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: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend the Farm Loan Programs (FLP) regulations for loan making and servicing, specifically those on real estate appraisals, lease, subordination and disposition of security, and Conservation Contract requirements. FSA is proposing the changes to streamline the loan making and servicing process and give the borrower greater flexibility while protecting the financial interests of the Government.

DATES: We will consider comments that we receive by June 12, 2012.

ADDRESSES: We invite you to submit written comments on this proposed rule. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Director, Loan Servicing and Property Management Division, FLP, FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0523, Washington, DC 20250–0523.

Comments will be available for inspection online at *www.regulations.gov* and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is also available through the FSA home page at *http://www.fsa.usda.gov/.*

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 proposes changes concerning certain loan making and servicing provisions of FSA's direct and guaranteed loan programs. 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 proposes to amend the FSA regulations for several FLP loan making and servicing issues, including real estate appraisals, leases, disposition, and release of security, and Conservation Contracts. FSA is proposing the changes to streamline the loan making and servicing process and give the borrower greater flexibility while protecting the financial interests of the Government.

First, FSA proposes changes for 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 FO loan collateral, the products' value must have been considered in the appraised value of collateral securing the loan. 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 now proposes to modify its regulations to mirror the CONACT by applying the requirement only to FO loans.

FSA also proposes to clarify its regulation on appraisal appeal rights by specifying that the appeal of real estate appraisals used by FSA in non-primary loan servicing contexts is limited to the question of whether the appraisal is compliant with the Uniform Standards of Professional Appraisal Practice (USPAP), and that the appellant must submit a technical appraisal review of the appraisal that has been prepared by a State Certified General Appraiser. Appeals of real estate appraisals in the primary loan servicing context can include either a technical appraisal review prepared by a State Certified General Appraiser or an independent appraisal. For chattel appeal appraisals, FSA proposes to amend the regulation to reflect current policy that the borrower may obtain an independent appraisal to help determine the question of whether the appraisal in question is consistent with present market values of similar items in the area.

Furthermore, FSA proposes to not require a new appraisal for guaranteed loans if updates can be made to an existing appraisal, or if the guaranteed loan amount is less than $250,000.

Second, FSA proposes changes related to leases of borrowers' property for mineral production, communication towers, and wind and solar energy installations. The revisions and clarifications proposed by this rule would provide flexibility for these leases while also implementing standards for consistent treatment by FSA.

Third, for borrowers with chattel security, FSA proposes limiting the tracking of chattel proceeds to those that will be applied to FSA loans, instead of having detailed agreements on the use of all chattel proceeds. FSA also proposes giving the State Executive Director (SED) the authority to release security in certain situations if stringent security and graduation requirements are met.

Fourth, on Conservation Contracts, in which a borrower's debt is reduced for taking certain conservation actions, FSA proposes changes that will reduce the costs to FSA and the time needed to administer the program while still ensuring the conservation intent is met.

These changes are discussed in more detail below.

Appraisals

Section 307(d) of the CONACT (7 U.S.C. 1927(d)), requires that for farm ownership loans made after December 23, 1985 (the date of enactment), the value of oil, gas, or other minerals must be included in the appraised value of the security collateral in order for FSA to have a valid security interest in those products. FSA administratively extended this requirement in the regulations to require that real estate appraisals used by FSA for any type of FLP loan include the value of any oil, gas, or other minerals. This has resulted in the following issues:

- In loan making, FSA's general policy is to obtain and pay for an appraisal. This may occur even when a third party appraisal, completed by a qualified appraiser, may already be available. Not only does this substantially increase the cost to FSA, but it can also delay application processing and increase the applicant's wait for loan funds.

• In loan servicing, this mineral appraisal requirement puts FSA security at risk on non-FO loans because not stating the value of minerals in an appraisal, usually because they have no known value at the time of the appraisal, could prevent FSA from getting the mineral security interest in special loan servicing, where the best lien obtainable is taken on the borrower's security, or in a voluntary conveyance or foreclosure. This could increase FSA program losses.

This rule therefore proposes to remove this mineral appraisal requirement in 7 CFR 761.7, 765.252, and 765.351 for all future FLP loans except direct FO loans, where it is required by law. This change would not be retroactive. For all non-FO loans made after the effective date of this rule, FSA will have a security interest in oil, gas, or other minerals on or under the property regardless of whether the value of those products were included in the appraisal value of the property. This security interest is reflected in the FSA mortgage forms.

Appeals of Appraisals

In making direct loans, FSA obtains real estate appraisals to ensure adequate security for the loan. If FSA makes an adverse decision that involves the appraisal, applicants generally have the right to appeal the decision and the appraisal under 7 CFR part 11. When an applicant appeals the decision regarding the appraised value, it has been FSA's policy to limit the appeal to the question of whether the appraisal complied with USPAP, and the borrower or applicant who filed the appeal may obtain a technical appraisal review prepared by a State Certified General Appraiser to help determine USPAP compliance. FSA proposes to amend 7 CFR 761.7 to reflect this policy. The change is proposed because submission of an independent appraisal by an applicant or borrower is not useful as two appraisals that both comply with USPAP can still differ, but there is no basis for the appeal hearing officer to choose one over the other, or some other value. The proposed change will allow the borrower or applicant to submit a technical appraisal review prepared by a State Certified General Appraiser to determine if FSA's appraisal complies with USPAP. The proposed change would also require that the technical appraisal review be prepared in accordance with USPAP, and paid for by the borrower or applicant.

For appeals of real estate appraisals in primary loan servicing cases, FSA proposes to amend 7 CFR 766.115 to clarify that the technical appraisal reviews must be prepared by a State Certified General Appraiser. The borrower in a primary loan servicing case may still obtain an independent appraisal as provided for by 7 CFR 766.115(a)(2) and CONACT section 353(j) (7 U.S.C. 2001).

For appeals of chattel appraisals, FSA's current policy is to limit the question to whether FSA's appraisal is consistent with present market value of similar items in the area, and to allow the applicant or borrower to submit an independent appraisal review to help determine that question. FSA proposes amending 7 CFR 761.7 to reflect this policy.

FSA proposes to remove 7 CFR 761.7(d) regarding FSA's internal administrative appraisal and technical reviews since the provisions are for internal procedures and therefore not required to be in the *Code of Federal Regulations.*

Appraisal Requirements for Guaranteed Loans

FSA currently requires an appraisal of the security for all guaranteed loans in excess of $50,000 in accordance with 7 CFR 762.127. The $50,000 threshold has not changed since the start of the program in the early 1980's. FSA proposes to increase the minimum guaranteed loan amount for which a real estate appraisal will be required.

OMB Circular A–129 states, ''Agencies should ensure that a State licensed or certified appraiser prepares an appraisal for all credit transactions over $100,000 ($250,000 for business loans).'' 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. Therefore, FSA proposes to increase the minimum guaranteed loan amount required for a real estate appraisal from $50,000 to the minimum level of $250,000. 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 unguaranteed loans, for example statement of value, tax assessment, automated valuation model, and so on. If an appraisal is completed voluntarily for loans of $250,000 or less, it is not required to be USPAP compliant. 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 merely allow lenders to follow industry standards to document collateral value.

Amending the appraisal regulations to increase the minimum loan amount to $250,000 will benefit lenders, guaranteed loan applicants, and FSA. Some of the applicants are small or family farms for whom appraisal fees can be a significant burden. Due to the relatively small size of these loans, FSA can expeditiously provide financial assistance to these borrowers. Appraisal fees will be reduced, if not eliminated, as there will be no cost for an appraisal on loans under $250,000.

Application processing times also are expected to be reduced because of the proposed change, due to the fact that the appraisal will not need to be conducted under the new threshold, and this will also help make FSA's guaranteed loan program more attractive to lenders and their applicants. Faster access to capital is expected to promote operation viability and a higher probability of loan repayment.

Guaranteed loans greater than $250,000 still require a current appraisal completed by a State Certified General Appraiser in accordance with USPAP in the previous 12 months. As an alternative, FSA also proposes to revise 7 CFR 762.127 to allow FSA to waive the requirement for loans greater than $250,000 if there is an existing appraisal that is more than 12 months old and:

• Overall market conditions have remained stable or improved;

• 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.

This change would relieve the applicant of the cost of a new appraisal. Further, with stable or improving market conditions, there would be no additional risk to FSA when collateralizing a loan with security that has not had an updated appraisal. No appeal will be available on FSA's decision to waive this regulatory requirement.

The proposed increase from $50,000 to $250,000 would apply to real estate appraisals, not chattel appraisals. FSA's policy to not require chattel appraisals for loans of $50,000 or less where a strong equity position exists would remain.

FSA also proposes clarifying in 7 CFR 762.127 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.

Lastly, the terms ''complete'' and ''limited appraisal'' have been determined to be obsolete in the industry. Therefore, FSA proposes to remove the references of ''complete'' and ''limited appraisal'' from the regulations in 7 CFR part 762.

Leases

With the increased emphasis on wireless communication, finding traditional energy sources, and developing alternative energy sources, FSA is receiving more requests to allow borrowers to lease portions of their farm for communication towers, wind energy installations, and mineral exploration. While usually beneficial to landowners and their lenders, these leases may create a financial burden to the borrower as a result of unanticipated costs, such as removal of the equipment or mitigation of damages. The installations can also make the land difficult or impossible to farm, and FSA farm loan borrowers are required by law to operate, not lease, the farmland they own and use as security.

Such leases, however, can provide flexibility for farm loan borrowers in the form of increased cash flows, reduced debt load, and quicker debt reduction that can lead to graduation from FSA credit to commercial credit. Each of these situations is unique, and legal counsel is often required. Therefore, instructions to cover every circumstance cannot be issued in this rule; however, FSA proposes certain revisions and clarifications to 7 CFR 765.205(b), 765.252(a), and 765.252(b) to allow consistent treatment of such lease requests. For example, the proposed 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 or agreements related to the lease.

FSA also proposes changes in 7 CFR 765.252 to allow these nonfarm type leases be made for any term, instead of the 3- to 5-year limit in the present regulations. FSA proposes removing the time limit in order to allow qualified nonfarm leases to continue for longer periods since these leases provide flexibility and cash flow to the borrower, but do not interfere with the successful operation of the farm or adversely affect the Government's interest. These standards are central to FSA's mission as FSA is required to supply agricultural financing to farm operators who cannot obtain funds elsewhere until they are in a position to move to commercial credit.

Subordinations

In a subordination, a lender will give another entity, often another lender, its superior lien position. FSA often executes subordinations for its direct loans so another lender can provide financing to an FSA borrower. This subordination of the lien on FSA security allows the borrower to produce a crop, build a house on the farm, or do other things that are beneficial to the family farm. These FSA subordinations are almost always to another lender that is making a loan to the borrower, and the present FSA regulations address this circumstance. However, FSA proposes expanding the definition in 7 CFR 761.2(b) to allow for leases to companies who want to use the land for purposes such as alternative energy. Subordinations of real estate to a lessee must meet the following conditions (all of which also apply to subordinations of real estate to creditors):

- The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;
- 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;
- Except for CL, the borrower is unable to partially or fully graduate;
- The borrower must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718;
- The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718;
- 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 subpart G of 7 CFR part 1940;
- Any planned development of real estate security will be performed as directed by the lessor or creditor, as approved by FSA, and will comply with the terms and conditions of 7 CFR 761.10;
- Subordinations of shared appreciation agreement (SAA) mortgages may only be approved when there is no increase in the debt that is prior to the SAA debt; and
- FSA may subordinate non-program security only when it is also security for a program loan with the same borrower.

FSA proposes amending 7 CFR 765.205(b) to extend subordination authority to include leases, as the contracts presented to borrowers by companies who want to use the land for alternative energy or communication towers often contain subordination language in addition to the terms of the lease.

FSA also proposes amending 7 CFR 765.205(b)(1) to allow a subordination of real estate security to 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 another loan more beneficial to the operation. This type of financing is often used when a lower interest rate becomes available.

Disposition of Chattel Proceeds

Section 335(f)(6) of the CONACT (7 U.S.C. 1985(f)(6)) allows FSA to require borrowers to plan for, or report on, how proceeds from the sale of collateral property will be used. Currently, FSA requires borrowers with chattel security to sign detailed annual agreements on the use of all chattel proceeds, even beyond those required for payment of FLP loans, and to immediately report to FSA all proceeds from the sale of chattel security. FSA proposes to limit these agreements to proceeds from the disposition of normal income security and will be applied to the FSA indebtedness in order to save time for both the borrower and FSA. This change would mean that for proceeds that will not be applied to FSA loans, borrowers who live some distance from the nearest FSA office could save time and expense required for ''in person'' reporting and submission of chattel proceeds. FSA personnel will also be free to perform other duties instead of tracking proceeds used to pay other creditors. The borrower will still be informed of their rights and responsibilities regarding the security. FSA will continue to comply with the statutory release requirements in Section 335(f) of the CONACT, including release of normal income security prior to acceleration in an amount sufficient to pay for essential household and farm operating expenses, while not reducing the oversight of chattel security. FSA proposes to change 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 (with revisions as necessary) on which the borrower and FSA agree to the use of proceeds that will be used to make payments. With the proposed change, FSA will use an internal form that records the proceeds of both normal income and basic security as they are submitted. To reflect this change to the regulation, FSA proposes to conform the current definition of the agreement for the use of proceeds in 7 CFR 761.2(b).

FSA further proposes 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 and 7 CFR 765.302(b) is unnecessary.

FSA also proposes to remove 7 CFR 765.302(h), which requires the borrower to maintain documentation of all dispositions of chattel proceeds, because it goes beyond the scope of the new proposed definition of the agreement, which is limited to proceeds that will be applied to loan payments. The recordkeeping requirement of all chattel proceeds, regardless of whether applied to loan payments, is still important for annual planning purposes, however, so FSA proposes to incorporate the recordkeeping requirement into 7 CFR 765.301(a).

Release

Due the changing needs of many in the rural community, FSA is proposing to amend 7 CFR 765.305 and 765.351(f) to expand releases of its liens. The proposed change would allow FSA to release some security without compensation for borrowers who have not had primary loan servicing within the last 3 years if the loan security margin would be 150 percent or more after the release, and the borrower is:

- Graduating on all chattel or all real estate debt (that is, partial graduation);
- Using the security to obtain other credit; or
- Transferring a small tract of real estate to a person related by blood or marriage.

Loans of borrowers in these circumstances have a low risk of loss to the Government, and the partial release of security without compensation would be acceptable when weighed against the benefits that would accrue to the borrower. In addition, supporting this change is the fact that at the end of fiscal year 2010, the dollar delinquency on the FLP direct loan program as a whole was 5.9 percent and the loss rate was 1.2 percent. These are remarkably positive statistics in light of FSA's mission to serve those who cannot get credit elsewhere. This success is, of course, partially due to the nature and resilience of farmers, but beyond that, there have been several policies that have brought the delinquencies and losses down:

- The extensive servicing options originally made available through the Agricultural Credit Act of 1987;
- The Treasury Offset Program (TOP) brought about by the Debt Collection and Improvement Act of 1996 and the continuation of administrative offsets;
- Continued financial support by the various FSA farm programs (commodity and price support);
- Stable FLP credit policies; and
- Continued emphasis on looking at cash flow and not just collateral when making credit decisions.

As the average age for farmers increases and their numbers diminish, FSA is encountering instances where farmers with loans that have security margins of 150 percent or more are requesting releases of security for partial graduations (when a borrower obtains commercial credit on all real estate or all chattel loans), to obtain financing for non-farm businesses, to facilitate gradual generational transfers of farm property to family members, or to manage future taxes by transferring assets to family members. These proposed changes may allow successful farmers to expand into businesses such as selling seed and feed retail, trucking or welding, that while not eligible for FSA financing, still contribute to their income and provide services to the local community. Further, the proposed changes allow borrowers to transfer small tracts to family members related by blood or marriage to start a business, or build a house, or any number of things that could spur economic activity in the area. Although these borrowers have successful operations and their loans are better secured than most direct borrowers, graduation requirements will still ensure that they are unable to move entirely to commercial credit before FSA releases security. This policy will help support the rural population while still protecting the Government.

Conservation Contracts

The Conservation Contract Program provides debt cancellation for FLP borrowers in exchange for them taking land out of production for conservation purposes. The proposed 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 under another conservation program for which the borrower receives compensation. If the conservation program, whether administered by Federal, State, or local government, compensates the borrower for similar conservation, wildlife or recreation benefits on the same land, FSA proposes that the land generally will not be eligible for a Conservation Contract. The borrower, who has already received payment for the conservation benefit, should not receive additional payments on land in the form of a debt cancellation with a Conservation Contract. This change would, thus, eliminate inadvertent duplicative payments, sometimes referred to as ''double-dipping.'' However, cost-share payments from other sources for practices that improve the property as opposed to solely conserving the property, such as pesticide application, diking, or noxious weed removal, are not considered a duplication of benefits as long as such practices are consistent with with the Conservation Contract management plan. Borrowers would be required to certify on the Conservation Contract as to any participation in other conservation programs for the Conservation Contract land. Any portion of the land that was already encumbered by another conservation program would be ineligible for a Conservation Contract.

FSA also proposes to clarify in 7 CFR 766.110(m) that FSA would not grant subordinations of the Conservation Contract. This will ensure that the contract is not lost through foreclosure of a lien by a holder who obtains a superior lien through a subordination.

FSA proposes to require in 7 CFR 766.110(c) a legal right-of-way or other legal, permanent access to the Conservation Contract property for the life of the Conservation Contract. The current regulation is silent on this issue. On Conservation Contract properties that are land-locked with no legal right of access, FSA officials or the management authority cannot verify compliance with the Conservation Contract. The Conservation Contract form FSA–2535 includes the following statement in paragraph 11.B: ''Grantee has a right of reasonable ingress and egress to the contract area over the Grantor's property, whether or not the property is adjacent to the contract area, for the exercise of any of the rights of Grantee under this contract,'' but this does not give FSA or the management authority the legal right to access the property through a third party's property. In addition, if the land is transferred to a subsequent landowner, it is possible that access may be refused by the subsequent landowner despite the contract's language. 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 proposing to change 7 CFR 766.110 to require a minimum parcel size of 10 contiguous acres to better manage Conservation Contracts. Presently, there are numerous small parcels with Conservation Contracts that are not suitable for the purposes of the program as they are too small for conservation, recreation, or wildlife purposes. In addition, they are difficult to identify, access, and manage. Establishing a minimum size as a general requirement has minimal adverse effect on the borrowers or FSA, and FSA or the management authority will be better able to inspect the property for contract compliance, to ensure protection of the natural resource and recreational areas.

Further, FSA proposes to require subordinations from prior lienholders before approval of the Conservation Contract. Under the existing regulations, if a borrower with a Conservation Contract defaults on a debt with another lender that is secured by the same land as that subject to the Conservation Contract, that creditor could foreclose on the property and effectively remove the Conservation Contract. The intent of the program is to establish long-term conservation, wildlife, or recreation benefits. Requiring a subordination from a prior lienholder would ensure that the Conservation Contract will stay with the land for the duration of the contract.

FSA is proposing new damages for a breach of contract in this rule. Currently a grantor who breaches the Conservation Contract by using the land in a manner not permitted under the contract, such as building an unauthorized structure or cutting down timber, must either restore damaged or altered land, or repay the amount of the debt cancellation. FSA has determined that this does not provide sufficient incentive to ensure the grantor's compliance with the terms of the Conservation Contract as the original debt is reinstated, but the public still loses the benefit of the conservation of the land. 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 proposes to require 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. Such interest will accrue either at the note rate for a grantor indebted to FSA or at the non-program interest rate for a grantor who is no longer indebted to FSA or a successor-in-interest. Also, grantors who still have an FSA loan and breach a Conservation Contract will be considered to be in non-monetary default on their loan if the violation is not timely cured, and FSA will take collection actions accordingly. These changes are expected to reduce the number of Conservation Contract breaches and help to ensure that the Conservation Contract Program accomplishes its important purpose of protecting the land and enhancing its conservation, wildlife, or recreation value. Conservation Contracts executed prior to the implementation of this rule will be enforced according to the terms and regulations in force at the time of their execution.

Lastly, FSA proposes to clarify that uplands eligible for Conservation Contracts include buffer areas necessary not only for the protection of proposed Conservation Contract areas, but also for protection of the area enrolled in other conservation programs.

Technical Amendments

FSA proposes to remove § 761.103(b)(8) requiring loan evaluation as part of the farm assessment. The farm assessment helps determine the appropriate level of FSA oversight, credit counseling, and training needs of the applicant. A loan evaluation is also completed by FSA when a loan request is processed and is intended to be a narrative to address eligibility, collateral, capacity, capital, and loan conditions of the specific loan. Therefore, it is duplicative to include a loan evaluation as part of the farm assessment. A loan evaluation also should not be a burden on the applicant. Therefore, FSA proposes to remove the requirement for a loan evaluation to be part of the initial farm assessment.

Appendix A to Subpart C of part 766, Notice of Availability of Loan Servicing to Borrowers who are Current, Financially Distressed, or Less Than 90 Days Past Due, does not match the requirement established in § 766.104(a)(5). The paragraph requires borrowers who are financially distressed or current to pay a portion of the interest due on their loans to qualify for primary loan servicing. Appendix A section (a)(4), paragraph entitled ''payment of interest,'' however, implies that the borrower will always have to pay a portion of the interest that has accrued on FLP loans when a restructuring is closed. FSA proposes to revise Appendix A to remove this inconsistency and reflect that the requirement to pay some interest on the account only applies to borrowers who are not delinquent at closing.

Previously, definitions applicable to 7 CFR parts 761 through 767 were moved to 7 CFR 761.2(b); however, several conforming changes to 7 CFR part 762 were not made at that time. FSA proposes conforming changes to 7 CFR part 762 to properly cite the location of the definitions and remove ''or ranching'' from 7 CFR 762.146(b)(1). Lastly, this rule proposes to remove obsolete CFR references for FLP and to replace them with current references that were missed when FSA published the Regulatory Streamlining regulation on November 8, 2007 (72 FR 63242–63361).

Executive Orders 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 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 not significant under Executive Order 12866 and, therefore, OMB was not required to review this proposed rule.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?

• Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
• What else could we do to make the rule easier to understand?

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 proposing to revise 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.
• Planning for the disposition of chattel proceeds will be simplified, while FSA still tracks all proceeds to be applied on FLP loans.
• 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 proposed 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 proposed 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 proposed 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 proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' As proposed, 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 proposed 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 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 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 proposed amendments are either revisions of internal operations or modifications to existing responses that will have no net effect on paperwork burden. For example, the proposed 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.

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 proposed for 7 CFR parts 761, 762, 765, 766, and 772 require no changes or new collection to the currently approved information collections by OMB under the 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 proposed 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 proposes to amend 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:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

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

* * * * *

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

* * * * *

3. Amend § 761.7 as follows:

a. Revise paragraph (b)(1);

b. Add paragraph (b)(3); and

c. Revise paragraph (d).

The revisions and addition 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 include the value of oil, gas, and other minerals even if the minerals have no known or nominal value.

* * * * *

(d) *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 of chattel or real estate 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 in the same manner as their non-guaranteed loans. If an appraisal is used, it does not have to be USPAP compliant.

(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. 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 § 762.145(b)(4) and (e)(1), remove the citation ''§ 762.102(b)'' and add in its place the citation ''§ 761.2(b) of this chapter''.

§ 762.146 [Amended]

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

§ 762.149 [Amended]

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

§ 762.150 [Amended]

12. In § 762.150(b)(5) and (d)(2), remove the text ''and ranchers'' and remove the citation ''§ 762.102'' and add in its place the citation ''§ 761.2(b) of this chapter''.

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

§ 765.205 Subordination of liens.

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

* * * * *

(b) *Subordination of real estate security.* (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, 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 loans 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 (b)(3)(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 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 (effective date of the final rule), 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 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; and

(4) Except for CL, the borrower is unable to fully graduate as specified § 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 (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 addition 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 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 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; and

(4) 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'' before the word ''interest''; and

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

The revisions and additions read as follows:

§ 766.110 Conservation Contract.

(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) *Unsuitable acreage.* 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 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

BILLING CODE P

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.

How to apply

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

Help in responding to this notice

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.

Who will decide if you qualify?

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.

What happens if you do not apply?

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) How to get copies of Agency handbooks and forms

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) Reconsideration, mediation, negotiation, and appeal rights

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.

Reconsideration

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.

Mediation

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.

Negotiation of the appraisal

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.

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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. Revise 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 in its place the reference "part 765 of this chapter"; and

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

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 is governed by part 765 of this chapter.

Signed on April 5, 2012.

Bruce Nelson,

Administrator, Farm Service Agency.

[FR Doc. 2012–8827 Filed 4–12–12; 8:45 am]

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