

February 5, 2021

**United States Department of Agriculture  
Farm Service Agency  
Supporting Statement  
OMB Control Number 0560-New  
7 CFR 761, General Program Administration**

This document supports the information collection requirements of the final rule to be published as part of the Farm Service Agency's (FSA) effort to reorganize and consolidate the regulations governing its Farm Loan Programs (FLP). In this effort, the agency consolidated several CFR subparts and moved its regulations from 7 CFR Chapter XVIII to 7 CFR Chapter VII. The programs of the former Farmers Home Administration (FmHA) were divided among four new agencies under the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354).

Most regulations governing FLP, their information collection requirements, and many of the forms used by FLP were intertwined with those of three other USDA agencies (Rural Utilities Service, Rural Business and Cooperative Services, and Rural Housing Service) that also continue to administer programs of the former FmHA. In addition, many FLP regulations contained outdated and confusing procedures that made the administration of FLP difficult. Furthermore, regulations contained internal administrative processes that made updating the regulations cumbersome. This was a disincentive for even minor adjustments and stymied efficient program delivery. The final rule is part of an effort by the agency to:

- Review the FLP processes and make changes to improve program delivery within its current statutory authority, as the agency did not seek legislative changes before the publication of the proposed or final rule.
- Where feasible, match requirements imposed on applicants and borrowers to the requirements of commercial lenders. Applicants obtaining credit from the agency have been denied credit from commercial lenders, and therefore, pose a higher risk of losses to the agency. As a result, the Congress, through legislation, has incorporated additional requirements for the agency's applicants and borrowers.
- Eliminate unnecessary internal administrative provisions from the regulations that have resulted in confusing the requirements applicable to the public seeking agency assistance, and eliminate duplication found in the regulations governing FLP. It has been the agency's experience, as information needed to apply for loans or servicing were dispersed in over 42 CFR subparts, similar information was repeated several times, and in many cases not in the same order or stated with the exact same language. This caused irritation, confusion and frustration to applicants, borrowers, and employees as the agency invariably when amending the pertinent section in the CFR through the rulemaking process, one or more applicable CFR sections were not included.

- Rewrite internal handbooks used by State and County Offices in administering agency loan programs in a format easier to use. Further, as required by Departmental guidance and the Freedom to E-File Act, agency handbooks and forms must be made available in electronic format.

The information collections applicable to FLP approved under control numbers 0575-0042 and 0575-0093 are transferred to this control number and are assigned a new control number. Further, the information collections approved under control number 0560-0154 are transferred to this control number. Control number 0560-0154 will be retired when the final rule this document supports will be effective.

This analysis includes remodeled collection instruments, and provides the information collection requirements contained in the final rule utilizing current program data. As provided in question 8, the agency consulted with applicants, borrowers, commercial lenders, as well as agency employees and has revised the information collections accordingly. Further, the agency made a concerted effort to accurately assess the burden it imposes on applicants, borrowers, and other parties; therefore, for the information collections included in this submission, the agency has included respondents that were required to provide information but were not counted in previous submissions, as well as counted the time it takes to complete the collection instruments more accurately.

The information collection instruments included in this submission are in the proposed stage because:

- The agency needs to obtain OMB's approval of the information collection and be assigned a new control number
- The final rule, which this document supports, will not be effective until 60 days after its publication in the Federal Register.

**Note:** The agency renumbered all the forms used in FLP delivery since the paperwork burden packages for the proposed rule were submitted to OMB. Further, in this analysis, where appropriate the agency revised the (1) number of respondents; (2) responses per respondent, and (3) the response time to reflect current program use. Lastly, the agency is attaching an Excel spreadsheet that describes burden approved under the old OMB control numbers, the information collection instrument with the old and new number, and program changes or adjustments made to information collections as a result of the final rule.

## **Justification**

### **1. Explain the circumstances that make the collection of information necessary.**

FLP provides loans to family farmers to purchase real estate and equipment, and finance agricultural production. The regulation covered by this information collection package describes

the policies and procedures the agency uses to provide supervised credit to direct FLP applicants and borrowers in accordance with the provisions of the Consolidated Farm and Rural Development Act (Act) (Pub. L. 87-128), as amended. Supervised credit information collection requirements include planned and actual production and financial records, as well as the development and update of a loan assessment addressing the course of action to be followed, so that financing can be obtained through commercial credit sources. In addition, the regulation addresses construction and development requirements that must be met by applicants and borrowers.

Authority to establish the regulatory requirements contained in 7 CFR 761 is provided under 5 U.S.C. 301 which provides that “The Head of an Executive department or military department may prescribe regulations for the government of his department,...the distribution and performance of its business...” Furthermore, section 339 of the Act (7 U.S.C. 1989) provides that “the Secretary is authorized to make such rules and regulations, prescribe the terms and conditions for making... loans, security instruments and agreements, except as otherwise specified herein, and to make such delegations of authority as he deems necessary to carry out this title.” The Secretary delegated authority to administer the provisions of the Act applicable to FLP to the Under Secretary for Farm and Foreign Agricultural Services (FFAS) in section 2.16 of 7 CFR part 2. FFAS further delegated this authority to the FSA Administrator in section 2.42 of 7 CFR part 2.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for new collection, indicate the actual use the Agency has made of the information received from the current collection.**

Information collections are submitted by FLP direct applicants and borrowers to the local FSA office serving the county in which their business is headquartered. The information is necessary to provide supervised credit as legislatively mandated and is used by Agency Officials to:

- Ensure that when loan funds or insurance proceeds are used for construction and development projects, work is completed according to applicable state and local requirements, and in a manner that protects the Agency’s financial interest.
- Ensure that the loan repayment plan is developed using realistic data, based on the actual history of the operation and any planned improvements.
- Identify potential concerns limiting the success of the operation and develop a loan assessment outlining the course of action to be followed, to improve the operation so that commercial credit is available.

The general nature of a loan from FSA is very similar to that of any conventional commercial creditor. However, FSA applicants and borrowers tend to pose more of an economic risk of loss than those operations financed by commercial credit sources, as applicants must document that no other source of credit is available at the time of application. Legislation requires FSA to actively supervise these borrowers and provide credit counseling, management advice, and financial guidance.

The information collection requirements established in 7 CFR 761 are described below and on the attached FSA-85-1, Reporting and Recordkeeping Requirements.

## **Forms**

### **FSA-2037, Farm Business Plan - Balance Sheet**

7 CFR 761.102(a); 7 CFR 761.105(b)(1); 7 CFR 764.51(b)(2)(ii); 7 CFR 764.51(c)(4); 7 CFR 764.401(c)(1); 7 CFR 764.402(a)(2); 7 CFR 765.51(a); 7 CFR 765.101(c); 7 CFR 765.205(a)(2); 7 CFR 765.404(b)(1); 7 CFR 766.102(a)(2); 7 CFR 766.102(d); 7 CFR 766.204(a)(2); 7 CFR 766.353(a)(3); 7 CFR 766.354(a)(2)

The information requested on FSA-2037 is provided by applicants requesting loans, existing borrowers requesting a servicing action, and borrowers, as provided on loan and security instruments or at the agency's request, for the agency to determine the progress made. Use of FSA-2037 is not mandatory as applicants and borrowers may provide the information in any alternative format used for other purposes, as well as copies of balance sheets used to apply for loans from other creditors. The information collected on FSA-2037 is a detailed listing of the applicant or borrower's assets and liabilities. The agency uses the information to make feasibility and eligibility determinations and ensure that applicants will be able to repay the requested loan. A balance sheet is required from individual as well as entity member applicants and borrowers. The agency inputs in the Farm Business Plan information applicants and borrowers provided on FSA-2037. After the input is complete and before the action requested is closed, applicants and borrowers sign the computer print-out that reflects the information provided. The agency has included in this information collection package the number of entity members required to provide a balance sheet, and has indicated the number of entity members required to provide the information.

The agency estimates that 37,699 FSA-2037 are completed per year for the agency to conduct the year-end analysis on the borrowers' operations as well as conduct reviews of borrowers with limited resource interest rates. The agency is required to conduct year-end analysis on borrowers that received: loans during the year, chattel subordination, or primary loan servicing. Further, borrowers on limited resource interest rates have to be reviewed on an annual basis to determine if the operation can support an increase towards or up to the regular interest rates. The time required to provide the information is estimated to be 60 minutes.

The agency estimates that 25,900 applicants (18,062 individuals and 7,838 entity members are included in this number) will complete FSA-2037 for loan making purposes. The agency receives applications from 5,531 new applicants per year. Since the agency has no prior history or lending relationship with these applicants, the agency estimates the time to complete FSA-2037 is 90 minutes for these applicants, as they will have to complete all parts of the form or provide the information in another format. For existing applicants the agency estimates that it takes 60 minutes to complete the form. The agency requires an updated balance sheet if loan closing occurs 90 days after loan approval. It is estimated that 2,340 FSA-2037 will be provided for this reason (1,800 individuals and 540 entity members) and the time to provide the updated

balance sheet is estimated to be 15 minutes as the applicant only needs to provide updates to any items that have changed. Further, under the final rule, the agency will not automatically approve a loan when an adverse decision is overturned on an appeal, but the agency will reevaluate the applicant's information taking into consideration the hearing officer's determination. The agency estimates that in 25 cases an updated balance sheet will be required for the agency to continue processing the loan application after the conclusion of the appeals process. The time to complete FSA-2037 at the conclusion of the appeals process is estimated to be 15 minutes.

As a provider of temporary credit the agency is required to conduct graduation reviews of its borrowers to determine their ability to graduate to other sources of credit. To conduct the review, the agency needs balance sheet information. It is estimated that 11,577 graduation reviews are conducted per year and the time to complete FSA-2037 for graduation purposes is estimated to be 60 minutes.

Borrowers request the agency subordinate its lien position to a commercial lender to obtain needed financing for the operation. For the agency to approve the subordination request, it needs to analyze the borrower's balance sheet to determine if the operation can repay the agency's loans as well as the loan being requested from the commercial lender. The agency receives 9,066 subordination requests (6,974 individuals and 2,092 entity members are included in this number) per year. The time to complete FSA-2037 is estimated to be 10 minutes because the borrower will already have completed a balance sheet to provide the commercial lender and only needs to provide a copy to the agency.

The agency processes 150 requests for assumption of a borrower's debt by an ineligible applicant per year. Ineligible applicants are required to provide a balance sheet for the agency to determine if the applicant will be able to repay the assumed debt. The time to complete FSA-2037 for this purpose is estimated at 60 minutes.

The agency receives 3,716 requests for primary loan servicing per year (2,858 individuals and 858 entity members are included in this number). Delinquent, as well as financially distressed, borrowers are required to provide a balance sheet for the agency to make feasibility and eligibility determinations on the borrower's request. It is estimated that it takes 60 minutes to complete FSA-2037 for primary loan servicing requests. Further, 22 financially distressed borrowers will become delinquent before their request for primary loan servicing is complete. Therefore, these borrowers will have to provide an updated balance sheet and the time to complete it is estimated at 15 minutes.

72 borrowers (54 individuals and 18 entity members are included in this number) who request amortization of their shared appreciation agreement have to provide a balance sheet for the agency to make feasibility determinations. It takes 60 minutes for borrowers to complete FSA-2037 for this purpose.

Lastly, the agency receives 14 requests for voluntary conveyance of real estate and chattel per year (11 individuals and 3 entity members are included in this number). It takes 30 minutes to complete FSA-2037 for this purpose as the balance sheet for these borrowers will be less

complicated, because liquidation of chattel and real estate may be already completed and the borrower is in the process of settling debt with other creditors.

### **FSA-2038, Farm Business Plan – Income and Expense**

7 CFR 761.2(b); 7 CFR 761.102(a); 7 CFR 761.104(a); 7 CFR 761.105(b)(1); 7 CFR 764.51(b)(9); 7 CFR 764.51(c)(4); 7 CFR 764.401(c)(1); 7 CFR 764.402(a)(2); 7 CFR 765.51(a); 7 CFR 765.101(c); 7 CFR 765.205 (a)(5) & (b)(4); 7 CFR 765.206(b)(1) & (5); 7 CFR 765.207(d); 7 CFR 765.253(b); 7 CFR 765.301(d); 7 CFR 765.302(f); 7 CFR 765.351(a)(1), (5) & (8); 7 CFR 765.352(a)(3); 7 CFR 765.404(b)(1); 7 CFR 765.406(b)(4); 7 CFR 766.52(a)(2), (4) & (5); 7 CFR 766.53(a)(2); 7 CFR 766.53(b); 7 CFR 766.54(b)(1) 7 CFR 766.102(a)(7); 7 CFR 766.102(d); 7 CFR 766.102(f)(4); 7 CFR 766.109(a)(4); 7 CFR 766.151(a)(3); 7 CFR 766.151(b)(3); 7 CFR 766.204(a)(2) & (4); 7 CFR 766.353(a)(3); 7 CFR 766.354(a)(3)

The information requested on FSA-2038 is provided by applicants requesting loans, existing borrowers requesting a servicing action, and borrowers, as provided on loan and security instruments or at the agency's request, for the agency to determine the progress made. Use of FSA-2038 is not mandatory as applicants and borrowers may provide the information in any alternative format used for other purposes, as well as copies of income and expenses used to apply for loans from other creditors. The information collected on FSA-2038 is a listing of the applicant or borrower's projected income and expenses for the current or upcoming production cycle. The agency uses the information to make feasibility determinations and ensure that applicants will be able to repay the requested loan. The agency inputs in the Farm Business Plan information applicants and borrowers provided on FSA-2038. After the input is complete and before the action requested is closed, applicants and borrowers sign the computer print-out that reflects the information provided.

In cases where the loan approval or servicing request exceeds one production cycle and FSA-2038 is atypical due to cash, inventory at hand, new enterprise, carryover debt, atypical planned purchases, operating changes, or other reasons, the applicant must provide FSA-2038 that reflects a typical cycle. The second FSA-2038 will include only income and expenses that are typical for the operation. It is estimated that 182 applicants and 143 borrowers requesting loan servicing will have to provide the second FSA-2038. The time to provide it is estimated at 15 minutes, since the applicant or borrower has already provided the atypical FSA-2038 to the agency. This existing information collection was previously unapproved.

The agency is required to conduct year-end analysis on borrowers who, during the year, received: a direct loan; chattel subordination; or primary loan servicing. In addition, the agency is required to evaluate borrowers with limited resource rates to determine if the operation will continue to remain feasible with regular interest rates. It is estimated that 37,699 FSA-2038 will be completed per year for the purposes of year-end analysis and limited resource review. The time to complete it is estimated to be 90 minutes.

The agency receives 18,062 loan applications a year and the agency assumes that all applications will contain FSA-2038. The time to complete each FSA-2038 for loan making purposes is estimated to be 90 minutes. The agency requires updated income and expenses if loan closing

occurs 90 days after loan approval; it is estimated that 1,800 FSA-2038 will be provided for this reason and the time to provide the updated income and expenses is estimated to be 15 minutes as applicants have to provide updates for only the items that have changed. Further, under the final rule, the agency will not automatically approve a loan when an adverse decision is overturned on an appeal, but the agency will reevaluate the applicant's information taking into consideration the hearing officer's determination. The agency estimates that in 25 cases updated income and expenses information will be required for the agency to continue processing the loan application after the conclusion of the appeals process. The time to complete FSA-2038 at the conclusion of the appeals process is estimated to be 15 minutes as applicants have to provide updates only to the items revised due to the appeal.

As a provider of temporary credit the agency is required to conduct graduation reviews of its borrowers to determine their ability to graduate to other sources of credit. To conduct the review, the agency needs balance sheet information. It is estimated that 11,577 graduation reviews are conducted per year and the time to complete FSA-2038 for graduation purposes is estimated to be 90 minutes.

Borrowers request the agency subordinate its lien position to a commercial lender to obtain needed financing for the operation. For the agency to approve the subordination request, it needs to analyze the borrower's income and expenses to determine if the operation can repay the agency's loans as well as the loan being requested from the commercial lender. The agency receives 6,974 subordination requests per year. The time to complete FSA-2038, or provide the agency with a copy of the income and expenses provided to the commercial lender, is estimated to be 10 minutes because the borrower will already have compiled income and expenses to provide the commercial lender.

Borrowers must obtain the agency's consent before granting a junior lien on the security used to secure the agency loan. Before granting consent, the agency must ensure the borrower's operation will be able to repay the agency loan as well as the junior lien. Annually, 740 borrowers request agency consent to grant junior liens and the time to complete FSA-2038, or provide the agency with a copy of the income and expenses provided to the junior lienholder, is estimated to be 10 minutes as borrowers will have compiled income and expenses to provide the junior lienholder.

For loans secured by real estate, a borrower may request the agency grant consent to a severance agreement so that chattel acquired in the future by the borrower will not become part of the real estate securing the agency debt. One of the conditions under which the agency may grant consent is that the transaction will not jeopardize the borrower's ability to repay all outstanding debts to the agency. 740 borrowers request severance agreements annually and the time to complete FSA-2038, or provide the agency with a copy of the income and expenses provided to the commercial lender, is estimated to be 10 minutes as the borrowers will have compiled income and expenses to provide the creditor from whom the chattel security is being acquired.

Borrowers may request agency consent to cease operating security, if several conditions are met. One of the conditions is inability to graduate to commercial credit; therefore, the agency needs to analyze the operation's income and expenses to verify the borrower is unable to graduate. It is

estimated that 740 borrowers request agency consent to cease operating security. The agency estimates the time to complete FSA-2038 for this purpose to be 30 minutes as borrowers making such a request have arranged for the security to be leased and the operation's income is known to the borrower.

150 borrowers request that their debt be assumed by a transferee, and request the agency to release them from liability. Subsequently, the agency processes 150 requests for assumption of a borrower's debt by an ineligible applicant per year. Ineligible applicants are required to provide income and expenses for the agency to determine if the applicant will be able to repay the assumed debt. It is estimated the time to complete FSA-2038 for this purpose is 90 minutes. Further, the borrower is required to provide income and expenses for the agency to determine if the release of liability request should be granted. The time to complete FSA-2038 is estimated at 30 minutes since completion of the form for this purpose is not complicated because the borrower has stopped farming.

Borrowers unable to make their payments due to a natural disaster may request the agency set-aside the payment due in the year the disaster occurred. Borrowers are required to provide income and expense records for the agency to verify that the payments cannot be made. The agency processes 945 disaster set-aside requests per year and the time to complete FSA-2038 is 90 minutes.

The agency receives 2,858 requests for primary loan servicing per year. Delinquent, as well as financially distressed, borrowers are required to provide income and expenses for the agency to make feasibility determinations on the borrower's request. It is estimated that it takes 90 minutes to complete FSA-2038 for primary loan servicing requests. In addition, 22 financially distressed borrowers will become delinquent before their request for primary loan servicing is complete. Therefore, these borrowers will have to provide updates to income and expenses and the time to provide the updates is estimated at 15 minutes.

150 divorced spouses withdrawing from the farming operation request to be released of liability at the time an application for primary loan servicing is considered. Withdrawing spouses are required to provide income and expense statements for the agency to consider the request. The time to complete FSA-2038 for this purpose is estimated to be 30 minutes because to be released of liability divorced spouses may not have repayment ability and may not own non-essential assets; therefore, the income and expenses statement will not be complicated or time-consuming.

Borrowers who meet the eligibility requirements may be granted loan deferral when they apply for primary loan servicing. The agency requires that the borrower's operation reflect a feasible post-deferral plan; therefore, 807 borrowers develop post-deferral FSA-2038 that require 30 minutes to complete. The time requirement is less because borrowers have already completed FSA-2038 as part of the request for primary loan servicing that includes deferral of loan payments and know which expenses are projected to be paid off by the end of the deferral period.

Borrowers requesting pre- or post-acquisition homestead protection are required to provide updated income and expenses for the agency to determine if the borrowers will be able to make the rental payments on the homestead protection property. The agency processes 21 requests for

homestead protection (18 for pre-acquisition and 3 for post-acquisition); FSA-2038 takes 30 minutes to complete for this purpose because borrowers are required to provide only updates to income and expenses submitted to the agency when it was considering the borrowers' primary loan servicing request.

54 borrowers who request amortization of their shared appreciation agreement have to provide income and expense records for the agency to make feasibility determinations. It takes 90 minutes for borrowers to complete FSA-2038 for this purpose.

### **FSA-2039 – Farm Business Plan – Worksheet Summary of Year's Business**

FSA-2039 is an optional form the agency developed to assist applicants in determining if their request is feasible before they apply for a loan. Applicants complete FSA-2037 and FSA-2038, or any other format, before attempting to complete FSA-2039, as all the information to be input on this form is found on the applicable lines on FSA-2037 and FSA-2038. It is the agency's experience that most applicants either do not complete or partially complete FSA-2037 and FSA-2038; therefore, the agency estimates that about one percent, or 1,800, applicants attempt to complete FSA-2039. The agency estimates that, for applicants attempting it, the time to complete FSA-2039 is 20 minutes.

### **FSA-2140 – Deposit Agreement and FSA-2141, Interest-Bearing Deposit Agreement**

7 CFR 761.51(a)(3)(iii), (b)& (d), 7 CFR 764.402(e)(3); and 7 CFR 765.352(a)(3)(iii)

As mandated by the Act, the agency provides supervised credit to farmers unable to secure commercial financing. As part of the supervised credit process, it may be necessary to deposit loan funds, insurance proceeds, or proceeds from partial release of real estate security into a supervised bank account. These accounts may be used to assure correct use of funds planned for capital purchases or debt refinancing when electronic funds transfer or treasury check processes are not practicable. Supervised bank accounts require signature by both the agency and the borrower to withdraw funds. It is estimated that 750 applicants and borrowers will be required to select a financial institution and execute FSA-2140 to establish a supervised bank account. The response time is estimated to be 10 minutes.

In addition, a representative of the financial institution selected by the applicant or borrower must also sign FSA-2140. Since the use of supervised bank accounts is limited and the applicant/borrower selects the financial institution, it is estimated that 565 different institutions will be selected and that their representatives will spend 10 minutes completing the form. This existing collection was previously unapproved.

Lastly, in very limited situations where loan funds are not immediately needed and electronic funds transfer or multiple advances are not practicable or feasible, or where insurance proceeds are going to be used over a period of time, the agency may require that the excess funds be deposited in an interest-bearing account. The agency estimates that 10 FSA-2141 will be completed for this purpose. The time to complete it is estimated to be 10 minutes for the applicant or borrower and 10 minutes for the financial institution.

## **FSA-2150 – Development Plan**

7 CFR 761.10(b)(1); 7 CFR 761.10(c)(1); 7 CFR 761.10(d)(4); 7 CFR 765.205 (b)(14); and 7 CFR 765.352(a)(3)(v)

Applicants may use loan proceeds for construction or development; borrowers requesting real estate subordination or partial release may use proceeds for construction or development; and borrowers may use insurance proceeds for loss or damage to agency security for construction or development. If all construction or development is to be performed under a single contract, the final rule requires only a copy of the contract be provided to the agency. If multiple contracts will be used, the final rule requires the development plan as well as copies of all the contracts be provided to the agency. Further, the cost estimate needs to be provided if it is not included in the contracts.

The applicant or borrower must provide information describing the planned development, the proposed schedule, and the manner in which the development will be completed. The agency requires copies of drawings and specifications for planned construction projects as necessary to protect the Government's financial interests. The estimate of the total cost of the planned constructions or development is necessary for the agency to determine that sufficient funds are available for its completion. Such evaluation is essential in assuring that the operation will generate the cash flow used in determining loan repayment. The description of the construction project or development is necessary for the agency to evaluate it and ensure that projections, including costs, are reasonable. This information is routinely obtained by applicants or borrowers considering construction; therefore, no collection time was included as the only additional collection imposed by the regulation is submission to the Agency. Further, drawings and specifications are routinely obtained during the construction process; therefore, no time was included for the collection of data. Applicants or borrowers may use FSA-2150 or other documentation that provides similar information. It is estimated that 972 applicants or borrowers will conduct construction under the borrower method; 122 will use the single contract method, and 345 will use multiple contracts to complete construction or development. The time to provide the documentation required is estimated to be 15 minutes per response, notwithstanding the method of construction selected.

## **FSA-2153 – Release by Claimants and FSA-2154 – Release by Contractor**

7 CFR 761.10(f)

Before the final advance of funds is disbursed under the contract for construction and development, the applicant or borrower must obtain lien waivers from the contractors that performed the development. If the applicant or borrower fails to obtain FSA-2153 and FSA-2154 contractors or subcontractors not paid in full may file mechanics lien against the agency's security. The agency estimates that 345 subcontractors will complete FSA-2153 annually. Further, the agency estimates that 1,157 FSA-2154 will be completed annually (122 for single contract method and 1,035 for multiple contract method). The time to complete both FSA-2153 and FSA-2154 is estimated at 15 minutes. Further, the agency estimates that 467 borrowers will

have to obtain FSA-2153 and FSA-2154, as appropriate. The time to obtain it is estimated at 30 minutes. Previous approval of this collection did not include burden imposed on borrowers.

### **Non-form collections**

#### **7 CFR 761.10(c)(5); 7 CFR 761.10(d)(5); and 7 CFR 761.10(d)(6) – Technical Data, Tests, and Engineering Evaluations**

The agency's FLP staff has the education and training necessary for making and servicing loans; however, FLP staff does not have sufficient training and education to evaluate complex construction projects; therefore, applicants or borrowers are required to provide copies of technical data, tests, or engineering evaluations, when necessary to protect the agency's financial interest.

Further, FLP staff does not have the expertise necessary to evaluate the plans and specifications associated with complex construction projects. The final rule requires that the applicant provide written certification that the final drawings and specifications conform to local or state building requirements. The certification must be obtained from individuals or organizations trained and experienced in the compliance, interpretation, or enforcement of the applicable standards and may include licensed architects, professional engineers, local building officials, or national code organizations. The applicant routinely obtains this information in the construction process to protect their interests; therefore, no time was included for the collection of this data. It is estimated that 1,151 applicants will spend 30 minutes submitting this information to the agency.

#### **7 CFR 761.10(e)(2) and (e)(3) – Written Certification of Inspections**

The final rule requires the applicant to obtain professional inspections when necessary to protect the agency and the applicant's interest. Inspections are necessary to ensure construction complies with the plans and specifications and are routinely obtained by the applicant during the construction process; therefore, no time was included for the collection of this data. It is estimated that 540 applicants will spend 15 minutes submitting copies of the inspection reports.

#### **7 CFR 761.10(g) – Surety Requirement**

The final rule further requires the applicant obtain a surety bond from the contractor used to complete construction and development to guarantee the contractor's payment and performance when necessary to protect the Government's interests. It is estimated that 25 contractors will be required to provide a surety bond and that each contractor will spend an average of 10 minutes providing bond documentation. Further, if the planned development changes from the original proposal, the agency requires that the contractor provide surety bond to cover the change. The agency estimates that 25 contractors have to provide surety bond for changes in construction, and the time is estimated to be 10 minutes per response.

#### **7 CFR 761.10(h) – Request to Change Planned Development**

The agency's approval of a loan to finance construction is based on cash flow projections developed using specific plans, specifications, and costs, as well as a projected completion schedule. Any changes to the planned development can impact the total cost, completion date, or even the value of the loan security. Therefore, to protect the agency's interests, prior approval is required for any changes to construction and development plans. It is estimated that 72 applicants and borrowers will spend 15 minutes submitting documentation to change planned development.

#### **7 CFR 761.51(e) – Pledge of Collateral When SBA Balance Will Exceed \$100,000**

When the amount deposited into a supervised bank account will exceed \$100,000, the amount insured by FDIC, the financial institution must agree to pledge acceptable collateral to the Federal Reserve Bank for the excess over \$100,000 before the deposit is made. The pledge of collateral is necessary to protect the agency and the applicant or borrower's financial interests. It is estimated that 10 lenders will be required to pledge collateral each year and that each lender will spend an average of 10 minutes providing documentation to the agency. This existing collection was previously unapproved.

#### **7 CFR 761.51(e)(2) – Request to Release Collateral Pledged for a Supervised Bank Account**

Financial institutions that have pledged collateral for supervised bank accounts may request a release of part or all of the collateral when the balance of the account has been reduced below \$100,000. It is estimated that 10 financial institutions will spend an average of 10 minutes each making such requests. This existing collection was previously unapproved.

#### **7 CFR 761.54 – Withdrawal of Funds from a Supervised Bank Account**

As previously described, funds may be withdrawn from a supervised bank account when both the agency and the borrower have provided authorization. Borrowers typically make multiple withdrawals from a supervised bank account. It is estimated that 750 borrowers will each make 5 requests for withdrawals each year. Each request is estimated to take 10 minutes. This existing information collection was previously unapproved.

#### **7 CFR 761.103; 7 CFR 764; 7 CFR 766.102; 7 CFR 766.202 – Copies of Income Tax Returns**

Cash flow projections used for processing loan making and servicing requests must be based on actual production, income, and expenses. One of the simplest methods of obtaining this information is to obtain copies of the applicant or borrower's tax returns. The final rule contains the new provision that copies of three years of tax returns be provided as part of a complete loan application. The final rule, however, reduced the number of years tax returns required for loan servicing from three to five. The agency maintains copies of documents, including tax returns, submitted by the applicant in the loan making process and the borrower during loan servicing; therefore, in many cases, only the most recent year's tax return must be submitted. However, 5,531 respondents who are new applicants will have to provide copies of all three years of tax returns. The applicant or borrower is already required to collect and maintain this information

for filing tax returns; therefore, no time is included for its collection. Time estimates are limited to submitting copies of the tax returns to the agency. It is estimated that a total of 6,825 applicants and borrowers will spend 15 minutes each submitting copies of tax returns.

### **7 CFR 761.103 (a) and (b) – Development of the Loan Assessment**

Under the provisions of the Act, the agency develops a loan assessment with each applicant to determine the applicant's financial condition, organizational structure, management strengths and weaknesses, appropriate levels of agency oversight needed, credit counseling needs, and training needs. The financial information needed for the loan assessment is collected on FSA-2037 and FSA-2038, or any other format acceptable to the agency; however, information such as the operation's goals and the organizational structure must be discussed with the applicant. The information is normally obtained at the time the agency discusses the loan application with the applicant. The loan assessment is developed at the time of the initial application. After the agency obtains the information needed from the applicant, the agency inputs it in the Farm Business Plan. Before the loan is approved the applicant signs the printed loan assessment to acknowledge participation in its development. It is estimated that information to develop the assessment will be collected from 5,531 applicants. The response time is estimated at 30 minutes per applicant. This existing information collection was previously unapproved.

### **7 CFR 761.103(c) and (d) – Assessment Update**

The Act further requires that an assessment update be prepared for each subsequent loan. At the time of the assessment update, the agency and the applicant or borrower review the existing assessment to determine the progress made toward goals and graduation to commercial credit. The assessment update is normally completed in the Farm Business Plan for each subsequent loan requested and when the year-end analysis is completed. Applicants and borrowers provide the information needed to update the assessment and sign the printed copy. Therefore, it is estimated it takes 10 minutes to provide the information needed to update the assessment and sign it to acknowledge participation in the update. It is estimated that 16,450 applicants and borrowers will work with the agency to update their loan assessment. This existing information collection was previously unapproved.

### **7 CFR 761.104(d) – Evidence of Premium Price for Commodities**

On a state-by-state basis, the agency sets agricultural commodity prices that are to be used by applicants in developing operating plans. Applicants may enter intro contracts to sell the commodities produced by the operation at a price above than the price established by the agency; therefore, the agency requires those applicants to provide evidence that the higher price will be received for the commodities produced. Evidence provided may include a copy of the contract entered into with the specific price for each commodity. It is estimated that 1,645 applicants will provide written evidence and the time estimated to provide the information is estimated to be 10 minutes per response. This existing information collection was previously unapproved.

### **7 CFR 761.105(b) – Actual Income, Production and Expenses and Other Financial Records**

The agency completes a year-end analysis to compare actual income and expenses with planned income and expenses for borrowers who:

- Received a loan, subordination or primary loan servicing within the last year.
- Are financially distressed or delinquent.
- Have a loan deferral.
- Are receiving a limited resource interest rate.

This action is part of the agency's supervised credit procedures. It is estimated that 37,699 borrowers will provide actual income, production and expenses records, as well as other financial records, to the agency to complete the year-end analysis. Since borrowers will provide only the actual records, it is estimated that each will spend 60 minutes providing this information. This existing information collection was previously unapproved.

### **Travel Time**

The agency estimates that applicants and borrowers required to provide information under this information collection docket will travel once to the agency office. Therefore, the agency estimates that this information collection docket imposes on the respondents 40,424 hours of travel time.

**Note:** There is no travel time imposed on lenders or financial institutions providing information on behalf of the applicant or borrower, or on contractors providing development and construction services.

### **3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decisions for adopting this means of collection. Also describe any consideration of information technology to reduce burden.**

Information collections obtained using agency forms may be submitted electronically provided the applicant has obtained and activated a USDA account with Level 2 access that allows for electronic submissions. All forms that the applicant has to complete in their entirety, or review and execute, are posted on the e-Gov website at <http://www.sc.egov.usda.gov>. For forms the applicant is required to complete in their entirety, the fillable version of the form, as well as detailed instructions on completing the form, are included on the e-Gov website. Forms prepared by the agency, that the public simply reviews and signs, are also provided on the e-Gov website. However, in lieu of detailed instructions for completing those forms, the instructions simply state that the forms are provided on the website for information purposes only.

Non-form information collections require providing copies of documents in the applicant's possession or providing written replies to agency requests or offers. Non-form collections, as well as all agency forms, may be submitted in person at the local agency office, by mail, or by facsimile. Further, applicants with established Level 2 accounts may provide non-form

information collections as any kind of non-executable attachments, such as PDF, doc, xls, or text formats.

Even though forms are available on the e-Gov forms website, public input on this information collection package indicated that very few applicants and borrowers utilize this option. Most respondents stated that they obtain and return forms and non-forms to the agency office as they feel a person-to-person meeting is beneficial. The information required from applicants and borrowers is mainly financial in nature, and farmers are not comfortable with providing it through electronic means, notwithstanding the adequacy of agency security safeguards in place. Most of the agency's applicants and borrowers reside in rural areas, which often do not have access to high speed internet connection. Moreover, applicants and borrowers often seek additional clarification and explanation of the requirements, as well as explanation of the consequences of not complying with the requirements, from agency officials.

Currently, the agency can only accept forms electronically from individual applicants. Electronic signature authentication for entity borrowers is not currently available; however, the agency is anticipating that this option will be available in the near future, provided adequate appropriations are received from Congress to ensure that appropriate system security safeguards are met. Further, the agency is currently exploring options available for applicants and borrowers to respond to, and provide information to, agency-initiated actions. This option will allow the agency to pre-fill forms with information already in its possession, as there are several instances in the loan making process where the agency completes part of the information collection instrument and provides it to the applicant to review and execute. In turn, when this option becomes available, the agency may initiate interactions and transactions that only require the applicant or borrower's review and approval or disapproval, as in those situations the applicant or borrower may not need to visit the agency office to complete the transaction.

Lastly, even though USDA and the agency have publicized and provided information in outreach materials, during stakeholder meetings, as well as agriculture-related meetings and symposiums, on the option to provide information electronically, applicants and borrowers still prefer going to the agency office to obtain forms and information on how to apply for loans and servicing than obtaining forms and information from the internet. Therefore, the agency estimates that less than one percent of responses will be provided through the internet.

As noted above, electronic signature authentication is currently limited to applicants and borrowers who have obtained and activated a USDA account with Level 2 access. Therefore, all third parties (including lenders and contractors) that provide information to the agency on behalf of the applicant or borrower do so in paper format, as they cannot submit information electronically nor is there the ability to provide all third parties with a USDA account with Level 2 access.

**4. Describe efforts to identify duplication. Show specifically why similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The final rule restructures the CFR parts pertaining to FLP. Existing CFR parts have been consolidated to remove duplicative requirements. Much of the remaining burden established in this regulation is required under the provisions of the Act which mandates specific actions be taken when making and servicing loans to direct FLP borrowers.

Agency personnel with expertise in making and servicing loans, have reviewed the information collections required under this CFR part for eliminating any duplication or unnecessary collections of information. The information contained in this collection is made part of the case file and, when reasonably current, may be used in lieu of re-submission by the applicant or borrower; however, financial information that is collected at another time may be dated and not useful for the specific action being considered. Various program areas within the agency share data; however, information collections established in this regulation would typically not be available from another agency. Therefore, the potential to share data is limited.

**5. Methods to minimize burden on small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods to minimize burden.**

The agency has made every effort to minimize burden on small businesses and small entities. The agency only requires collection of information when necessary to act on an applicant or borrower's request for assistance. The information required by this regulation is financial in nature and similar to that required to complete Federal tax returns, make business decisions or to obtain a loan from any commercial lender. Thus, it places no additional burden on small businesses above that required in the normal course of business.

**6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The agency is mandated to provide supervised credit; therefore, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property. The collection of information is required as a result of an applicant or borrower's specific request, is obtained on an as-needed basis, and is used to document the applicant or borrower's eligibility for the requested benefit, as well as to make feasibility determinations. Accurate decisions, when making a loan or servicing an account, largely depend on current financial information and actual history and the potential of the farming operation to carry out the purposes for which the loan was made. There is no regular reporting schedule related to the information collection requirements in this part. If the information were not collected, or collected less frequently, the agency would be unable to meet the Congressionally-mandated mission of its loan programs.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- a. Requiring respondents to report information more frequently than quarterly.  
There are no information collection requirements that require information more frequently than quarterly.

- b. Requiring written responses in less than 30 days. There are no information collection requirements that require written responses in less than 30 days.
- c. Requiring more than an original and two copies. There are no information collection requirements that require more than an original or single copy of a document.
- d. Requiring respondents to retain records for more than 3 years. There are no such requirements.
- e. No utilizing statistical sampling. There are no such requirements.
- f. Requiring the use of statistical sampling which has not been reviewed and approved by OMB. There are no such requirements.
- g. Requiring the pledge of confidentiality. There are no such requirements.
- h. Requiring submission of propriety trade secrets. There are no such requirements.

**8. Describe efforts to consult with persons outside the Agency to obtain their view on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on data elements to be recorded, disclosed, or reported.**

On February 9, 2004 (69 FR 6056-6121), the agency published a notice regarding its intention of requesting OMB approval to establish new information collections to correspond with the agency's new CFR structure. There were no comments received on the notice.

For this information collection the agency contacted commercial lenders' representatives and applicants and borrowers. Field office employees assisted the agency in identifying applicants and borrowers and assisted in reviewing the information collection instruments and the applicable instructions. All persons contacted reviewed draft information collection instruments and the instructions for their completion, and provided answers to the same survey questions.

Based on comments received from the commercial lenders' representatives, the agency determined that its practices, as provided in the final rule, closely correspond to commercial lenders' practices, especially as they pertain to production and financial records requirements. Commercial lenders do not enter into supervised bank account agreements with their borrowers as they do not have the requirement, and second, if the need arises to release loan proceeds in increments, there are alternatives available at their disposal. The commercial lenders' representatives attributed the differences between practices to statutory requirements the agency is required to adhere to and the agency's applicants, as to be eligible for agency loans, applicants must be denied credit from commercial lenders.

The applicants and borrowers the agency contacted stated that the information the agency requests is not excessive or intrusive. Even though these respondents understood the necessity, two expressed concern with the requirement that applicants and borrowers provide their Social Security Number to the agency to receive a loan or servicing. All applicants and borrowers contacted stated that where the information requested by the agency differs from the information commercial lenders require, the reasons for the difference are clear, as most of the agency's requests are based on statutory requirements.

Based on applicants and borrowers' input, the agency revised the estimated time for completing

FSA-2037 and FSA-2038, as some stated the time the agency estimated did not seem to be adequate, especially for first time applicants. Lastly, one respondent disagreed with the agency's decision to reduce the production and financial records requirement from five to three years. However, after the agency explained the reasons for the change, specifically the agency's desire to match commercial lenders' requirements, the respondent agreed. Therefore, the agency did not increase the records requirement in response to this comment.

The following provided input on the information collection for this docket.

Kevin Rime  
Farmer  
1535 49<sup>th</sup> Ave. NW  
Garrison, ND 58540  
701-337-5720

Richard Heikes  
Farmer  
88524 574<sup>th</sup> Ave.  
Hartington, NE 68739  
402 692-3260  
(Mark Moser, Farm Loan Manager, Wayne, NE, assisted in gathering input)

David Lovely  
Farmer  
316 E. Saginaw  
Breckenridge, MI 48615  
989 842-3191 Ext. 2426  
(Timothy Neuhardt, Farm Loan Manager, Ithaca, MI, assisted in gathering input)

Bryce Scrimsher  
Farmer  
50912 US Hwy 95  
Culdesac, ID 83524  
208 843-5002  
(Bardell Faux, Farm Loan Manager, Lewiston, ID, assisted in gathering input)

William Wamsley  
The Centreville National Bank of Maryland  
P.O. Box 400  
Centreville, MD 21617

Marty Desmond  
MidAtlantic Farm Credit  
1410 South State Street  
Dover, DE 19901  
302 734-7534

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There are no payments or gifts provided to respondents.

**10. Describe any assurance of confidentiality provided to the respondents and the basis for the assurance in statute, regulation, or Agency policy.**

Agency forms that serve as collection instruments contain a Privacy Act statement identifying circumstances under which the information collected may be released. This statement is based on the Privacy Act, the Freedom of Information Act and the FSA System of Records that has been published in the Federal Register. Agency policies, as well as a copy of the System of Records, are published in FSA handbooks 2-INFO and 3-INFO. No further assurance of confidentiality is provided to applicants or borrowers.

**11. Provide additional justification for any question of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

The information collected under this docket is of a financial nature. As a condition for the receipt of program benefits, applicants and borrows must provide total disclosure of income data and a history of their business dealings that is often considered sensitive. Regardless, the information is required to properly document the agency’s decision pertaining to loan making and servicing actions.

**12. Provide estimates of the hour burden of the collection of information.**

The estimate of hour burden of the information collections is as follows:

Total Number of Unduplicated Respondents	100,087
Reports Filed Per Person	2.6
Total Annual Responses	256,214
Total Annual Burden Hours	287,188
Average Burden Per Collection	1 hour 8 minutes
Per Respondent	2 hours 55 minutes

The estimate of annual cost for the information collections is as follows:

Respondent’s Cost Per Hour -	Farmers	\$19.09
	- Financial Institutions	\$28.53
	- Contractors	\$28.53

Total Annual Respondent Cost – Farmers	\$5,471,213
- Financial Institutions	\$3,794
- Contractors	\$12,953
- Total	\$5,487,960

Cost per hour for all respondents was derived from the U.S. Department of Labor’s Occupational Employment and Wages, May 2005, tables which are found at the Bureau of Labor Statistics website at <http://stats.bls.gov/oes>.

**13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.**

The regulation and associated information collections place no burden costs on respondents for capital, start-up, operation, maintenance, or the purchase of services.

**14. Provide estimates of annualized cost to the Federal Government.**

Agency employees review information provided by applicants, borrowers, and third parties and make feasibility determinations. The agency estimates that its employees spend 478,546 hours reviewing and processing the collections included in this docket.

Averaging the GS-9 through GS-12 salaries indicates an average employee salary of \$53,146 per year. Standard adjustments recommended by FSA’s Budget Division of 33.3% are added for benefits and miscellaneous expenses, for a total average cost for an FLP employee salary of \$70,844 per year, which divided by 2080 hours equals an hourly salary of \$34.05.

Therefore, the estimated annual cost to the Federal Government is  $478,546 \times \$34.05 = \$16,294,491$ .

Note: the agency utilized the County Office Workload and Funding Report, BU-533R, for FY 2006 to estimate the costs to the Federal Government.

**15. Explain the reason for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

The agency is publishing a final rule to consolidate several CFR subparts and to move FLP regulations from 7 CFR Chapter XVIII to 7 CFR Chapter VII. Therefore, the agency is requesting that a new OMB Control Number be assigned to this information collection, which includes collections applicable to FLP currently approved under control numbers 0575-0042, 0575-0093, and 0560-0154.

As a result of the information collection analysis completed for the final rule, the total burden hours for FLP were increased. In some cases the increase was due to changes in the number of respondents, responses per respondent, or response time. In other cases the increase was due to the addition of existing information collections that are currently unapproved. A detailed

explanation on the specific program changes and adjustments made to the information collection is included in the attached spreadsheet analysis.

**16. For collection of information whose results will be published, outline plans for the tabulation and publication.**

The information collections required under this regulation will not be tabulated or published.

**17. If seeking approval to not display the expiration date for the OMB approval of information collection, explain the reasons that display would be inappropriate.**

While agency forms are made available electronically at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov), hard copies of each form are also maintained in State and County Offices. Displaying the expiration date results in the need to dispose of existing supplies and reprinting of the form with the new expiration date each time the approval is renewed. This increases printing costs to the agency and results in the need to revise forms posted to the website.

**18. Explain each exception statement to the certification statement identified in Items 19 and 20 on OMB Form 83-I.**

There are no exceptions requested.

**19. Explain how this information collection relates to the Secretary of Agriculture's Service Center Implementation Team initiative.**

Agency employees collect the required information from the applicant or borrower. Information collected is program specific and would not be part of one-stop shopping, except for basic information dissemination between Service Center agencies. Employees utilize information already available at the Service Center and work directly with other FSA programs and USDA agencies to minimize the amount of information collected from applicants and borrowers. Information collected is stored at the Service Center.