# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Parts 761 and 766

**RIN 0560–AI05**

### Loan Servicing; Farm Loan Programs

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farm Service Agency (FSA) is amending the Farm Loan Programs (FLP) direct loan servicing regulations to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). This rule implements four amendments to the direct loan servicing regulations. The first amendment further emphasizes transitioning borrowers to private sources of credit in the shortest time practicable. The second amendment amends the Homestead Protection lease regulations by extending the right to purchase the leased property to the lessee's immediate family when the lessee is a member of a socially disadvantaged group. The third amendment amends the account liquidation regulations to suspend certain loan acceleration and foreclosure actions, including suspending interest accrual and offsets, if a borrower has filed a claim of program discrimination that has been accepted as valid by USDA and the borrower's account is at the point of acceleration or foreclosure. The fourth amendment amends the supervised bank account regulations to make the FSA regulations on insurable account limits consistent with the regulations of the Federal Deposit Insurance Corporation.

**DATES:** This rule is effective on February 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Cumpton, Assistant to the Director, Loan Servicing and Property Management Division, FSA, USDA; telephone: (202) 690–4014. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

#### Background

This final rule implements multiple provisions of the 2008 Farm Bill (Pub. L. 110–246) concerning loan servicing for FSA's direct loan program. In general, FSA direct loans provide credit to farmers who are unable to get credit elsewhere.

On August 7, 2009, FSA published the loan servicing proposed rule (74 FR 39565–39569). As discussed below, FSA proposed three substantive amendments and one conforming technical amendment in the proposed rule. This final rule addresses the comments received on the proposed rule and makes some minor revisions to the proposed language to address the comments received. FSA received comments on the proposed rule from two commenters; the comments addressed multiple provisions of the rule. The commenters were a nonprofit organization and an FSA employee.

#### Summary of Amendments to the Loan Servicing Regulations

The amendments in this rule are made to 7 CFR part 761, "General Program Administration," which specifies provisions that apply to multiple Farm Loan Programs, and to 7 CFR part 766, "Direct Loan Servicing—Special," which specifies the requirements and procedures for direct loan servicing in special circumstances, primarily those involving financially distressed borrowers.

One amendment promotes the goal of transitioning borrowers to private credit. This rule clarifies and expands the requirements that borrowers must meet, including training and planning activities, to demonstrate that they are gaining the skills to transition to private credit. These amendments are made to 7 CFR 761.1, "Introduction," a general introductory section to the farm loan regulations, and to 7 CFR 761.103, "Farm Assessment," which describes how FSA assesses a borrower's farming operation to determine credit counseling needs and training needs. As discussed below, in response to a comment on the proposed rule, FSA added additional clarity and detail to the requirements.

A second amendment allows family members of lessees who are members of a socially disadvantaged group to purchase properties under Homestead Protection. This amendment, which is made to 7 CFR 766.154, "Homestead Protection Leases," is specifically required by the 2008 Farm Bill. The purpose of the Homestead Protection program is to allow borrowers who secured their loan with their principal residence to continue to occupy that property through a lease or lease-purchase, after it has come into the inventory of the Government after foreclosure or voluntary conveyance. Before this amendment was made, only the original lessee on a Homestead Protection lease-purchase agreement had the option to purchase the property; this amendment allows the lessee to designate a family member the right to exercise that option.

The third amendment sets a moratorium on foreclosure and loan acceleration actions for borrowers with an accepted program discrimination claim with the USDA Office of the Assistant Secretary for Civil Rights, Office of Adjudication. This amendment will stop foreclosure and loan acceleration actions for borrowers with an accepted discrimination claim, including interest accruals and offsets, while the discrimination claim is being resolved. This amendment adds a new section, 7 CFR 766.358, "Acceleration and Foreclosure Moratorium" to 7 CFR part 766 subpart H, "Loan Liquidation."

In addition to the amendments required by the 2008 Farm Bill, this rule implements a conforming amendment to comply with section 335(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, July 21, 2010), which increased the maximum deposit insurance amount for accounts insured by the Federal Deposit Insurance Corporation (FDIC). This rule changes a reference to the limit on insured accounts from $100,000 to "the maximum amount insurable by the Federal government," which means that the FLP regulations will remain consistent with federal deposit insurance regulations, even if the FDIC limit is revised again or authority for deposit insurance is transferred to another Federal government entity. The

current FDIC limit is $250,000. This amendment is made to 7 CFR 761.51, "Establishing a Supervised Bank Account."

**Discussion of Comments**

The following provides a summary of the comments related to each amendment, and FSA's response, including changes we are making to the regulations in response to the comments.

**Transitioning Borrowers to Private Credit**

*Comment:* "Borrower graduation requirements" should be added to the tools noted in 7 CFR 761.1 to assist borrowers in the transition to private credit. Also, the new sentence clarifying the purpose of FSA farm loan programs should be moved up a sentence.

*Response:* FSA agrees and has made the suggested changes.

*Comment:* "Graduation plan" should be added to the list of items required as part of the farm assessment in 7 CFR 761.103(b).

*Response:* FSA agrees with the comment and has made the suggested change. This change supports the concept of transitioning borrowers to private commercial credit in the shortest period possible and reinforces the importance of the graduation plan. We also added a reference to Conservation Loans (CL), to clarify which requirements do not apply to those loans. Conservation Loans are a new type of farm loan, authorized by the 2008 Farm Bill, which may be used to implement certain conservation practices. An inability to obtain commercial credit is not a requirement for CL eligibility, so some of the requirements that are intended to help borrowers transition to commercial credit do not apply to CL.

*Comment:* "Sufficient experience and training for a successful transition to private commercial credit" should be made part of the training waiver requirements in 7 CFR 764.453.

*Response:* The proposed rule did not propose changes to 7 CFR 764.453. The suggested change is not consistent with the overall objectives of the direct loan program, which include assisting borrowers in obtaining training and experience needed to qualify for commercial credit. The direct loan program requires that borrowers who need additional training must complete that training during the term of their direct loan, not as a condition to initially qualify for a loan. A loan applicant who already had the experience and training sufficient to make a successful transition to private credit would likely not need and would therefore not be eligible for a direct loan. Therefore, FSA is not amending the regulations in response to this comment.

*Comment:* FSA should reference the statutory requirement for performance criteria and publish those criteria.

*Response:* The existing statutory requirements for performance criteria are referenced in the preamble to the proposed rule. Specifically, Section 5304 of the 2008 Farm Bill amends the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–2008r, the Con Act) to add a section that requires the Secretary to establish a plan and performance criteria that promote the goal of transitioning borrowers to private commercial credit and other sources of credit in the shortest time possible. As discussed in the preamble to the proposed rule, FSA does not intend to publish additional detail about the performance criteria in the regulations. Regulations set requirements and benefits for the public; these performance criteria are the internal procedures that FSA will use to evaluate its own performance in transitioning borrowers to private credit.

**Extension of Right To Reacquire Homestead Property to Family Members**

*Comment:* Why is this opportunity only provided for lessees who are a member of a socially disadvantaged group, rather than all lessees? If it's a good idea for one, it's a good idea for all.

*Response:* FSA cannot extend this opportunity to all lessees because Section 5305 of the 2008 Farm Bill does not provide authority for us to do so. FSA is merely implementing the statutory language approved by Congress.

**Out of Scope Comment**

*Comment:* Oppose FSA's "term limits" on loans and the applicable provisions should have been removed in the 2008 Farm Bill. Term limits are arbitrary.

*Response:* This comment is outside the scope of this rule. FSA did not propose changing the term limits in the proposed rule.

**Miscellaneous Changes**

This rule makes minor clarifying changes, which are not in response to a comment on the provisions in the proposed rule, to make terms consistent throughout the rule. For example, this rule consistently uses the term "lessee or designee" to refer to a lessee utilizing a lease-purchase option, rather than sometimes using that term and sometimes using the term "purchaser." This rule also adds references to Conservation Loans where appropriate, to clarify which provisions do not apply to those loans.

**Executive Order 12866**

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Thus, FSA has not prepared a regulatory flexibility analysis.

All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to U.S. Small Business Administration small business size standards. 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 sizes of entities. The costs of compliance with this rule are expected to be minimal. The foreclosure and loan acceleration moratorium will reduce interest costs for some borrowers, and should in no case increase costs for borrowers. No comments were received on the proposed rule regarding disparate impact on small entities. 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 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 FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the FLP direct loan servicing program, required by the 2008 Farm Bill, that are identified in this final rule are administrative in nature and can be considered non-discretionary. Therefore, FSA has

determined that NEPA does not apply to this rule, and no environmental assessment or environmental impact statement will be prepared.

**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 rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies in accordance with 7 CFR part 11 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 final 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." This 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 preempt Tribal law. This rule was included in the October through December 2010, Joint Regional Consultation Strategy facilitated by USDA that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each region on the rules. When the consultation process is complete, USDA will analyze the feedback and then incorporate any appropriate changes into the regulations through rulemaking procedures.

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 Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) 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 as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Federal Assistance Programs**

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

10.099 Conservation Loans
10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans

**Paperwork Reduction Act**

The amendments to 7 CFR parts 761 and 766 in this final rule require no new collection or changes to the current information collections approved by OMB under the control numbers 0560–0233 and 0560–0238.

**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 for other purposes.

**List of Subjects**

*7 CFR Part 761*

Accounting, Loan programs—Agriculture, Rural areas.

*7 CFR Part 766*

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

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

## PART 761—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 § 761.1, amend paragraph (c) by adding a new third sentence to read as follows:

**§ 761.1 Introduction.**

* * * * *

(c) * * * The programs are designed to allow those who participate to transition to private commercial credit or other sources of credit in the shortest period of time practicable through the use of supervised credit, including farm assessments, borrower training, market placement, and borrower graduation requirements.

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### Subpart B—Supervised Bank Accounts

■ 3. In § 761.51, revise paragraph (e), introductory text, to read as follows:

**§ 761.51 Establishing a supervised bank account.**

* * * * *

(e) If the funds to be deposited into the account cause the balance to exceed the maximum amount insurable by the Federal Government, the financial institution must agree to pledge acceptable collateral with the Federal Reserve Bank for the excess over the insured amount, before the deposit is made.

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### Subpart C—Supervised Credit

■ 4. In § 761.103, revise paragraphs (a), (b)(9), and (b)(10), and add paragraph (b)(11) to read as follows:

**§ 761.103 Farm assessment.**

(a) The Agency, in collaboration with the applicant, will assess the farming operation to:

(1) Determine the applicant's financial condition, organizational structure, and management strengths and weaknesses;

(2) Identify and prioritize training and supervisory needs; and

(3) Develop a plan of supervision to assist the borrower in achieving financial viability and transitioning to private commercial credit or other sources of credit in the shortest time practicable, except for CL.

(b) * * *

(9) Supervisory plan, except for streamlined CL;

(10) Training plan; and

(11) Graduation plan, except for CL.

* * * * *

## PART 766—DIRECT LOAN SERVICING—SPECIAL

■ 5. The authority citation for part 766 is revised to read as follows:

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

### Subpart D—Homestead Protection Program

■ 6. In § 766.154, revise paragraph (c) to read as follows:

**§ 766.154 Homestead Protection Leases.**

* * * * *

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) If the lessee is a member of a socially disadvantaged group, the lessee may designate a member of the lessee's immediate family (that is, parent, sibling, or child) (designee) as having the right to exercise the option to purchase.

(3) The purchase price is the market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(4) The lessee or designee may purchase homestead protection property with cash or other credit source.

(5) The lessee or designee may receive Agency program or non-program financing provided:

(i) The lessee or designee has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property;

(iii) The lessee or designee demonstrates an ability to repay such an FLP loan; and

(iv) The lessee or designee is otherwise eligible for the FLP loan.

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### Subpart H—Loan Liquidation

■ 7. Add § 766.358 to read as follows:

**§ 766.358 Acceleration and foreclosure moratorium.**

(a) Notwithstanding any other provisions of this subpart, borrowers who file or have filed a program discrimination complaint that is accepted by USDA Office of Adjudication or successor office (USDA), and have been serviced to the point of acceleration or foreclosure on or after May 22, 2008, will not have their account accelerated or liquidated until such complaint has been resolved by USDA or closed by a court of competent jurisdiction. This moratorium applies only to program loans made under subtitle A, B, or C of the Act (for example, CL, FO, OL, EM, SW, or RL). Interest will not accrue and no offsets will be taken on these loans during the moratorium. Interest accrual and offsets will continue on all other loans, including, but not limited to, non-program loans.

(1) If the Agency prevails on the program discrimination complaint, the interest that would have accrued during the moratorium will be reinstated on the account when the moratorium terminates, and all offsets and servicing actions will resume.

(2) If the borrower prevails on the program discrimination complaint, the interest that would have accrued during the moratorium will not be reinstated on the account unless specifically required by the settlement agreement or court order.

(b) The moratorium will begin on:

(1) May 22, 2008, if the borrower had a pending program discrimination claim that was accepted by USDA as valid and the account was at the point of acceleration or foreclosure on or before that date; or

(2) The date after May 22, 2008, when the borrower has a program discrimination claim accepted by USDA as valid and the borrower's account is at the point of acceleration or foreclosure.

(c) The point of acceleration under this section is the earliest of the following:

(1) The day after all rights offered on the Agency notice of intent to accelerate expire if the borrower does not appeal;

(2) The day after all appeals resulting from an Agency notice of intent to accelerate are concluded if the borrower appeals and the Agency prevails on the appeal;

(3) The day after all appeal rights have been concluded relating to a failure to graduate and the Agency prevails on any appeal;

(4) Any other time when, because of litigation, third party action, or other unforeseen circumstance, acceleration is the next step for the Agency in servicing and liquidating the account.

(d) A borrower is considered to be in foreclosure status under this section anytime after acceleration of the account.

(e) The moratorium will end on the earlier of:

(1) The date the program discrimination claim is resolved by USDA or

(2) The date that a court of competent jurisdiction renders a final decision on the program discrimination claim if the borrower appeals the decision of USDA.

Signed in Washington, DC, on January 21, 2011.

**Jonathan W. Coppess,**

*Administrator, Farm Service Agency.*

[FR Doc. 2011–1917 Filed 1–27–11; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 234

### U.S. Customs and Border Protection

### 19 CFR Part 122

**[CBP Dec 11–05]**

**RIN 1651–AA86**

## Airports of Entry or Departure for Flights to and From Cuba

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Final rule.

**SUMMARY:** Under Department of Homeland Security (DHS) regulations, direct flights between the United States and Cuba must arrive at or depart from one of three named U.S. airports: John F. Kennedy International Airport, Los Angeles International Airport, or Miami International Airport. This document amends current DHS regulations to allow additional U.S. airports that are able to process international flights to request approval of U.S. Customs and Border Protection (CBP) to process authorized flights between the United States and Cuba. These amendments are in accordance with the President's recent statement easing the restrictions placed on flights to and from Cuba by, among other things, providing that eligible airports may seek approval from