Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 765, 766, and 772

RIN 0560-AI14

Farm Loan Programs; Clarification and Improvement

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending the Farm Loan Programs (FLP) regulations for loan making and servicing, specifically those on real estate appraisals, leases, subordination and disposition of security, and Conservation Contract requirements. FSA is also streamlining the loan making and servicing process and giving the borrower greater flexibility while protecting the financial interests of the Government.

DATES: Effective **[Insert date 45 days after publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Michael C. Cumpton, telephone: (202) 690-4014. Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule follows the FSA proposed rule that was published on April 13, 2012, (77 FR 22444 – 22462). The rule streamlines the loan making and servicing process for direct and guaranteed FLP loans and gives the borrower greater flexibility while protecting the financial interests of the Government.

FSA direct loans and loan guarantees are a means of providing credit to farmers whose financial risk exceeds a level acceptable to commercial lenders. Through direct and guaranteed Farm Ownership (FO), Operating Loans (OL), and Conservation Loans (CL), as well as direct Emergency Loans (EM), FSA assists tens of thousands of family farmers each year in starting and maintaining profitable farm businesses. FSA loan funds may be used to pay normal operating or family living expenses; make capital improvements; refinance certain debts; and purchase farmland, livestock, equipment, feed and other materials essential to farm and ranch operations. FSA services extend beyond the typical loan by offering customers ongoing consultation, advice, and creative ways to make their farm successful. These programs are a temporary source of credit. Direct borrowers generally are required to graduate to other credit when their financial condition will allow them to do so.

FSA is amending the FSA regulations for several FLP loan making and servicing issues, including real estate appraisals, leases, disposition, and release of security, and Conservation Contracts.

The overall changes are summarized below followed by a discussion of the individual comment issues and the responses.

FSA is amending various issues related to appraisals. Section 307(d) of the Consolidated Farm and Rural Development Act (CONACT, 7 U.S.C. 1927(d)) requires that in order for FSA to have the rights to oil, gas, or other minerals as Farm Ownership Loan (FO) loan collateral, the products' value must have been considered in the appraisal. The section only applies to FO loans made after the date of enactment

(December 23, 1985), but FSA administratively extended this requirement to any type of FLP loan. FSA is revising the regulations in 7 CFR 761.7, 765.252 and 765.351 to mirror the CONACT by applying the requirement only to FO loans.

FSA is clarifying its regulation in 7 CFR 761.7 on appraisal appeal rights by specifying that the appeal of real estate appraisals used by FSA, other than those used for primary loan servicing, is limited to whether the appraisal is compliant with the Uniform Standards of Professional Appraisal Practice (USPAP). The appellant may submit only a technical appraisal review of the appraisal that has been prepared by a State Certified General Appraiser.

On guaranteed loans, FSA is going to increase the minimum guaranteed amount for which an appraisal is required from $50,000 to $250,000 as specified in 7 CFR 762.127. The lending industry's regulators, such as the Federal Deposit Insurance Corporation and the Farm Credit Administration, currently allow $250,000 as their threshold for business type (agricultural purpose) loans. There is no comparable proposal to raise the limit for direct FSA loans because direct loans typically display more serious financial stress, pose significantly more risk of loss to FSA, and warrant stricter safeguards. For loans of $250,000 or less, lenders may document value in the same manner as for their non-guaranteed loans using, for example, statement of value, tax assessment, and automated valuation model. The security for the loan must still meet the requirements specified in 7 CFR 762.126 to ensure that proper and adequate security is obtained to protect the interests of the lender and FSA. This change will allow lenders to follow industry standards of documenting collateral value.

FSA also is revising 7 CFR 762.127 to allow the use of an appraisal that is more than 12 months old for guaranteed loans greater than $250,000 if market conditions have remained stable, the condition of the property in question is comparable to the time of the appraisal, and the value of the property has remained the same or increased.

FSA is also clarifying 7 CFR 762.127 to state that while a formal appraisal is not necessary for chattel or real estate that will serve as additional security, an estimated value is still required.

FSA is clarifying 7 CFR 762.127(c) to state that real estate appraisals must be completed in accordance with USPAP and that restricted reports as defined in USPAP are not acceptable. Restricted reports are permitted under USPAP, but are not appropriate for credit decisions. Both of these requirements are consistent with the Interagency Appraisal and Evaluation Guidelines (Guidelines) and the existing regulation in 7 CFR 762.127; however, they were not included in the proposed rule. As this clarification is consistent with the Guidelines and existing regulations, additional comments are not necessary.

The terms “complete” and “limited appraisal” have been determined to be obsolete in the industry so FSA is removing the terms from the regulations in 7 CFR part 762.

FSA is revising and clarifying 7 CFR 765.205(b), 765.252(a), and 765.252(b) to allow consistent treatment of wireless communication leases, mineral leases, and alternative energy projects. The change provides that a lease must not adversely affect FSA’s security interest or the successful operation of the farm, and requires FSA review of contracts and agreements related to the lease. The revision will also allow these nonfarm type leases be made for any term, instead of the 3 to 5 year limit in the present regulations.

FSA is expanding the definition of subordination in 7 CFR 761.2(b) to allow for subordinations to be included in leases as companies who want to use real estate security for alternative energy or communication towers often include subordination language in the lease. FSA is amending 7 CFR 765.205(b) to extend subordination authority to include leases when certain conditions are met.

FSA is also amending 7 CFR 765.205(b)(1) to allow a subordination of real estate security to other creditors if the loan will be used to refinance a loan originally made for an authorized loan purpose by FSA or another creditor. This will allow FSA to help an existing borrower refinance a farm loan with an FSA loan. This often happens when a farmer wants to refinance the existing loan because interest rates have fallen.

FSA is changing 7 CFR 765.302 to track only normal income security proceeds that are planned for release or applied to FSA FLP payments instead of attempting real time monitoring of all proceeds. This will be accomplished with the use of an agreement for each production cycle on which the borrower and FSA agree to the use of proceeds that will be used to make payments. To reflect this change to the regulation, FSA is revising the current definition of the agreement for the use of proceeds in 7 CFR 761.2(b). FSA is removing 7 CFR 765.302(b), which provides that an agreement for the use of proceeds is in effect until the proper disposition of all listed chattel security has been accomplished or a new agreement is executed. The duration of the agreement is specified in the agreement itself. FSA is also removing 7 CFR 765.302(h), which requires the borrower to keep records of all dispositions of chattel proceeds, since it goes beyond the scope of the new agreement. However, as the recordkeeping requirement of all chattel proceeds, regardless of use, is still important for annual planning purposes, FSA is incorporating the recordkeeping requirement into 7 CFR 765.301(a).

FSA is amending 7 CFR 765.305 and 765.351(f) to allow the release of some security without compensation for borrowers who have not had primary loan servicing or Disaster Set-Aside within the last 3 years if the loan security margin would be 150 percent or more after the release, and the borrower is graduating, using security for other credit, or transferring small tracts to relatives.

The Conservation Contract Program provides debt cancellation for FLP borrowers in exchange for them taking land out of production for conservation purposes. The changes noted below will reduce the costs to FSA and the burden of administering the Conservation Contract Program while still ensuring the conservation objective is met by clarifying and revising the Conservation Contract Program regulations in 7 CFR 766.110.

There are many instances where land proposed for a Conservation Contract is encumbered by another conservation program for which the borrower receives compensation. These revisions ensure that the land will not be eligible for a Conservation Contract if another conservation program pays the borrower for similar conservation, wildlife, or recreation benefits on the same land. Any portion of the land that is already encumbered by another conservation program would be ineligible for a Conservation Contract.

FSA is clarifying 7 CFR 766.110(m) to specify that FSA will not grant subordinations of Conservation Contracts. This will ensure that the contract is not lost through foreclosure by a lender who obtains a superior lien through a subordination.

FSA is requiring a legal right-of-way or other legal, permanent access to the Conservation Contract property for the life of the Conservation Contract in 7 CFR 766.110(c). A legal right-of-way that is recorded, in addition to the Conservation Contract, will assure that FSA or the management authority will have access to inspect the property for the life of the Conservation Contract.

FSA is revising 7 CFR 766.110 to require a minimum parcel size of 10 contiguous acres to better manage Conservation Contracts. Establishing a minimum size as a general requirement has minimal adverse effect on the borrowers or FSA, and ensures an adequate size tract to meet conservation purposes.

FSA is implementing new damages for a breach of contract in 7 CFR 766.110. The purpose of the Conservation Contract Program is to place at-risk land under a conservation contract for a set period of time, protect the land, and enhance its conservation, wildlife or recreation value. The consequences of a breach of the Conservation Contract must discourage violations and abuse of the program. Therefore, FSA is requiring any violator to restore damaged or altered areas or, if the land is not restored within 90 days, pay FSA the amount of the debt previously cancelled, plus interest to the date of payment, plus any actual expenses incurred by FSA in enforcing the Conservation Contract, plus a penalty in the amount of 25 percent of the amount of the debt cancelled. In addition, FSA is clarifying that uplands that are eligible for

Conservation Contracts include buffer areas necessary to protect the Conservation Contract area as well as the area subject to other conservation programs.

Several technical amendments included in the final rule regarding assessments, payment of interest, and definitions will also be implemented as no comments were received. (See the proposed rule for a description of the technical amendments.)

Discussion of Comments and Responses

In response to the proposed rule, 20 comments were submitted by 16 commenters during the 60-day comment period. Comments were submitted by the Hmong National Development, Inc., the American Bankers Association, appraisers, the general public, and FSA employees. The comments addressed multiple provisions of the rule. Many of the comments received during the comment period were supportive, but several had concerns with certain aspects of the proposed rule. Some issues raised in the comments resulted in changes to the regulations.

On some issues comments represented both sides of the issue and sometimes suggested specific changes. For example, half of the comments FSA received related to aspects of the proposal to increase the threshold for requiring an appraisal on guaranteed loans from $50,000 to $250,000. One comment supported the change as proposed, some comments generally supported the increase, but recommended additional conditions or modifications, and several comments were against the increase. The suggested changes and reasons for not making the change are discussed below.

The following provides a summary of the issues in the comments FSA received, the FSA response, and any changes made to the regulations based on the comments.

Increase Appraisal Threshold for Guaranteed Loans to $250,000

Comment: Increasing the appraisal threshold to $250,000 results in eliminating the independent third party valuation an appraisal provides. That will result in inflated collateral values and increased risk of loss.

Response: If a lender would require an appraisal on a non-guaranteed loan even though the transaction was below $250,000, FSA expects the lender to require an appraisal for the guaranteed loan as well. Therefore, FSA is not eliminating a formal evaluation of collateral; it is bringing our requirements in line with normal banking practices. While evaluations may not contain the same supporting documentation and valuation methods as an appraisal, lenders' must use a formal process to estimate and document the property's market value.

In December 2010, the federal banking regulators jointly issued Guidelines that provide federally regulated institutions and examiners clarification on the expectations for prudent appraisal and evaluation policies, procedures, and practices. These Guidelines include regulators' expectations for lenders to establish and follow policies relating to real estate appraisals and evaluations of collateral. Lenders are expected to establish and follow policies defining when an evaluation is appropriate instead of an appraisal and also the methods to be used in conducting and documenting an evaluation of collateral. FSA expects lenders to apply their appraisal and evaluation policies to guaranteed loans in the same manner as non-guaranteed loans.

The Guidelines instruct lenders to define instances in which they would request an appraisal, and include factors such as the transaction's expected loan to value ratio, the borrower's credit risk factors, and the type of property proposed as security. In addition, they address the independence issue by stating that the collateral valuation process should be isolated from influence from the loan production staff. The Guidelines also provide considerable instructions on the content to be included in the evaluations and maintained in the credit file. Again, FSA expects lenders to follow the Guidelines for guaranteed loans.

Regarding the risk of additional losses, FSA does not believe that this increase presents a significant exposure to increased losses. Only 16 percent of FSA's Guaranteed Farm Ownership loan funds are for loans under $250,000. Some of these loans would also be in conjunction with a Direct Farm Ownership loan, which would require a USPAP appraisal. Furthermore, FSA will have an opportunity to examine and consider standard eligible lenders' evaluations before issuing the Guarantee. Given these factors along with the Guidelines lenders are already following, FSA's exposure to additional losses as a result of this change is insignificant.

Because collateral valuations will continue to be adequately supported and reviewed and that there is no significant exposure to additional losses, there will be no change to 7 CFR 762.127(c) in response to this comment.

Comment: In many parts of the country, appraisal fees and the timeframes for obtaining an appraisal are not significant issues.

Response: State laws vary regarding who is authorized to appraise farm property. In some states, only Certified General Appraisers are permitted to issue appraisals on farmland. While the availability of qualified and authorized real estate appraisers may not be an issue in certain parts of the country, other regions are experiencing a lack of availability and therefore have problems with both timeliness and the cost of an appraisal. This puts FSA customers at a disadvantage when purchasing farmland for under $250,000. These customers are frequently small beginning farmers or Socially Disadvantaged farmers for whom FSA has targeted funds. Delays and additional costs have a greater impact on these operations than they would on larger, more established operations. With this rule change, we are trying to place our applicants on the same footing as the larger, more established farmers.

As indicated above, this will be beneficial to a large number of our most disadvantaged customers, therefore, there will be no change to 7 CFR 762.127(c) in response to this comment.

Comment: Lenders are able to manage the additional risk associated with an evaluation rather than an appraisal through their credit policies, such as lower loan to value ratio (60 to 75 percent). Establish a maximum (75 percent) loan-to-value ratio under which FSA would accept an evaluation, with full collateral value only if an appraisal is obtained.

Response: As mentioned above, FSA expects lenders to apply their credit standards on guaranteed loans in the same manner in which they do for their non-guaranteed loans.

The Guidelines direct lenders to consider factors such as loan to value ratios, atypical properties, and borrower's risk characteristics when deciding whether to obtain an appraisal rather than an evaluation; therefore, no change is being made to 7 CFR 762.127(c)(1) in response to this comment. In addition, the sentence included in the proposed rule stating that if an appraisal is completed, it does not have to be USPAP compliant has been removed. That sentence is unnecessary since any collateral valuation completed for loans falling under 7 CFR 762.127(c)(1) will be determined based on an evaluation completed in accordance with the Guidelines or an appraisal completed in accordance with USPAP.

Comment: The same appraisal policy should be implemented for direct loans as they are no riskier than guaranteed loans.

Response: FSA's history of loan losses and delinquency supports our concern that the direct loan program is indeed riskier than the guaranteed program. Further, with real estate loans, the direct loan regulations permit junior positions on real estate at 100 percent loan to value ratios. With these collateral positions, FSA strongly believes a USPAP appraisal is necessary to support our credit decision. In addition, our direct loan program does not charge the loan applicant for an appraisal and timeliness has not been a significant problem.

Due to these differences in the direct loan program versus the guaranteed program, there will be no change to 7 CFR 764.107(a)in response to this comment.

Comment: The proposed appraisal change should apply to unimproved tracts only as valuation of improvements can only be adequately done by a certified appraiser.

Response: The Guidelines require lender's credit policies on collateral valuation to address the types of properties on which they would require an appraisal rather than an evaluation of value. These properties would typically include those with a substantial portion of the value coming from improvements, particularly specialized buildings. Since many properties only have a small amount of improvements with minimal contributory value, FSA does not want to prevent those from being valued under the lenders' normal procedures.

Because the current language and lenders' policies adequately address this issue and protect FSA, there will be no change to 7 CFR 762.172(c) in response to this comment.

Comment: Since many purchases are jointly made with direct loans, the $250,000 real estate appraisal threshold should be for combined debt for the purchase of real estate or the refinance of debt.

Response: When a loan is made in conjunction with a direct loan, FSA will complete an appraisal for its direct loan; therefore, it is unnecessary to establish a different standard for guaranteed loans made jointly with direct.

As this concern is already addressed by current policies, there will be no change to 7 CFR 762.127(c) in response to this comment.

Comment: The $250,000 appraisal threshold should be limited to the total outstanding guaranteed loan principal balance at the time of loan closing.

Response: Industry standards base the appraisal exception on the particular loan transaction amount rather than total outstanding balances. As previously indicated, our goal is that FSA requirements for guaranteed lenders remain consistent with industry standards.

To ensure FSA requirements retain consistency with industry standards, there will be no change to 7 CFR 762.127(c) in response to this comment.

Administrative and Technical Reviews of Real Estate Appraisals

Comment: The administrative and technical review of appraisals is a significant and important function of the collateral calculation process that provides a sound level of trust in the process. Reviews protect against government loss and are a key part of sound lending practices. Removing this requirement in 7 CFR 761.7(d) would remove important protections of the program.

Response: After a review of the concerns noted above, FSA agrees that important protections against government loss may be harmed by the proposed change.

In response to this comment, 7CFR 761.7(d) is not being removed.

Unlimited Term Leases for Non-Farm Property

Comment: FSA should include unused agriculture property, such as milk barns, a vacant house or real farm property located a significant distance from the primary operation or not utilized in the primary operation to the list of property that can be leased for an unlimited term.

Response: FSA does not agree with the addition of property that is part of the operation, but located remotely or is not part of the primary operation. Many modern farms are made up of several smaller operations located over a wide area. While these tracts or operations can be a significant distance from the primary operation, they are considered in the farm business plan developed by the borrower and FSA and contribute to the cash flow. FSA does agree with the addition of farm type property that is no longer used as part of the operation or an unused residence.

In response to this comment, we revised § 765.252(a)(2) to include farm property no longer in use, such as old barns. No change will be made in response to the comment suggestion to include real farm property based on distance.

Tracking of Disposition from Normal Income Proceeds

Comments: Do not make the proposed changes for the disposition of chattel proceeds. The issues with the proposed changes for the disposition of chattel proceeds are:

1. The practical implementation of the proposed change for the disposition of chattel proceeds would be extremely difficult under the statutory and regulatory requirements on notification of potential purchasers. In some Central Filing System (CFS) states, a creditor can file notice of a lien on specific crops or specific types of livestock or the creditor may file a notice covering all crops or all livestock. To change

the CFS filing, a creditor must obtain the signature of the farmer on the CFS statement or amendment and pay a fee, so FSA policy is to list all crops and all livestock to decrease the cost and time associated with CFS actions. Farmers routinely rotate crops depending as various factors including expected price, weather conditions, pest and disease problems, etc. so the CFS filing would have to be amended every year resulting in costs and inconvenience for the farmer and FSA.

2. If FSA attempts to limit notifications or CFS filings to only the crop and livestock codes to those commodities that a borrower intends to use to pay the FSA debt, FSA will lose the ability to protect its security interest when borrowers are under financial stress. This problem would be particularly acute when loan accounts are accelerated (FSA regulations stop the release of security proceeds when an account is accelerated) as the borrower would probably not execute an amendment of the CFS filing to cover all crops.

3. The proposed change for the disposition of chattel proceeds does not effectively address challenges for borrowers with breeding livestock. The determination of whether the sale of a cull cow will be considered basic or normal income security often is made through discussions with the borrower at the time of the sale based on the total number of cows sold and the number of replacements in the herd.

4. Not requiring the farmer to report sales of normal income security that are not intended for payment to FSA provides the borrower with excessive latitude and opportunity to use proceeds in an unacceptable manner. Borrowers could sell crops that should be used to pay operating expenses or make payments to prior lienholders and

instead use that money for investment in non-farm business or personal uses without any FSA oversight. This could also cause problems for beginning farmers who are still refining their budgeting and financial management skills and who benefit from additional oversight the current system provides.

5. Reporting and tracking normal income security dispositions are an important aspect of supervised credit and an important tool to help develop sound financial management skills.

Response: The concerns regarding the requirement in the law to notify potential purchasers are well founded, and FSA will continue to comply with CFS and potential purchaser notifications in 7 CFR 765.204. However, other tools such as account classification, year-end analysis, graduation reviews, and farm visits can be used to provide adequate credit oversight while still reducing reporting burdens to the greatest extent possible. Administrative guidance will be included in our Farm Loan Program Servicing Handbooks provided used by the field offices. Borrowers will be allowed to operate without submission of all proceeds to FSA to the greatest extent possible.

The above concerns are noted, but we have found that to best achieve FSA's goal of reducing reporting burdens on our borrowers, FSA will not require submission of proceeds beyond what is required by law or needed for repayment of the loan. Other credit management tools can be used as necessary to ensure borrower success and protect FSA's security interests. There will be no change to 7 CFR 765.302 in response to this comment.

Comment: The proposed change in § 765.302 to track only normal income security proceeds that are planned to be applied to FLP payments should be tabled until § 765.204, which requires notification of potential purchasers of FSA's lien on a borrower's chattel security, is amended to require notification only when the security is planned for FSA payments or basic security.

Response: FSA will continue to comply with CFS and potential purchaser notifications in 7 CFR 765.204, however, this change will allow for greater flexibility in what security is included in the notifications.

As the change will allow us added flexibility while still remaining in compliance there will be no change to 7 CFR 765.302 in response to this comment.

Comment: Limit the reduced reporting to borrowers who have had loans outstanding for at least 3 years, have paid the loans timely, and have not had any security accounting transgressions. An option would be to limit the reporting when FSA determines that the value of the basic and normal income security that will continue to be tracked and reported is at least 150 percent of the FSA indebtedness.

Response: FSA does not have the authority to curtail notifications to potential purchasers as this requirement is specified in the CONACT (7 U.S.C. 1631), and establishing criteria to implement the new policy on only certain borrowers based on creditworthiness or security would be complex, time consuming, and prone to error or inconsistency.

In order to comply with existing requirements and policies, there will be no change to 7 CFR 765.302 in response to this comment.

Release of Security without Compensation

Comment: Add a requirement that the released property will not interfere with access to or operation of the remaining farm. Essential buildings and facilities should not be released as property might not be marketable without them. The requirement should be restricted to approval by the FSA State Executive Director (SED) only and indicate that the report to the SED should include easement issues, legal description, survey issues, environmental concerns, utilities, and if the release could adversely impact the remaining security.

FSA should add Disaster Set-Aside to the requirement that no primary loan servicing has been required for 3 years.

Response: After a review, FSA agreed with each of the above comments and determined that their inclusion in the rule would improve the changes.

Based on the comments, these changes have been incorporated into 7 CFR 765.351(f). Both chattel and real estate releases without compensation will require that no Disaster Set-Aside has been in place on the account within the past 3 years. Both chattel and real estate releases without compensation will require SED approval. Real estate releases without compensation will require that access or operation of the remaining farm operation will not be impacted and essential buildings and facilities will not be released if they reduce the utility or marketability of the remaining property.

Prior Lienholder Subordination to Conservation Contract

Comment: The requirement for a prior lienholder to subordinate their debt in favor of a Conservation Contract will be difficult to accomplish and will make it much harder to participate in the Conservation Contract program. The requirement will cost the prior lienholder time and money, and the prior lienholder might not even want to allow the prior lien under any circumstances. The net result will be that the conservation goals of the program will be diminished.

Response: FSA understands that sometimes this requirement could prevent the use of a Conservation Contract to reduce a borrower’s debt; however, it is extremely important that the Conservation Contract be protected during the full term. When farm real estate is sold or changes hands by other means, such as foreclosure by a prior lienholder, and the contract can no longer be enforced, taxpayer funds have been wasted with the conservation goal unrealized. While FSA hopes that this does not serve as an impediment to future contracts, it is preferable for real estate in production to continue to comply with its existing conservation requirements instead of losing an easement that has been paid for by the Government.

In order to best uphold the goals of the Conservation Contract program, we are not making a change to 7 CFR 766.110 in response to this comment.

Executive Order 12866 and 13563

Executive Order 12866, “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 emphasizes 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 not significant under Executive Order 12866 and, therefore, OMB was not required to review this final rule.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601), FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to the North American Industry Classification System and the U. S. Small Business Administration. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all entities.

In this rule, FSA is revising regulations that affect both loan making and loan servicing. FSA does not expect these changes to impose any additional cost to the borrowers, and in fact, FSA expects some Government, borrower, and lender costs could be saved because:

- Third party appraisals could be used in some cases in which FSA currently has to pay for new appraisals that include the mineral's value in real estate appraisals.
- A waiver for some guaranteed loan appraisals will save lenders and guaranteed borrowers the expense of ordering new appraisals when it is not necessary to protect Government interests.
- FSA will allow the release of security for other credit or generational transfers when FSA is very well secured.
- Elimination of double-dipping and strengthening the oversight of the real estate entered into the Conservation Contract program will allow the Government to fairly compensate the owners of the valuable natural resources without the risk of losing usage restrictions which have been paid for by the taxpayers.

Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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 regulations for compliance with NEPA (7 CFR part 799 and 7 CFR part 1940, subpart G). FSA concluded that the changes to streamline the servicing process and give the borrower greater flexibility explained in this final rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all Farm Loan Program actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental impact statement on this final rule.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. 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 set forth in the Notice to 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 final rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule preempts State and local laws and regulations that are in conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must 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, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. 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 Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law. USDA will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by Tribal officials concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any become necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 1044) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for final rule 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 under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) for State, local, or Tribal governments, or private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendments to the regulations are either revisions of internal operations or modifications to existing responses that will have no net effect on paperwork burden. For example, the new requirement for documentation to permit the use of guaranteed loan appraisals over 12 months old in certain situations is offset by waiving the requirement for a new appraisal in every situation where the current appraisal is more than 12 months old. These changes are associated with the information collection approved under OMB control number 0560-0155, which is in the process of being renewed; the renewal request includes these changes.

The borrower certification regarding double dipping in the Conservation Contract is a statement on an existing form that does not add burden.

Therefore, the amendments for 7 CFR parts 761, 762, 765, 766, and 772 require no new or changes to the information collections currently approved by OMB control numbers of 0560-0155, 0560-0233, 0560-0236, 0560-0237, 0560-0238 and 0560-0230.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and other purposes.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule would apply are:

10.099 Conservation Loans

10.404 Emergency Loans

10.406 Farm Operating Loans

10.407 Farm Ownership Loans

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, banking, Credit, Loan programs-agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs-agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs-agriculture.

7 CFR Part 772

Agriculture, Credit, Loan programs-agriculture, Rural areas.

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

PART 761 – FARM LOAN PROGRAM; GENERAL PROGRAM ADMINISTRATION

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. In § 761.2(b), revise the definitions of "Agreement for the use of proceeds" and "Subordination" to read as follows:

<u>§ 761.2 Abbreviations and definitions</u>.

* * * * *

(b) * * *.

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

* * * * *

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

* * * * *

3. Amend § 761.7 by revising paragraph (b)(1) and adding paragraphs (b)(3) and (e) to read as follows:

§ 761.7 Appraisals.

* * * * *

(b) * * *

(1) Real estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. Applicable appraisal procedures and regulations are available for review in each Agency State Office.

* * * * *

(3) For direct FO loans secured by real estate after December 23, 1985, the appraisal must consider the value of oil, gas, and other minerals even if the minerals have no known or nominal value.

* * * * *

(e) Appraisal appeals. Challenges to an appraisal used by the Agency are limited as follows:

(1) When an applicant or borrower challenges a real estate appraisal used by the Agency for any loan making or loan servicing decision, except primary loan servicing decisions as specified in § 766.115 of this chapter, the issue for review is limited to whether the appraisal used by the Agency complies with USPAP. The applicant or borrower must submit a technical appraisal review prepared by a State Certified General Appraiser that will be used to determine whether the Agency's appraisal complies with

USPAP. The applicant or borrower is responsible for obtaining and paying for the technical appraisal review.

(2) When an applicant or borrower challenges a chattel appraisal used by the Agency for any loan making or loan servicing decision, except for primary loan servicing decisions as specified in § 766.115 of this chapter, the issue for review is limited to whether the appraisal used by the Agency is consistent with present market values of similar items in the area. The applicant or borrower must submit an independent appraisal that will be used to determine whether the appraisal is consistent with present market values of similar items in the area. The applicant or borrower is responsible for obtaining and paying for the independent appraisal.

Subpart C—Supervised Credit

[§ 761.103 Amended]

4. Amend § 761.103 by removing paragraph (b)(8) and redesignating paragraphs (b)(9), (10), and (11) as paragraphs (b)(8), (9), and (10), respectively.

PART 762 – GUARANTEED FARM LOANS

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

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

[§ 762.120 Amended]

6. Amend § 762.120 as follows:

a. In paragraph (a)(2) introductory text, remove the phrase “and ranch”;

b. In paragraphs (k)(3) and (l)(2), remove the phrase “or ranching”; and

c. In paragraph (m), remove the phrase “or ranchers”.

[§ 762.121 Amended]

7. In § 762.121(a)(1)(v), remove the words "and ranch".

8. Revise § 762.127 to read as follows:

§ 762.127 Appraisal requirements.

(a) General. The general requirements for an appraisal are:

(1) Value of collateral. The lender is responsible for ensuring that the value of chattel and real estate pledged as collateral is sufficient to fully secure the guaranteed loan.

(2) Additional security. The lender is not required to complete an appraisal or evaluation of collateral that will serve as additional security, but the lender must provide an estimated value.

(3) Appraisal cost. Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower or transferee in the case of a transfer and assumption.

(b) Chattel security. The requirements for chattel appraisals are:

(1) Need for chattel appraisal. A current appraisal (not more than 12 months old) of primary chattel security is required on all loans except loans or lines of credit for annual production purposes secured by crops, which require an appraisal only when the guarantee is requested late in the current production year and actual yields can be reasonably estimated. An appraisal is not required for loans of $50,000 or less if a strong equity position exists.

(2) Basis of value. The appraised value of chattel property will be based on public sales of the same or similar property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

(3) Appraisal form. Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information.

(4) Experience and training. Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(c) Real estate security. The requirements for real estate appraisals are:

(1) Loans of $250,000 or less. The lender must document the value of the real estate by applying the same policies and procedures as their non-guaranteed loans.

(2) Loans greater than $250,000. The lender must document the value of real estate using a current appraisal (not more than 12 months old) completed by a State Certified General Appraiser. Real estate appraisals must be completed in accordance with USPAP. Restricted reports as defined in USPAP are not acceptable. The Agency may allow an appraisal more than 12 months old to be used only if documentation provided by the lender reflects each of the following:

(i) Market conditions have remained stable or improved based on sales of similar properties,

(ii) The property in question remains in the same or better condition, and

(iii) The value of the property has remained the same or increased.

(3) Agency determinations under paragraph (c)(2) of this section to permit appraisals more than 12 months old are not appealable.

[§ 762.145 Amended]

9. In 7 CFR part 762, remove the citation "§ 762.102(b)", and add "§761.2(b) of this chapter" in its place.

[§ 762.146 Amended]

10. In § 762.146(b)(1) remove the text "or ranching" and in paragraphs (b)(6) and (e)(1), remove the citation "§ 762.102(b)" and add citation "§ 761.2(b) of this chapter" in its place.

[§762.149 Amended]

11. In § 762.149(b)(1)(iii) introductory text, remove the citation "§ 762.102" and add the citation "§ 761.2(b) of this chapter" in its place.

[§762.150 Amended]

12. In § 762.150(b)(5) and (d)(2) remove the text "and ranchers" and add the citation "§ 761.2(b) of this chapter" in its place.

PART 765 – DIRECT LOAN SERVICING – REGULAR

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

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

Subpart E—Protecting the Agency's Security Interest

14. In § 765.205, revise paragraphs (b), (c) introductory text, and (c)(1) to read as follows:

§ 765.205 Subordination of liens.

* * * * *

(b) Subordination of real estate security. For loans secured by real estate, the Agency will approve a request for subordination subject to the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Chattel security. The requirements for chattel subordinations are as follows:

(1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(3)(i) through (xiii) of this section.

* * * * *

Subpart F – Required Use and Operation of Agency Security

15. Amend § 765.252 as follows:

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

b. Add paragraphs (a)(5) and (b)(4).

The revisions and additions read as follows:

§ 765.252 Lease of security.

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

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

(2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage. The term of surface leases for farm property no longer in use, such as old barns, or for nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

* * * * *

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

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

(b) * * *

(1) For FO loans secured by real estate on or after December 23, 1985, and loans other than FO loans secured by real estate and made from December 23, 1985, to **[Insert date of publication in the FEDERAL REGISTER]**, the value of the mineral rights

must have been included in the original appraisal in order for the Agency to obtain a security interest in any oil, gas, and other mineral associated with the real estate security.

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

* * * * *

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

* * * * *

[§ 765.253 Amended]

16. Amend § 765.253 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

Subpart G – Disposal of Chattel Security

17. Revise § 765.301(a) to read as follows:

§ 765.301 General.

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

* * * * *

18. Amend § 765.302 as follows:

a. Revise paragraph (a);

b. Remove paragraphs (b) and (h);

c. Redesignate paragraphs (c), (d), (e), (f) and (g) as paragraphs (b), (c), (d), (e) and (f), respectively; and;

d. Revise newly redesignated paragraphs (b) through (e).

The revisions read as follows:

§ 765.302 Use and maintenance of the agreement for the use of proceeds.

(a) The borrower and the Agency will execute an agreement for the use of proceeds.

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

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

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

(e) The borrower must provide the Agency with the necessary information to update the agreement for the use of proceeds.

* * * * *

19. Amend § 765.305 by adding paragraph (c) to read as follows:

§ 765.305 Release of security interest.

* * * * *

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

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

(2) The borrower will retain the security and use it as collateral for other credit, including partial graduation as specified in § 765.101;

(3) The security margin on each FLP direct loan will be 150 percent or more after the release. The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter; 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) The release is approved by the FSA State Executive Director; and

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

Subpart H – Partial Release of Real Estate Security

20. Amend § 765.351 as follows:

a. Revise paragraph (a)(3);

b. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) through (a)(10) as (a)(4) through (a)(9), respectively;

c. Revise paragraph (b)(1)(ii);

d. Remove paragraph (b)(1)(iii); and

e. Add paragraph (f).

The revisions and additions read as follows:

§ 765.351 Requirements to obtain Agency consent.

*   *   *   *   *

(a)   *   *   *

(3) Except for releases in paragraph (f) of this section, the amount received by the borrower for the security being disposed of, or the rights being granted, is not less than the market value and will be remitted to the lienholders in the order of lien priority;

*   *   *   *   *

(b)   *   *   *

(1)   *   *   *

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

*   *   *   *   *

(f) Release without compensation. Real estate security may be released by FSA without compensation when the requirements of paragraph (a) of this section, except paragraph (a)(3) of this section, are met, and:

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

(2) The security is:

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

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

(3) The property released will not interfere with access to or operation of the remaining farm;

(4) Essential buildings and facilities will not be released if they reduce the utility or marketability of the remaining property;

(5) Any issues arising due to legal descriptions, surveys, environmental concerns, utilities are the borrower's responsibility and no costs or fees will be paid by FSA;

(6) The security margin on each FLP direct loan will be above 150 percent after the release. The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter; however, well documented recent sales of similar properties can be used if the Agency determines the criteria have been met and a sound decision can be made without current appraisals;

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

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

PART 766 – DIRECT LOAN SERVICING – SPECIAL

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

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

Subpart C – Loan Servicing Programs

22. Amend § 766.110 as follows:

a. Revise paragraphs (a)(6), (b)(2)(vi), (c) introductory text, and (c)(3);

b. Add paragraphs (c)(4) through (7);

c. Revise paragraph (e);

d. Amend paragraph (f), second sentence, by adding the word "best" immediately before the word "interest"; and

c. Add paragraphs (m) and (n).

The revisions and additions read as follows:

<u>§ 766.110 Conservation Contract</u>.

(a) * * *

(6) Only loans secured by the real estate that will be subject to the Conservation Contract may be considered for debt reduction under this section.

(b) * * *

(2) * * *

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas, or other areas enrolled in other conservation programs;

* * * * *

(c) <u>Unsuitable acreage.</u> Notwithstanding paragraph (b) of this section, acreage is unsuitable for a Conservation Contract if:

* * * * *

(3) The Conservation Contract review team determines that the land does not provide measurable conservation, wildlife, or recreational benefits;

(4) There would be a duplication of benefits as determined by the Conservation Contract review team because the acreage is encumbered under another Federal, State, or local government program for which the borrower has been or is being compensated for conservation, wildlife, or recreation benefits;

(5) The acreage subject to the proposed Conservation Contract is encumbered under a Federal, State, or local government cost share program that is inconsistent with the purposes of the proposed Conservation Contract, or the required practices of the cost share program are not identified in the conservation management plan;

(6) The tract does not contain a legal right of way or other permanent access for the term of the contract that can be used by the Agency or its designee to carry out the contract; or

(7) The tract, including any buffer areas, to be included in a Conservation Contract is less than 10 acres.

* * * * *

(e) Conservation management plan. The Agency, with the recommendations of the Conservation Contract review team, is responsible for developing a conservation management plan. The conservation management plan will address the following:

(1) The acres of eligible land and the approximate boundaries, and

(2) A description of the conservation, wildlife, or recreation benefits to be realized.

* * * * *

(m) Subordination. For real estate with a Conservation Contract:

(1) Subordination will be required for all liens that are in a prior lien position to the Conservation Contract.

(2) The Agency will not subordinate Conservation Contracts to liens of other lenders or other Governmental entities.

(n) Breach of Conservation Contract. If the borrower or a subsequent owner of the land under the Conservation Contract fails to comply with any of its provisions, the Agency will declare the Conservation Contract breached. If the Conservation Contract is breached, the borrower or subsequent owner of the land must restore the land to be in compliance with the Conservation Contract and all terms of the conservation management plan within 90 days. If this cure is not completed, the Agency will take the following actions:

(1) For borrowers who have or had a loan in which debt was exchanged for the Conservation Contract and breach the Conservation Contract, the Agency may reinstate the debt that was cancelled, plus interest to the date of payment at the rate of interest in the promissory note, and assess liquidated damages in the amount of 25 percent of the debt cancelled, plus any actual expenses incurred by the Agency in enforcing the terms of the Conservation Contract. The borrower's account will be considered in non-monetary default; and

(2) Subsequent landowners who breach the Conservation Contract must pay the Agency the amount of the debt cancelled when the contract was executed, plus interest at the non-program interest rate to the date of payment, plus liquidated damages in the

amount of 25 percent of the cancelled debt, plus any actual expenses incurred by the Agency in enforcing the terms of the Conservation Contract.

23. Revise § 766.115(a)(1) and (b) 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 prior to reconsideration or the appeal hearing;

* * * * *

(b) If the appraised value of the borrower's assets change as a result of the challenge, the Agency will reconsider its previous primary loan servicing decision using the new appraisal value.

* * * * *

24. Revise appendix A to subpart C to read as follows:

Appendix A to Subpart C of Part 766 – FSA-2512, Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due

This form is available electronically.

FSA-2512 (09-27-11)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE

Date

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

This notice informs you of servicing options that may be available to current borrowers, financially distressed borrowers, or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

<u>How to apply</u>

To apply, you must complete, where applicable, and provide all items required in paragraph (f).

<u>Help in responding to this notice</u>

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

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

<u>Who will decide if you qualify?</u>

After you submit a complete application, the Agency 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.

<u>What happens if you do not apply?</u>

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of the Agency's handbooks and forms;
(h) Reconsideration, mediation, negotiation and appeal rights;
(i) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

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

(1) You are financially distressed or delinquent due to 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; or
- (v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

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

Lien requirements

If you are delinquent, are offered loan servicing, and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

If you are current on your loan payments before the restructure is closed, you must pay a portion of the interest that has accrued on your loans at or before closing the servicing action.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, 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 the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest 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 financial distress or 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 financial distress or 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:

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

In addition, the Agency 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, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

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 writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for your FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency 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 the Agency 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 writedown only if you are delinquent on your FLP loan and 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.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, 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 the Agency.

If any of these events occur within the first 4 years of the agreement, you will have 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 Program

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, the Agency 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 you are delinquent and 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, the Agency 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 the Agency 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 good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency 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 by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash 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 or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency 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 two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two 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 the Agency obtaining title.

Property restrictions and easements

The Agency 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 the Agency to lease the property determined eligible for homestead protection. The rent the Agency 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 the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(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 Programs

You can apply for debt settlement at any time; however, these programs are usually used only 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 the Agency may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. The Agency will not finance these alternatives.

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 the Agency. Payments can be spread out over a maximum of 5 years if the Agency 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 the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury 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.

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

A complete application for primary loan servicing must include items (1) through (10). 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 Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2513, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2512" signed by all borrowers.
(2) FSA-2001, "Request for Direct Loan Assistance."
(3) FSA-2002, "Three Year Financial History" or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.
(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.
(9) 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.
(10) SCS-CPA-026, "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 the Agency.
(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.
(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

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 the Agency 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 the Agency;
(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.

The Agency 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) <u>How to get copies of Agency handbooks and forms</u>

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) <u>Reconsideration, mediation, negotiation, and appeal rights</u>

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

<u>Reconsideration</u>

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

<u>Mediation</u>

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

<u>Negotiation of the appraisal</u>

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) The right not to be discriminated against

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 into 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.

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

PART 772—SERVICING MINOR PROGRAM LOANS

25. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 490.

§ 772.5 [Amended]

26. Amend § 772.5 as follows:

a. In paragraph (c)(1), remove the reference “7 part 1962, subpart A” and add the reference “part 765 of this chapter” in its place; and

b. In paragraph (c)(3), remove the reference “7 CFR part 1965, subpart A” and add the reference “part 765 of this chapter” in its place.

27. Revise § 772.8(b) to read as follows:

§ 772.8 Sale or exchange of security property.

* * * * *

(b) For IMP loans, a sale or exchange of real estate or chattel that is serving as security must be done as specified in part 765 of this chapter.

Signed on August 27, 2013.

Juan M. Garcia,
Administrator,
Farm Service Agency.

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