonstrated history of successful direct loan repayment. After 3 years of successful loan repayment and principal reduction, a borrower can request FSA to release liens on additional security items provided the loan will continue to be fully secured. The borrower formally requests to be considered for a release of security using form FSA-2061- Application of Partial Release or Consent. FLP anticipates an increase in the use of the FSA-2061 as more borrowers will be able to qualify for a lien release than before.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: This information collection is required to support Direct Loan Servicing – Regular information collection activity to cover the increase of the borrowers to qualify for a lien release.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated to average 0.50 hours per response.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 4,747.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 4,747.

Estimated Average Time per Response: 0.50 hours.

Estimated Total Annual Burden on Respondents: 2,374.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are

prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Parts 764 through 766 and 768 through 770

Agriculture, Credit, Loan programs – agriculture.

For the reasons discussed above, FSA amends 7 CFR chapter VII as follows:

PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

2. Amend § 761.2 as follows:

a. In the undesignated introductory paragraph, remove the words "767 and";

b. In paragraph (a) add the abbreviation for DBSA in alphabetical order; and

c. In paragraph (b):

i. In the definition of "Administrative appraisal review", redesignate paragraphs (1) and (2) as paragraphs (i) and (ii);

ii. In the definition of "Agricultural commodity", remove the words "forage, nursery" and add "forage, ornamental plants, nursery" in their place;

iii. Revise the definition of "Beginning farmer";

iv. Add a definition of "Commercially foraged" in alphabetical order;

v. Revise the definition of "Debt forgiveness";

vi. Remove the definition of "Debt writedown";

vii. Add the definitions of "Debt write-down" and "Distressed Borrower Set-Aside" in alphabetical order;

viii. Revise the definition of "Equitable relief";

ix. Revise the definition of "Essential family living and farm operating expenses";

x. In the definition of “Established farmer”, redesignate paragraphs (1) through (6) as paragraphs (i) through (vi);

xi. Revise the definition of “Family farm”;

xii. In the definition of “Farm Ownership loan”, remove the word “Downpayment” and add “Down Payment” in its place;

xiii. Revise the definition of “Feasible plan;

xiv. In the definition of “Financially viable operation”, redesignate paragraphs (1) through (4) as paragraphs (i) through (iv);

xv. Revise the definition of “Good faith”;

xvi. Add definitions of “Indian land” and “Indian Tribe” in alphabetical order;

xvii. In the definition of “Limited resource interest rate”, redesignate paragraphs (1) and (2) as paragraphs (i) and (ii);

xviii. Revise the definitions of “Non-eligible enterprise”, “Non-essential assets”, “Normal production yield”, “Participated in the business operations of a farm”, “Primary loan servicing programs”, “Related by Blood or Marriage”, and “Relative”;

xix. Remove the definition of “Rural youth”;

xx. In the definition of “Restructuring”, remove the word “writedown” and add “write-down” in its place;

xxi. In the definition of “Shared Appreciation Agreement”, remove the word “writedown” and add “write-down” both places it occurs; and

xxii. In the definition of “Youth loan”, remove the word “rural”.

The additions and revisions read as follows.

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

* * * * *

DBSA Distressed Borrower Set-Aside.

* * * * *

(b) * * *

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Beginning farmer is an individual or entity who:

(i) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, as applicable;

(ii) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;

(iii) Will materially and substantially participate in the operation of the farm:

(A) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located; or

(B) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

(iv) Agrees to participate in any loan assessment and borrower training required by Agency regulations;

(v) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the average farm acreage of the farms in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm acreage will be determined from the most recent Census of Agriculture;

(vi) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and

(vii) In the case of an entity:

(A) All the members are related by blood or marriage; and

(B) All the members are beginning farmers.

Commercially foraged means the harvesting of naturally occurring plants, or plantlike material, including fungi, that develop with limited management of the resource.

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

(i) Debt forgiveness includes:

(A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;

(C) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency;

(D) Discharging a debt as a result of bankruptcy; or

(E) Releases of liability which result in a loss to the Agency.

(ii) Debt forgiveness does not include:

(A) Debt reduction through a conservation contract;

(B) Any write-down provided as part of the resolution of a discrimination complaint against the Agency;

(C) Prior debt forgiveness that has been repaid in its entirety;

(D) Consolidation, rescheduling, reamortization, or deferral of a loan; and

(E) Forgiveness of a YL debt due to circumstances beyond the borrower's control.

Debt write-down means the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

Distressed borrower set-aside means the deferral of payment of an annual loan installment to the Agency to the end of the loan term in accordance with part 766, subpart J, of this chapter.

Equitable relief means relief provided in accordance with part 7 CFR 768.1.

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

(i) Are those that are basic, crucial, or indispensable;

(ii) Are determined by the Agency based on the following considerations:

(A) The specific borrower's operation;

(B) What is typical for that type of operation in the area; and

(C) What is an efficient method of production considering the borrower's resources; and

(iii) Include, but are not limited to, essential: Household operating expenses; food, including lunches; clothing and personal care; health and medical expenses,

including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.

* * * * *

Family farm means a business operation that:

(i) Produces agricultural commodities, including agricultural commodities commercially foraged on Indian land for the purposes of OLs, for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence or non-eligible enterprise;

(ii) Has both physical labor and management provided as follows:

(A) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:

(*1*) The borrower, with input and assistance allowed from persons who are either related by blood or marriage to an individual borrower; or

(*2*) The members responsible for operating the farm, in the case of an entity; and

(B) A substantial amount of labor to operate the farm is provided by:

(*1*) The borrower, with input and assistance allowed from persons who are either related by blood or marriage to an individual borrower; or

(*2*) The members responsible for operating the farm, in the case of an entity;

(iii) May use full-time hired labor in amounts only to supplement family labor; and

(iv) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

* * * * *

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

* * * * *

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

* * * * *

Indian land, for the purposes of the definition of “family farm” in this section, means land, or an interest therein, that is:

(i) Owned by an Indian Tribe;

(ii) Owned by an Indian Tribe and is subject to restrictions against alienation or encumbrance by the United States; or

(iii) Held in trust by the United States for an Indian Tribe.

* * * * *

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601-1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

Non-eligible enterprise means a business that meets the criteria in any one of the following categories:

(i) Produces exotic animals, birds, or aquatic organisms or their products that may be agricultural in nature, but are not primarily associated with agricultural production, for example, there is no established or stable market for them, or production is speculative in nature;

(ii) Produces animals, birds, or aquatic organisms ordinarily used for pets, companionship, sport, or pleasure and not primarily associated with human consumption, fiber, or draft use;

(iii) Primarily markets goods or provides services which might be agriculturally related, but are not produced by the farming operation; or

(iv) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.

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

(i) Do not contribute to:

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

(B) The farming operation; and

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

* * * * *

Normal production yield means, as used in 7 CFR part 764 for EMs:

(i) The per acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Noninsured Crop Disaster Assistance Program for the production year during which the disaster occurred;

(ii) The applicant's own production records, or the records of production on which FSA Farm Program payments are made contained in the applicant's Farm Program file, if available, for the previous 3 years, when the actual production history in paragraph (i) of this definition is not available;

(iii) The county average production yield, when the production records outlined in paragraphs (i) and (ii) of this definition are not available.

Participated in the business operations of a farm means that an individual has:

(i) Been the manager or operator of a farming operation for the year's complete production cycle as evidenced by tax returns, FSA farm records or similar documentation;

(ii) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or

(iii) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm (which can include a farm-related apprenticeship, internship, or

similar educational program with applied work experience) with significant responsibility for the day-to-day decisions for the year's complete production cycle, which may include selection of seed varieties, weed control programs, input suppliers, livestock feeding programs, or decisions to replace or repair equipment.

Primary loan servicing programs means:

(i) Loan consolidation and rescheduling, or reamortization;

(ii) Interest rate reduction, including use of the limited resource rate program;

(iii) Deferral;

(iv) Write-down of the principal or accumulated interest; or

(v) Any combination of paragraphs (i) through (iv) of this definition.

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

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

* * * * *

Subpart C—Progression Lending

§ 761.102 [Amended]

3. In § 761.102, amend paragraph (b)(1) by removing the word "year-end analyses,".

4. Amend § 761.103 as follows:

a. In paragraph (a)(3), remove the word "progressive" and add "progression" in its place, and remove the words "in the shortest time practicable" and add "at reasonable rates and terms" in their place; and

b. Revise paragraphs (b)(3) and (c)(3) and (4).

The revisions read as follows:

§ 761.103 Farm assessment.

* * * * *

(b) * * *

(3) The short- and long-term goals of the operation, including goals to reasonably increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth, and goals for progression towards graduation to commercial credit or eventual self-financing;

* * * * *

(c) * * *

(3) The short- and long-term goals of the operation, including goals to reasonably increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth, and goals for progression towards graduation to commercial credit or eventual self-financing;

(4) The short- and long-term financial viability of the farming operation, including a marketing plan, and available production history, as applicable;

* * * * *

5. Amend § 761.104 as follows.

a. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively;

b. Add new paragraph (f); and

c. In newly redesignated paragraph (g), remove "paragraph (g)" and add in its place "paragraph (h)" in its place.

The addition reads as follow.

§ 761.104 Developing the farm operating plan.

* * * * *

(f) Development of farm operating plans and determination of appropriate repayment terms must include consideration of a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth.

* * * * *

6. Amend § 761.105 as follows:

a. Revise the section heading;

b. In paragraph (a), remove the words "a year-end" and add "an" in its place; and

c. Revise paragraph (b).

The revisions read as follows:

§ 761.105 Analysis.

* * * * *

(b) The analysis must include a review of the previous production cycle's actual income, expense, and production performance, as well as a farm operating plan for the new operating cycle.

PART 762 – GUARANTEED FARM LOANS

7. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

8. In § 762.120, add paragraph (a)(3) to read as follows:

§ 762.120 Applicant eligibility.

(a) * * *

(3) If the debt forgiveness is resolved by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

* * * * *

9. In § 762.124 revise paragraph (e)(1) to read as follows:

§ 762.124 Interest rates, terms, charges, and fees.

* * * * *

(e) * * *

(1) Extended repayment schedules may include equal, unequal, or balloon installments if needed by a borrower on any guaranteed loan to establish a new enterprise, develop a farm, recover from a disaster or an economical reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education.

* * * * *

10. Amend § 762.142 as follows:

a. In paragraph (c)(1)(iii), remove the words "the debt of another lender" and add "debt" in their place;

b. In paragraph (c)(3)(ii), remove the words "to allow another lender";

c. In paragraph (d)(1), remove the words "For standard eligible and CLP lenders, the" and add "The" in their place;

d. Revise paragraph (d)(2);

e. Remove paragraph (d)(3);

f. Redesignate paragraphs (d)(4) through (10) as paragraphs (d)(3) through (9), respectively; and

g. Revise newly redesignated paragraph (d)(5).

The revisions read as follows.

§ 762.142 Servicing related to collateral.

* * * * *

(d) * * *

(2) The transferee must apply for a loan in accordance with § 762.110, and provide any other information requested by the Agency to evaluate the transfer and assumption request. A current appraisal is required unless the lien position of the guaranteed loan will not change.

* * * * *

(5) The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, including all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to an applicant under this part, except for a current appraisal when permitted in paragraph (d)(2) of this section.

* * * * *

11. Amend § 762.145 as follows:

a. In paragraph (a)(3)(i), remove the words “write down” and add “write-down” in their place;

b. In paragraph (a)(3)(ii), remove the word “writedown” and add “write-down” in its place;

c. In paragraph (a)(3)(iii), remove the words “write down” and add “write-down” in its place;

d. Revise paragraph (b)(4);

e. In paragraph (b)(7), remove the words “take a lien on all assets and”;

f. In paragraph (e), remove the word “writedown” wherever it appears and add “write-down” in its place;

g. In paragraph (e)(1), remove the words “write down” and add “write-down” in its place;

h. In paragraph (e)(2), remove the word “writedown” and add “write-down” in its place;

i. In paragraph (e)(7), remove the word “writedown” and add “write-down” in its place both times it appears;

j. In paragraph (e)(8), remove the word “writedown” and add “write-down” in its place;

k. In paragraph (e)(9), remove the word “writedown” wherever it appears and add “write-down” in its place;

l. In paragraph (e)(10), remove the word “writedown” and add “write-down” in its place both times it appears;

m. In paragraph (e)(12)(ii), remove the word “writedown” and add “write-down” its place;

n. In paragraph (e)(12)(iii) introductory text, remove the word “writedown” and add “write-down” in its place and

o. In paragraph (e)(12)(iii)(C), remove the word “writedown” and add “write-down” in its place.

The revisions read as follows:

§ 762.145 Restructured guaranteed loans.

* * * * *

(b) * * *

(4) Loans can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may crops or livestock, other than breeding livestock, be the only security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of the security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For other security, a current appraisal is required. The lender is required to project the security value at the time the balloon payment is due based on the remaining life of the security, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum term of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is rescheduled with unequal installments, a feasible plan, as defined in § 762.2(b), must be projected for when installments are scheduled to increase.

* * * * *

§ 762.147 [Amended]

12. In § 762.147, amend paragraphs (b)(2)(i) and (iv) by removing the word "writedown" and adding "write-down" in their places.

§ 762.150 [Amended]

13. In § 762.150, amend paragraph (j) by removing the word "writedown" wherever it appears and adding "write-down" in its place..

PART 764 – DIRECT LOAN MAKING

14. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart B—Loan Application Process

15. In § 764.51, revise paragraphs (b)(6) and (10) to read as follows:

§ 764.51 Loan application.

* * * * *

(b) * * *

(6) Except for CL, documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency. The authorized Agency official will evaluate and document whether or not rates and terms of available credit in the applicant's region will result in a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth;

* * * * *

(10) A legal description of the farm property owned or to be acquired and, upon Agency request, any leases, contracts, options, and other agreements related to the operation;

* * * * *

Subpart C—Requirements for All Direct Program Loans

16. Amend § 764.101 as follows:

a. Revise paragraphs (d), (e)(1), and (i);

b. In paragraph (l), remove the word "ownnership" and add "ownership" in its place.

The revisions read as follows:

§ 764.101 General eligibility requirements.

* * * * *

(d) *Credit history.* The applicant, and all entity members in the case of an entity, must have acceptable credit history demonstrated by debt repayment.

(1) As part of the credit history, the Agency will determine whether the applicant, and all entity members in the case of an entity, will carry out the terms and conditions of the loan and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant, and all entity members in the case of an entity, has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(2) When the applicant, or an entity member in the case of an entity, caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's credit worthiness.

(3) A history of failures to repay past debts as they came due will demonstrate unacceptable credit history when the ability to repay was within the control of the applicant, or entity member in the case of an entity. The circumstances in paragraphs (d)(3)(i) through (iv) of this section, for example, do not automatically indicate an unacceptable credit history:

(i) Foreclosures, judgments, delinquent payments which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR part 766;

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment;

(iii) “No history” of credit transactions; and

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment of the applicant, or an entity member in the case of an entity, when it can be satisfactorily demonstrated that the adverse action or delinquency was caused by circumstances that were of a temporary nature and beyond the individual's control; or the result of a refusal to make full payment because of defective goods or services or other justifiable dispute relating to the purchase or contract for goods or services.

* * * * *

(e) * * *

(1) Loan amounts, rates, and terms available in the marketplace. The authorized Agency official will evaluate and document whether rates and terms of available credit will result in a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth; and

* * * * *

(i) *Managerial ability.* The applicant, and in the case of an entity, the individuals holding a majority interest in the entity, must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. Managerial ability must be demonstrated by:

(1) *Education*. For example, the applicant or entity member obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field;

(2) *On-the-job training*. For example, the applicant or entity member is currently working on a farm as part of an apprenticeship program;

(3) *Farming experience.* For example, the applicant or entity member has been a manager or operator of a farm business for at least one entire production cycle or for MLs, made for OL purposes, the applicant may have obtained and successfully repaid

one FSA Youth-OL. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 10 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 10 years to demonstrate managerial ability; or

(4) *Alternatives for MLs made for OL purposes*. Applicants for MLs made for OL purposes, also may demonstrate managerial ability by one of the following:

(i) Certification of a past participation with an agriculture-related organization, such as, but not limited to, 4–H Club, FFA, beginning farmer and rancher development programs, or Community Based Organizations, that demonstrates experience in a related agricultural enterprise; or

(ii) A written description of a self-directed apprenticeship combined with either prior sufficient experience working on a farm or significant small business management experience. As a condition of receiving the loan, the self-directed apprenticeship requires that the applicant seek, receive, and apply guidance from a qualified person during the first cycle of production and marketing typical for the applicant's specific operation. The individual providing the guidance must be knowledgeable in production, management, and marketing practices that are pertinent to the applicant's operation, and agree to form a developmental partnership with the applicant to share knowledge, skills, information, and perspective of agriculture to foster the applicant's development of technical skills and management ability.

* * * * *

17. In § 764.103, revise paragraph (c) to read as follows:

§ 764.103 General security requirements.

* * * * *

(c) An additional amount of security will be required, if available, to reach a 125 percent security margin. Total loan security in excess of what is needed to achieve a security margin of 125 percent will only be taken when it is not practicable to separate the security, or if necessary to satisfy the requirements of § 764.254(b)(2)(i). Loans that do not require additional security are down payment loans, MLs, youth loans, and FOs for the purchase of a farm where the applicant provides a cash down payment equal to 5 percent or greater of the purchase price. Non-real estate assets will not be taken as additional security for any loan where real estate serves as adequate security.

18. Amend § 764.106 as follows:

a. Revise paragraph (d); and

b. In paragraph (e), remove the words "accounts, personal" and add "accounts, education savings accounts, personal" in their place.

The revision reads as follows:

§ 764.106 General real estate security requirements.

* * * * *

(d) Unless the applicant provides a written request for an exemption, when the property includes the primary personal residence and appurtenances of the applicant or any entity member(s) and:

(1) They are located on a separate parcel of up to the greater of 10 acres or the minimum size that meets all State and local requirements for a division into a separate legal lot; and

(2) The security requirements of § 764.103(b) can be satisfied without the use of the primary personal residence and appurtenances;

* * * * *

Subpart D—Farm Ownership Loan Program

§ 764.152 [Amended]

19. Amend § 764.152 as follows:

a. In paragraph (d) introductory text, remove the words "one or more members constituting a majority interest" and add "at least one member who will be the operator of the family farm" in their place; and

b. In paragraph (d)(2), remove the word "applicant" and add "applicant, or in the case of an entity at least one member who will be the operator of the family farm," in its place.

20. In § 764.154, revise paragraph (b) to read as follows:

§ 764.154 Rates and terms.

* * * * *

(b) *Terms.* The repayment terms are:

(1) The standard repayment term of an FO will be equal to the useful life of the security or 40 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. In no event will the term be more than 40 years from the date of the note. Repayment schedules may include equal installments, or unequal installments if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan.

(2) The first installment of an FO will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an

amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.

(3) The minimum scheduled installments for the first 3 years of an FO must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by the Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.

Subpart G—Operating Loan Program

21. In § 764.251, revise paragraph (a)(11) to read as follows:

§ 764.251 Operating loan uses.

(a) * * *

(11) Costs for minor real estate repairs or improvements, provided the loan is made primarily for agricultural purposes and can be repaid within 7 years. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease.

22. Amend § 764.254 as follows:

a. Revise paragraphs (a)(4), (b)(1) introductory text, (i), and (2); and

b. Add paragraphs (b)(3) and (4).

The revisions and addition read as follows:

§ 764.254 Rates and terms.

(a) * * *

(4) The Agency's Direct ML-OL interest rate on an ML to a beginning farmer or veteran farmer is available in each Agency office. The interest rate will be the lower of

the regular direct OL interest rate in effect at the time of loan approval or loan closing, or 5 percent.

(b) * * *

(1) The Agency schedules repayment of OL loans made for annual farm operating and family living expenses when planned income is projected to be available.

(i) The term of the loan may not exceed 24 months from the date of the note, except as provided in paragraph (b)(1)(ii) of this section.

* * * * *

(2) The standard repayment term of all other OLs must be equal to the useful life of the security or 7 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal installments, or unequal or balloon installments if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan. Loans with balloon installments:

(i) Must be secured by an amount projected at the time of loan closing to be at least equal to the direct loan balance outstanding at the time the balloon installment comes due, which may exceed the additional security requirements of § 764.103(c) of this chapter. Total loan security in excess of the requirements of this provision (paragraph (b)(2)(i) of this section) will only be taken when it is not practicable to separate the security. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans.

(ii) Are only authorized when the applicant can project the ability to refinance or restructure the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

(iii) Are not authorized when loan funds are used for real estate repairs or improvements.

(3) The first installment of an OL, for purposes other than annual farm operating and family living expenses, will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.

(4) The minimum scheduled installments for the first 3 years of an OL, for purposes other than annual farm operating and family living expenses, must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by the Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.

23. Amend § 764.255 as follows:

a. Revise paragraph (b) introductory text;

b. In paragraph (c)(1), remove "amount, and up to 150 percent, when available" and add "amount" in its place.

c. Revise paragraph (c)(2); and

d. Add paragraph (d).

The revisions and addition read as follows:

§ 764.255 Security requirements.

* * * * *

(b) Except for MLs or OLs made for the purpose of minor real estate repairs or improvements, by a:

* * * * *

(c) * * *

(2) For loans made for purposes other than annual operating purposes or for the purpose of minor real estate repairs or improvements, loans must be secured by a first lien on farm property or products purchased with loan funds and having a security value of at least 100 percent of the loan amount.

* * * * *

(d) For OLs made for the purpose of minor real estate repairs or improvements, the Agency must obtain a lien on the real estate repaired or improved in accordance with the requirements of § 764.104, while also ensuring the provisions of § 764.103(b) requiring adequate security are satisfied.

Subpart H—Youth Loan Program

§ 764.303 [Amended]

24. In § 764.303, amend paragraph (b) by removing "$5,000" and adding "$10,000" in its place.

Subpart I—Emergency Loan Program

§ 764.352 [Amended]

25. Amend § 764.352 as follows:

a. In paragraph (f) remove the words "write down" and add "write-down" their place; and

b. In paragraph (h) remove the words "at least 30 percent".

§ 764.353 [Amended]

26. In § 764.353, amend paragraph (c)(4) by removing the words “other disaster” and removing the word “production”.

27. Amend § 764.354 as follows:

a. Revise paragraphs (b)(1), (3), (4), and (5); and

b. Add paragraphs (b)(6) and (7).

The revisions and addition read as follows.

§ 764.354 Rates and terms.

* * * * *

(b) * * *

(1) The Agency schedules repayment of EMs based on the useful life of the security and the type of loss.

* * * * *

(3) EMs for annual farm operating and family living expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 24 months to accommodate the production cycle of the agricultural commodities.

(4) The standard repayment term of an EM for production losses or physical losses to chattel security (including assets with an expected life between 1 and 7 years) will be equal to the useful life of the security or 7 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. The Agency may extend the repayment term up to a total length not to exceed 20 years, if adequate security is available, and repayment schedules may include equal installments, or unequal installments, if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, and security is adequate to support the term of the loan. Notwithstanding any

other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan.

(5) The standard repayment term of an EM for physical losses to real estate will be equal to the useful life of the security or 40 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. In no event will the term be more than 40 years from the date of the note, and repayment schedules may include equal installments, or unequal installments, if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, and security is adequate to support the term of the loan. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan.

(6) The first installment of an EM, for purposes other than annual farm operating and family living expenses, will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.

(7) The minimum scheduled installments for the first 3 years of an EM, for purposes other than annual farm operating and family living expenses, must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.

Subpart J—Loan Decision and Closing

§ 764.402 [Amended]

28. In § 764.402, amend paragraph (d)(3)(vii) by removing the words "related as a family member" and adding "a relative" in their place.

Subpart K—Borrower Training and Training Vendor Requirements

§ 764.451 [Amended]

29. In § 764.451, amend the undesignated introductory paragraph by removing the words "production and financial management" and adding it with "borrower" in its place.

§ 764.452 [Amended]

30. Amend § 764.452 as follows:

a. In paragraph (a), remove the words "production and";

b. In paragraph (a)(2), remove the words "production or"

c. Remove paragraphs (b) and (d);

d. Redesignate paragraph (c) as paragraph (b); and

e. Redesignate paragraphs (e) through (g) as paragraphs (c) through (e).

§ 764.453 [Amended]

31. Amend § 764.453 as follows:

a. In paragraph (b), remove the words "production, financial management, or both," and add "financial management" in their place.

b. In paragraph (c), remove the words "production and".

§ 764.455 [Amended]

32. Amend § 764.455 by removing the words "production and".

§ 764.457 [Amended]

33. Amend § 764.457 as follows:

a. Remove paragraph (b)(6);

b. In paragraph (b)(4), add the word "and" at the end;

c. In paragraph (b)(5), remove the word "; and" and add a period in its place;

d. Remove paragraph (c)(3); and

e. In paragraph (c)(1), remove the word “planning.” and adding “planning; or” in its place.

PART 765 – DIRECT LOAN SERVICING - REGULAR

34. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart C—Borrower Graduation

35. In § 765.101, revise paragraph (c) to read as follows:

§ 765.101 Borrower graduation requirements.

* * * * *

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

* * * * *

36. Revise § 765.102 to read as follows:

§ 765.102 Borrower non-compliance with graduation requirements.

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

(b) If all outstanding direct loans were closed after September 25, 2024, or when the borrower makes a written request in response to the Agency’s notification of intent to accelerate within provided timeframes, the Agency will convert the debt to a non-program loan under the following conditions:

(1) It is in the interest of the Agency;

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

(3) The debt will be serviced as a non-program loan; and

(4) The term of the non-program loan will be:

(i) For FOs, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security, or 25 years.

(ii) For OLs, the Agency will schedule repayment in equal installments over the lesser of the remaining number of years on the loan, the useful life of security or 5 years.

Subpart E—Protecting the Agency's Security Interest

37. Amend § 765.205 as follows:

a. Redesignate paragraphs (b) through (d) as paragraphs (c) through (e), respectively; and

b. Add a new paragraph (b).

The addition reads as follows.

§ 765.205 Subordination of liens.

* * * * *

(b) *Incomplete applications.* Incomplete applications will be processed in accordance with 7 CFR 764.52.

* * * * *

Subpart F—Required Use and Operation of Agency Security

38. Amend § 765.252 as follows:

a. In paragraph (a)(3), remove the word “and”;

b. In paragraph (a)(4), remove the words “the operation” and add “the Agency’s security” in their place, and remove the period at the end of the paragraph.

c. In paragraph (a)(5), remove the word “Government” and add “Agency” in its place; and

d. Revise paragraph (c).

The revision reads as follows.

§ 765.252 Lease of security.

* * * * *

(c) *Lease of chattel security*. The borrower must request prior approval to lease chattel security. The Agency will approve requests provided the following conditions are met:

(1) The term of lease does not exceed 12 months and does not automatically renew;

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

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

(4) The lease must be in the best interest of the Agency as determined by the authorized Agency official;

(5) Leased security must be accessible and readily identifiable at all times. Leased livestock must be branded, tagged, or be otherwise specifically identifiable; and

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

§ 765.303 [Amended]

39. Amend § 765.303 as follows:

a. In paragraph (c)(2) remove the word “needs” and add “farming needs” in its place; and

b. In paragraph (c)(3) remove the word “needs” and add “farming needs” in its place.

40. In § 765.305, revise paragraph (c) to read as follows:

§ 765.305 Release of security interest.

* * * * *

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

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

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

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

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

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

Subpart H—Partial Release of Real Estate Security

41. Amend § 765.351 as follows:

a. In paragraph (a)(3), remove the words “received by the borrower” and add “paid” in their place; and

b. Revise paragraph (f).

The revision reads as follows.

§ 765.351 Requirements to obtain Agency consent.

* * * * *

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

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

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

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

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

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

42. In § 765.352, add paragraph (a)(4) to read as follows:

§ 765.352 Use of proceeds.

* * * * *

(4) To pay capital gains taxes on real estate transactions when the following conditions are met:

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

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

(iii) The remaining Agency debt is fully secured;

(iv) All other lienholders will:

(A) Be fully satisfied from the sale, or

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

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

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

Subpart I—Transfer of Security and Assumption of Debt

43. Amend § 765.402 as follows:

a. Revise paragraphs (b), (d), and (e)(1); and

b. Add paragraphs (f) and (g).

The revisions and additions read as follows.

§ 765.402 Transfer of security and loan assumption on same rates and terms.

* * * * *

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

* * * * *

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

(e) * * *

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

* * * * *

(f) *Application requirements*. Transferees must submit a complete application in accordance with § 764.51 of this chapter.

(g) *Security*. All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed.

44. In § 765.403, add paragraphs (f) and (g) to read as follows:

§ 765.403 Transfer of security to and assumption of debt by eligible applicants.

* * * * *

(f) *Application requirements*. Transferees must submit a complete application in accordance with 7 CFR 764.51.

(g) *Security*. All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed.

45. In § 765.404 revise paragraph (d) and add paragraph (g) to read as follows.

§ 765.404 Transfer of security to and assumption of debt by ineligible applicants.

* * * * *

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

* * * * *

(g) *Security*. All security must be transferred to the transferee with possession taken in accordance with the requirements of part 764 of this chapter for the type of loan being assumed.

PART 766 – DIRECT LOAN SERVICING - SPECIAL

46. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 7 U.S.C. 1981d(c).

Subpart A—Overview

47. In § 766.1, revise paragraph (b)(1)(i) to read as follows.

§ 766.1 Introduction.

* * * * *

(b) * * *

(1) * * *

(i) May not receive DSA under subpart B of this part or DBSA under subpart J of this part;

* * * * *

Subpart B—Disaster Set-Aside

§ 766.52 [Amended]

48. Amend § 766.52 as follows:

a. In paragraph (b)(3) remove the number "90" and add "150" in its place.

b. In paragraph (b)(6) remove the words "a DSA" and add "a DBSA or DSA" in its place.

49. Revise § 766.54(b)(2) to read as follows:

§ 766.54 Borrower application requirements.

*****

(b) * * *

(2) The borrower must provide any additional information requested by the Agency.

§ 766.56 [Removed]

50. Remove § 766.56.

Subpart C—Loan Servicing Programs

51. Amend § 766.101 by adding paragraph (e) to read as follows:

§ 766.101 Initial Agency notification to borrower of loan servicing programs.

* * * * *

(e) *SED extension authority*. In extraordinary circumstances, after the application period described in paragraphs (d)(2) and (3) of this section has expired, the SED may extend the application deadline when requested by the borrower in writing.

52. Amend § 766.102(a) as follows:

a. Remove paragraph (a)(1);

b. Redesignate paragraphs (a)(2) through (8) as paragraphs (a)(1) through (7), respectively;

c. In newly redesignated paragraph (a)(4) remove the words “subpart G of 7 CFR part 1940” and add “part 799 of this chapter” in their place;

d. In newly redesignated paragraph (a)(6), remove the words “statements; and” and add “statements;” in their place;

e. In newly redesignated paragraph (a)(7), remove the period at the end and add “; and” in its place; and

f. Add new paragraph (a)(8).

The addition reads as follows:

§ 766.102 Borrower application requirements.

(a) * * *

(8) Upon Agency request, any leases, contracts, options, and other agreements related to the operation.

53. In § 766.104, amend paragraph (a)(1) as follows:

a. In paragraph (a)(1)(iv), remove the word “or” at the end;

b. In paragraph (a)(1)(v), remove the period at the end; and replace with “; or”; and

c. Add paragraph (a)(1)(vi).

The addition reads as follows.

§ 766.104 Borrower eligibility requirements.

(a) * * *

(1) * * *

(vi) Catastrophic medical expenses for the care of a family member of the borrower or entity member, in the case of an entity borrower.

*****

§ 766.105 [Amended]

54. Amend § 766.105 as follows:

a. In paragraph (a)(4), remove the word “Writedown” and add “Write-down” in its place; and

b. In paragraph (c)(1)(i), remove the word “writedown” and add “write-down” in its place.

§ 766.107 [Amended]

55. Amend § 766.107 as follows:

a. In paragraph (a)(9), add “or J” after “subpart B”, and remove the words “deferral or DSA” and add “deferral, DBSA, or DSA” in their place; and

b. In paragraph (b)(6), remove the words “subpart B of” and add “subpart B or J of” in their place, and remove the words “deferral or DSA” and add “deferral, DBSA, or DSA” in their place.

56. Amend § 766.111 as follows:

a. Revise the section heading;

b. In paragraph (a), introductory text, remove the word “writedown” and add “write-down” in its place;

c. In paragraph (b), introductory text, remove the word “writedown” and adding “write-down” in its place;

d. Revise paragraph (b)(1);

e. In paragraph (b)(3), remove the word “writedown” and add “write-down” in its place.

The revisions read as follows:

§ 766.111 Write-down.

* * * * *

(b) * * *

(1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan is achieved with a debt service margin of 101 percent or more, the Agency will permit a borrower to accept a non-write-down servicing offer and waive the right to a write-down offer when the write-down offer will require additional time and appraisals to fully develop. If after obtaining an appraisal a feasible plan is achieved with and without a write-down and the borrower meets all the eligibility requirements, both options will be offered, and the borrower may choose one option.

* * * * *

57. Revise § 766.112 to read as follows:

§ 766.112 Additional security for restructured loans.

(a) If the borrower is delinquent prior to restructuring, an additional amount of security will be required, if available, to reach a 125 percent security margin when the Agency is servicing a loan, except as provided in paragraph (b) of this section. Total loan security in excess of what is needed to achieve a security margin of 125 percent will only be taken when it is not practicable to separate the security.

(b) The Agency will take the best lien obtainable on assets of the borrower and co-borrowers to meet the 125 percent security margin requirement, except that the following assets will not be considered available to meet this requirement:

(1) When taking a lien on an asset will prevent the borrower from obtaining credit from other sources;

(2) When an asset could have significant environmental problems or costs as described in part 799 of this chapter;

(3) When the Agency cannot obtain a valid lien;

(4) When an asset is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, education savings accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(5) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

58. In § 766.115, revise paragraphs (a)(1), (2) introductory text, (3) introductory text, and (3)(ii) to read as follows.

§ 766.115 Challenging the Agency appraisal.

(a) * * *

(1) Obtain a USPAP compliant technical appraisal review prepared by a State Certified General Appraiser of the Agency's appraisal and provide it to the Agency within 90 days of the request for reconsideration or appeal and prior to reconsideration or the appeal hearing;

(2) Obtain an independent appraisal within 90 days of the request for reconsideration or appeal request and completed in accordance with § 761.7 as part of the request or reconsideration or appeals process. The borrower must:

* * * * *

(3) Use the second appraisal completed under paragraph (a)(2) of this section to negotiate the Agency’s appraisal.

* * * * *

(ii) If the difference between the two appraisals is greater than five percent, the borrower may request a third appraisal within 30 days from the date the second appraisal is provided to the Agency. The Agency and the borrower will share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.

* * * * *

59. Add § 766.120 to read as follows:

§ 766.120 Extending maturity date and installment schedule for direct loans with a balloon payment.

(a) At a borrower's written request, the maturity date and installment schedule of a direct term loan with a balloon payment may be extended for up to an additional 8 years from the original maturity date using an addendum to the promissory note when the:

(1) Loan was originally amortized for no more than 15 years with a balloon payment scheduled in the final year of the loan;

(2) Loan has not received PLS, DBSA, or DSA;

(3) Borrower has made all scheduled loan installments in the last 36 months;

(4) Balloon payment is due in less than 12 months;

(5) Borrower does not have an outstanding DBSA or DSA on any loan;

(6) Borrower has not received PLS on any loan in the last 36 months;

(7) Borrower has only had equal installments scheduled on any direct term loan in the last 36 months;

(8) Borrower's direct loans are fully secured with each loan having a security value of at least 100 percent of the remaining balance of the loan;

(9) Borrower is unable to partially or fully graduate;

(10) Borrower has acted in good faith;

(11) Borrower is not otherwise financially distressed or delinquent;

(12) Borrower must pay a portion of the interest due on the loan; and

(13) Addendum is signed by the borrower before the original maturity date.

(b) In no event may the loan exceed applicable term limits described in this part.

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

§ 766.201 [Amended]

60. In § 766.201, amend paragraphs (a)(2) and (b) introductory text by removing the word "writedown" and add "write-down" in its places.

§ 766.203 [Amended]

61. In § 766.203, amend paragraphs (a)(1), (2), and (c) by removing the word "writedown" and adding "write-down" in its places.

Subpart H—Loan Liquidation

§ 766.351 [Amended]

62. In § 766.351, amend paragraph (a)(3) by removing the words "family member" and adding "relative" in their place.

§ 766.356 [Amended]

63. In § 766.356, amend paragraph (b)(1)(iii)(B) by removing the word "writedown" and adding "write-down" in its place.

64. Add subpart J, consisting of §§ 766.451 to 766.458, to read as follows:

Subpart J – DBSA

Sec.

§ 766.451 General.

(a) DBSA is available to borrowers with at least one outstanding program loan authorized in subtitle A, B, or C of the CONACT (the loan must be an OL, FO, CL, SW, or EM), and who are a delinquent borrower or financially distressed borrower.

(b) DBSA is not intended to circumvent other servicing available under this part.

§ 766.452 Eligibility.

(a) *Borrower eligibility*. The borrower must meet all the following requirements to be eligible for DBSA:

(1) The borrower must currently be operating the farm. Farmers who have rented out their land base for cash are not considered to be operating the farm.

(2) The borrower must have acted in good faith, and the borrower's inability to make the current or upcoming scheduled loan payments must be for reasons not within the borrower's control.

(3) The borrower cannot have more than one DBSA on each loan.

(4) The borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency. This determination will be based on:

(i) The borrower's actual production, income and expense records; and

(ii) Any other records required by the Agency;

(5) For the next production cycle, the borrower must develop a feasible plan showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including Agency debts. The borrower must provide documentation required to support the farm operating plan.

(6) The borrower must not be in non-monetary default.

(7) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(8) The borrower must not become 165 days past due before the appropriate Agency DBSA documents are executed.

(b) *Loan eligibility*. The loan must meet all the following requirements to be eligible for DBSA:

(1) To be considered for DBSA the loan must have been either an OL, FO, CL, SW or EM outstanding prior to September 25, 2024.

(2) All of the borrower's program and non-program loans must be current after the Agency completes DBSA for the scheduled payment installment.

(3) All FLP loans must either be current or less than 150 days past due at the time the complete application for DBSA is received by the Agency.

(4) The Agency has not accelerated the borrower’s account.

(5) For any loan that will receive DBSA, the remaining term of the loan must equal or exceed 2 years from the due date of the DBSA agreement.

(6) The loan must not have an existing DBSA or DSA in place.

(7) The loan must not have been consolidated with any other loan that would not be eligible for DBSA on its own merits.

§ 766.453 DBSA amount limitations.

(a) The DBSA amount is limited to the lesser of:

(1) The amount of the delinquent installment or upcoming scheduled installment; or

(2) The amount the borrower is unable to pay the Agency. Borrowers are required to pay any portion of an installment they are able to pay.

(b) The amount set aside will be the unpaid balance remaining on the installment at the time DBSA is complete. The amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

(c) Recoverable cost items may not be set aside.

§ 766.454 Borrower application requirements.

(a) *Requests for DBSA*. To request DBSA:

(1) A borrower must submit a request for DBSA to the Agency in writing.

(2) All borrowers liable for the loan must sign the DBSA request.

(b) *Required financial information*. When requesting DBSA:

(1) The borrower must submit actual production, income, and expense records for the current and upcoming production cycle unless the Agency already has that information for the borrower.

(2) The borrower must provide any additional information requested by the Agency.

§ 766.455 Borrower acceptance of DBSA.

Subject to the 165-calendar day limitation in § 766.452(a)(8), the borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DBSA, which will be within 30 days of having submitted a complete application.

§ 766.456 Payments toward DBSA installments.

(a) *Interest accrual*. Interest will accrue on any principal portion of the DBSA installment at the rate of one eighth of a percent.

(b) *Due date*. The DBSA amount, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

(c) *Applying payments*. The Agency will apply borrower payments toward DBSA installments first to interest and then to principal.

§ 766.457 Canceling a DBSA agreement.

(a) The Agency will cancel a DBSA agreement if the Agency takes any PLS action on the loan.

(b) The Agency will cancel a DBSA agreement if the borrower pays the:

(1) Current market value buyout in accordance with § 766.113; or

(2) The set-aside installment.

§ 766.458 Reversal of DBSA.

If the Agency determines that the borrower received an unauthorized DBSA, the Agency will reverse the DBSA agreement after all appeals are concluded.

65. Revise appendix A to read as follows:

Appendix A to Subpart C of Part 766—FSA–2510, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

This appendix A contains the notification (form letter) that the Farm Service Agency will send to borrowers who are at least 90 days past due on their loan payments.

It provides information about the loan servicing that is available to the borrower. As stated below on the notification, the borrower is to respond within 60 days from receiving the notification (see § 766.101(b)(2) and (d)(2) for the requirements). The notification is provided here as required by 7 U.S.C. 1981d.

FSA-2510
(03-26-24)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE

Date

Borrower's Name
Borrower Name/Address
Borrower Address
City, State, Zip Code

MAILING INSTRUCTIONS

The Farm Service Agency (FSA) is committed to supporting the success of America's farmers and ranchers. In reviewing your Farm Loan Programs (FLP) loan account, we have determined that you are seriously delinquent on your FLP loan payment. This notice informs you of options that may be available to you. FSA's loan servicing options including, primary loan servicing, conservation contract, current market value buyout, homestead protection, and debt settlement may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, and provide all items required in section (f), as applicable, within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need assistance in understanding the options available to you and their impact on your operation. An attorney can help assist you in understanding your options or there may be organizations that offer free or low-cost advice to farmers in your state. Contact your State Department of Agriculture or the U.S. Department of Agriculture (USDA) Extension Service for services in your state. You may contact your local service center with any questions.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, FSA will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

FSA will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means FSA will take legal action to collect all the money you owe to FSA under FLP. After acceleration of your loan accounts, FSA will start foreclosure proceedings. FSA will be required to repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which FSA has a security interest. FSA will also be required to obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

Servicing Options
(a) Primary loan servicing;
(b) Conservation contract;
(c) Current market value buyout;
(d) Homestead protection;
(e) Debt settlement;

Application Details
(f) Application forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;

Appeal Options

(h) Reconsideration, mediation, and appeal to The National Appeals Division (NAD);
(i) Challenging FSA appraisal; and
(j) Acceleration and foreclosure.

(a) Primary Loan Servicing

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You must resolve all non-monetary defaults prior to closing the servicing action.

(2) If you are also financially distressed or delinquent, it must be due to at least one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation;
(v) Loss of, or reduction in, your or your spouse's essential non-farm income; or
(vi) Catastrophic medical expenses for the care of a family member of a borrower or entity member, in the case of an entity borrower.

(3) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. FSA cannot write-down or write off debt that you could pay with the value of your equity in these assets.

(4) You must have acted in accordance with your loan agreements in all past dealings with FSA.

Time limits

If FSA determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive FSA's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give FSA a lien on 125% of your other assets, if available, and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt write-down, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with FSA.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid balance of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized, the interest rate will be the lesser of:

- The interest rate for that type of loan on the date a complete servicing application was received;
- The interest rate for that type of loan on the date of restructure; or
- The lowest original loan note rate on any of the original notes being restructured.

In addition, FSA will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, FSA will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent.

For information about current interest rates, or to understand if you qualify for limited resource rates, contact your local FSA Service Center.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt write-down

Debt write-down can reduce the principal and interest on your loan. FSA offers a write-down only when the loan servicing programs discussed above and the conservation contract program, if requested, will not result in a feasible plan. To receive debt write-down, the value of your restructured loan must be equal to or greater than the recovery value to FSA from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that FSA would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by FSA in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a write-down only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Any debt the borrower owes that FSA has written off, written down, or charged off will be reported to the Internal Revenue Service in accordance with reporting requirements at 26 U.S.C. 6050P and the related implementing regulations.

Shared Appreciation Agreement

If you own real estate and receive a debt write-down, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value.

Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by FSA.

If any of these events occur within the first 4 years of the Shared Appreciation you will be required to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract

You may request a conservation contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, FSA would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, FSA may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from FSA on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in all past dealings with FSA in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay FSA within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay electronically or by cashier's check, certified check or U.S. Treasury check. The checks should be made payable to FSA and provided to your local FSA servicing office for processing. FSA will not make or guarantee a loan for this purpose.

Any debt the borrower owes that FSA has written off, written down, or charged off will be reported to the Internal Revenue Service in accordance with reporting requirements at 26 U.S.C. 6050P and the related implementing regulations.

(d) Homestead Protection

Under the homestead protection program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay electronically or by cashier's check, certified check or U.S. Treasury check or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the conservation contract program, or current market value buyout is not available or not accepted.

You must agree to give FSA title to your land at the time FSA signs the Homestead Protection Agreement with you. FSA will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. FSA will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least 2 of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to FSA obtaining the title.

Property restrictions and easements

FSA may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to FSA to lease the property determined eligible for homestead protection. The rent FSA charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to FSA, FSA will cancel the lease and take legal action.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement

You can apply for debt settlement at any time; however, these programs are usually only used after it has been determined that primary loan servicing programs and the conservation contract program cannot help you. Under the debt settlement programs, the FLP debt you owe FSA may be settled for less than the amount you owe. These programs are subject to the discretion of FSA and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to FSA. Payments can be spread out over a maximum of 5 years if FSA determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay FSA the market value of your collateral along with any additional amount FSA determines you are able to pay.

Debt amounts which are collectible through administrative offset, through judgment, by the Department of the Treasury, or by other means will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

Any debt the borrower owes that FSA has written off, written down, or charged off will be reported to the Internal Revenue Service in accordance with reporting requirements at 26 U.S.C. 6050P and the related implementing regulations.

Application Details

(f) Forms, documentation, and information needed to apply

A complete application for primary loan servicing must include items (1) through (4). Additional information is required as noted if you want to be considered for the conservation contract program or debt settlement programs. If you need help to complete the required forms, you may request an FSA official to assist you. The forms for requirements (1), and (4) are included with this package.

(1) FSA-2001, "Application for Direct Loan Assistance." This form is required with application submission.
(2) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
(3) NRCS-CPA-026e, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.
(4) FSA-2732, "Debt Settlement Application." Complete this form only if you wish to apply for debt settlement. You must also comply with any FSA request for additional information needed to process a debt settlement request.
(5) If you are applying for a conservation contract, a map or aerial photo is required of your farm identifying the portion of the land and approximate number of acres to be considered.
(6) Copies of real estate leases are required (if applicable to the farm operation).
(7) Verification of non-farm income is required.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present FSA with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to FSA;
(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

FSA will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) How to get copies of FSA handbooks and forms

Copies of the forms for requirements in Forms, Documentation and Information section, numbers (1), (2) and (5) have been included in this package. You may obtain copies of FSA handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from your local FSA Service office.

(h) Reconsideration, mediation, and appeal to NAD

Reconsideration, mediation, and appeal rights pursuant to 7 CFR parts 780 and 11, respectively, will be provided to you if FSA makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration – according to FSA's appeal procedures in 7 CFR part 780.

Mediation – according to FSA's appeal procedures in 7 CFR part 780.

Appeal to NAD – according to the NAD appeal procedures in 7 CFR part 11.

(i) Challenging FSA appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the FSA for processing your request, you may 1) obtain a Uniform Standards of Professional Appraisal Practice compliant technical appraisal review by a State Certified General Appraiser of the FSA appraisal and submit it to FSA prior to reconsideration or an appeal hearing, 2) obtain an independent appraisal, and 3) possibly negotiate the appraised value based on the specifics of the two appraisals.

If this applies to you, FSA will provide additional information in the notification letter advising you of the Agency's decision concerning your loan servicing application.

(j) Acceleration and foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, FSA will accelerate your loan accounts and will be required to demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral if, with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt, or
(3) Transfer the collateral to FSA.

If any of these options result in payment of less than the amount you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If FSA determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of FSA, homestead protection rights will be provided.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name] at [County Office Address] or telephone [Phone Number].

1A. Authorized Agency Official Name	1B. Signature	1C. Title

Federal Equal Credit Opportunity Act Statement: *The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.*

Paperwork Reduction Act (PRA) Statement: *This information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the form is used when FSA conducts administrative action against individuals or debtors.*

Non-Discrimination Statement: *In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

66. Revise appendix B to read as follows:

Appendix B to Subpart C of Part 766—FSA-2510-IA, Notice of Availability Of Loan Servicing To Borrowers Who Are 90 Days Past Due (For Use In Iowa Only)

This appendix contains the notification (form letter) that the Farm Service Agency will send to borrowers with loans in Iowa who are at least 90 days past due on their loan payments. It provides information about the loan servicing that is available to the borrower. As stated below on the notification, the borrower is to respond within 60 days from receiving the notification (see § 766.101(b)(2) and (d)(2) for the requirements). The notification is provided here as required by 7 U.S.C. 1981d.

FSA-2510 IA
(03-26-24)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE

Date

Borrower's Name
Borrower Name/Address
Borrower Address
City, State, Zip Code

MAILING INSTRUCTIONS

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Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

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What happens if you do not bring the account current or apply within 60 days?

FSA will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means FSA will take legal action to collect all the money you owe to FSA under FLP. After acceleration of your loan accounts, FSA will start foreclosure proceedings. FSA will be required to repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which FSA has a security interest. FSA will also be required to obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

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(a) Primary loan servicing;
(b) Conservation contract;
(c) Current market value buyout;
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(1) You must resolve all non-monetary defaults prior to closing the servicing action.

(2) If you are also financially distressed or delinquent, it must be due to at least one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation;
(v) Loss of, or reduction in, your or your spouse's essential non-farm income; or
(vi) Catastrophic medical expenses for the care of a family member of a borrower or entity member, in the case of an entity borrower.

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(4) You must have acted in accordance with your loan agreements in all past dealings with FSA.

Time limits

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In loan consolidation, the unpaid balance of two or more operating loans can be combined into one larger operating loan.

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In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized, the interest rate will be the lesser of:

- The interest rate for that type of loan on the date a complete servicing application was received;
- The interest rate for that type of loan on the date of restructure; or
- The lowest original loan note rate on any of the original notes being restructured.

In addition, FSA will consider the maximum loan terms.

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For information about current interest rates, or to understand if you qualify for limited resource rates, contact your local FSA Service Center.

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You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

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The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that FSA would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by FSA in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a write-down only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

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Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by FSA.

If any of these events occur within the first 4 years of the Shared Appreciation you will be required to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

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You may request a conservation contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, FSA would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, FSA may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from FSA on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in all past dealings with FSA in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay FSA within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay electronically or by cashier's check, certified check or U.S. Treasury check. The checks should be made payable to FSA and provided to your local FSA servicing office for processing. FSA will not make or guarantee a loan for this purpose.

Any debt the borrower owes that FSA has written off, written down, or charged off will be reported to the Internal Revenue Service in accordance with reporting requirements at 26 U.S.C. 6050P and the related implementing regulations.

(d) Homestead Protection

Under the homestead protection program, you may repurchase your primary residence, certain outbuildings, and up to 40 acres of land. If you cannot pay electronically or by cashier's check, certified check or U.S. Treasury check or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the conservation contract program, or current market value buyout is not available or not accepted.

You must agree to give FSA title to your land at the time FSA signs the Homestead Protection Agreement with you. FSA will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. FSA will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least 2 of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to FSA obtaining the title.

Property restrictions and easements

FSA may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to FSA to lease the property determined eligible for homestead protection. The rent FSA charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to FSA, FSA will cancel the lease and take legal action.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement

You can apply for debt settlement at any time; however, these programs are usually only used after it has been determined that primary loan servicing programs and the conservation contract program cannot help you. Under the debt settlement programs, the FLP debt you owe FSA may be settled for less than the amount you owe. These programs are subject to the discretion of FSA and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to FSA. Payments can be spread out over a maximum of 5 years if FSA determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay FSA the market value of your collateral along with any additional amount FSA determines you are able to pay.

Debt amounts which are collectible through administrative offset, through judgment, by the Department of the Treasury, or by other means will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

Any debt the borrower owes that FSA has written off, written down, or charged off will be reported to the Internal Revenue Service in accordance with reporting requirements at 26 U.S.C. 6050P and the related implementing regulations.

Application Details

(f) Forms, documentation, and information needed to apply

A complete application for primary loan servicing must include items (1) through (4). Additional information is required as noted if you want to be considered for the conservation contract program or debt settlement programs. If you need help to complete the required forms, you may request an FSA official to assist you. The forms for requirements (1), and (4) are included with this package.

(1) FSA-2001, "Application for Direct Loan Assistance." This form is required with application submission.
(2) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
(3) NRCS-CPA-026e, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.
(4) FSA-2732, "Debt Settlement Application." Complete this form only if you wish to apply for debt settlement. You must also comply with any FSA request for additional information needed to process a debt settlement request.
(5) If you are applying for a conservation contract, a map or aerial photo is required of your farm identifying the portion of the land and approximate number of acres to be considered.
(6) Copies of real estate leases are required (if applicable to the farm operation).
(7) Verification of non-farm income is required.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present FSA with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to FSA;
(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

FSA will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) How to get copies of FSA handbooks and forms

Copies of the forms for requirements in Forms, Documentation and Information section, numbers (1), (2) and (5) have been included in this package. You may obtain copies of FSA handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from your local FSA Service office.

(h) Reconsideration, mediation, and appeal to NAD

Reconsideration, mediation, and appeal rights pursuant to 7 CFR parts 780 and 11, respectively, will be provided to you if FSA makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration – according to FSA's appeal procedures in 7 CFR part 780.

Mediation – according to FSA's appeal procedures in 7 CFR part 780.

Appeal to NAD – according to the NAD appeal procedures in 7 CFR part 11.

(i) Challenging FSA appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the FSA for processing your request, you may 1) obtain a Uniform Standards of Professional Appraisal Practice compliant technical appraisal review by a State Certified General Appraiser of the FSA appraisal and submit it to FSA prior to reconsideration or an appeal hearing, 2) obtain an independent appraisal, and 3) possibly negotiate the appraised value based on the specifics of the two appraisals.

If this applies to you, FSA will provide additional information in the notification letter advising you of the Agency's decision concerning your loan servicing application.

(j) Acceleration and foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, FSA will accelerate your loan accounts and will be required to demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral if, with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt, or
(3) Transfer the collateral to FSA.

If any of these options result in payment of less than the amount you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If FSA determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of FSA, homestead protection rights will be provided.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name] at [County Office Address] or telephone [Phone Number].

1A. Authorized Agency Official Name	1B. Signature	1C. Title

Federal Equal Credit Opportunity Act Statement: *The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.*

Paperwork Reduction Act (PRA) Statement: *This information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the form is used when FSA conducts administrative action against individuals or debtors.*

Non-Discrimination Statement: *In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

PART 768 – EQUITABLE RELIEF

67. The authority citation for part 768 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 768.1 [Amended]

68. Amend § 768.1 as follows:

a. In paragraph (a) introductory text remove the words “Agency loan requirements in this chapter” and add “direct FO, OL, or EM requirements” in its places;

b. In paragraph (a)(1) and (a)(1)(ii), remove the words “in this chapter”.

c. In paragraph (a)(3)(ii), remove the words “for the loan”.

PART 769 – FARM LOAN PROGRAMS RELENDING PROGRAMS

69. The authority citation for part 769 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 25 U.S.C. 488.

Subpart B—Heirs' Property Relending Program

70. Amend § 769.157 as follows:

a. In paragraph (b) introductory text, remove the words “instrument, and” and add “instruments, if available,”; and

b. Revise paragraph (b)(15).

The revision reads as follow.

§ 769.157 Intermediary’s relending plan.

* * * * *

(b)* * *

(15) A description of the requirements for maintaining adequate hazard insurance, workmen’s compensation insurance on ultimate recipients, and flood insurance.

71. Revise § 769.159 to read as follows:

§ 769.159 Processing loan applications.

(a) *Intermediary loan application review.* The Agency will review submitted applications from intermediaries for compliance with the provisions of this subpart.

(b) *Loan approval.* Loan approval is subject to the availability of funds. The loan will be considered approved for the intermediary on the date the Agency signs the obligation of funds confirmation.

(c) *Preferences for loan funding.* When necessary to address funding constraints, the Agency will fund eligible applications from intermediaries in the order specified in paragraphs (c)(1) through (4) of this section:

(1) First, to those with not less than 10 years of experience serving socially disadvantaged farmers and ranchers that are located in states that have adopted a statute consisting of an enactment or adoption of the Uniform Partition of Heirs Property Act, as approved and recommended for enactment in all States by the National Conference of Commissioners on Uniform State Laws in 2010, that relend to owners of heirs property (as defined by the Uniform Partition of Heirs Property Act);

(2) Second, to those that have applications from ultimate recipients already in process, or that have a history of successfully relending previous HPRP funds;

(3) Multiple applications in the same priority tier, will be processed based by date of application received; and

(4) Any remaining applications, after priority tiers 1 and 2 have been funded as specified in paragraphs (c)(1) and (2) of this section, will be funded in order of the date the application was received.

(d) *Current information required.* Information supplied by the intermediary in the loan application must be updated by the intermediary if the information is more than 90 days old at the time of loan closing.

72. In § 769.162, revise paragraph (a)(1) to read as follows:

§ 769.162 Security.

(a) * * *

(1) Primary security for HPRP loan will consist of a pledge by the intermediary of all assets now or hereafter placed in the HPRP revolving loan fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. A first lien in the intermediary's HPRP revolving loan fund account(s) will be accomplished by a deposit agreement. The deposit agreement with the depository bank will perfect the Agency's security interest in the intermediary's depository accounts. The deposit agreement must be approved by the Agency. The deposit agreement will not require the Agency's signature for withdrawals. The intermediary must use a depository bank that agrees to waive its offset and recoupment rights against the depository account and subordinate any liens it may have against the HPRP depository account in favor of the Agency;

* * * * *

73. Amend § 769.164 as follows:

a. Revise the sectionheading;

b. In paragraph (d)(8) remove the word "and" at the end of the paragraph;

c. In paragraph (d)(9) introductory text, remove the period at the end and add a colon it its place;

d. In paragraph (d)(9)(i) remove the period at the end and add a semicolon and the word "and" it its place; and

e. Revise paragraphs (d)(9)(ii) and (10).

The revisions read as follows:

§ 769.164 Post-award requirements.

* * * * *

(d) * * *

(9) * * *

(ii) Any funds that have not been used within 6 months to make loans to an ultimate recipient must be returned to the Agency unless the Agency provides a written exception based on evidence satisfactory to the Agency that funds will be used within an additional 6 months;

(10) All reserves and other cash in the HPRP revolving loan fund must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or the HPRP revolving loan fund must be protected by alternative measures approved by the Agency. The account must be interest-bearing, if feasible, and any interest earned on the account remains a part of the HPRP revolving loan fund; and

* * * * *

PART 770 – INDIAN TRIBAL LANDS ACQUISITION LOANS

74. The authority citation for part 770 is revised to read as follows:

Authority: 5 U.S.C. 301 and 25 U.S.C. 5136.

75. In § 770.6, revise paragraph (b) to read as follows:

§ 770.6 Rates and terms.

* * * * *

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. The rate will be equal to the interest rate for direct farm ownership loans not to exceed 5 percent. Except as provided in § 770.10(b) of this chapter, the interest rate will be fixed for the life of the loan.

§ 770.10 [Amended]

76. Amend § 770.10(e)(4)(i) to remove the word “writedown” and add “write-down” in its place.

Zach Ducheneaux,
Administrator,
Farm Service Agency.