

**United States Department of Agriculture
Farm Service Agency
Supporting Statement
OMB Control Number 0560-NEW
Conservation Loan Program
Direct Loan Servicing-Regular
7 CFR 765**

FSA is requesting an emergency approval to obtain OMB clearance for a new information collection on Conservation Loan Program (CL). This information collection will be incorporated into the existing approved information collection request of 0560-0236. FSA will be using the existing forms with no change from the ICR of 0560-0236.

This document supports the information collection requirements of the interim rule to be published as part of the Farm Service Agency's (FSA) effort to implement provisions under the Food, Conservation and Energy Act of 2008 (Farm Bill). Section 5002 of the 2008 Farm Bill (Public Law 110-246) authorizes the Secretary to make or guarantee qualified conservation loans to eligible farmers.

The interim rule is part of an effort by the Agency to comply with the 2008 Farm Bill. The Agency will incorporate new provisions of the Conservation Loan (CL) Program that include:

- CL loans will be made available to qualified farmers who intend to implement qualified conservation plans and other conservation projects.
- Eligibility applicants may obtain either direct or guarantee loan under the new provisions and be extended to persons who are beginning famers and socially disadvantage farmers.
- Amend current program requirements under 7 CFR Parts 765.
- Incorporate the new instructions into internal handbooks used by State and County Offices in administering agency conservation loan programs.
- Further, as required by Departmental guidance and the Freedom to E-File Act, agency handbooks and forms must be made available in electronic format.

In addition, the collected information is needed to evaluate an applicant's eligibility, determine the feasibility of the proposed operation and adequacy of the security being offered.

Consequently, FSA personnel will process these loans using existing FSA forms and regulations. The current direct loan procedures are published in 7 CFR part 765. The current guaranteed loan procedures are published in 7 CFR part 765. FSA will incorporate the new provisions into existing regulations after final publication of this interim rule.

Conservation loans will be funded using Natural Resources and Conservation Service (NRCS) allocations. Direct and Guarantee Farm Ownership (FO) loan allocation and funds will be

available for each state. Because FO funding is often very limited, and applications will be funded through NRCS appropriations, the agency believes the Conservation Loan Program will allow more farmers to receive loans to promote conservation and enhance conservation practices approved by NRCS.

This analysis includes collection instruments, and provides the information collection requirements contained in the proposed rule utilizing current program data and adjusted accordingly to accurately assess the burden it imposes on applicants, borrowers, as well as agency employees.

The information collection instruments included in this submission are in the interim stage because the Agency needs to obtain OMB's approval of the information collection and be assigned a new control number.

Justification

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

FSA's FLP Direct Loans, provides loans to family farmers to purchase real estate, equipment and finance agricultural production, promote soil and water conservation and protection. The regulation covered by this information collection package describes the policies and procedures the agency uses to provide supervised credit to FLP applicants requesting direct loan servicing assistance in accordance with the provisions of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1921 et seq.) (Pub. L. 87-128), as amended. Direct loan servicing information collection requirements include financial and production records of the operation, as well as information necessary to obtain liens on collateral, provide evidence of the indebtedness, and ensure repayment of the loan.

Authority to establish the regulatory requirements contained in 7 CFR 765 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.

FSA will adopt similar application requirements as direct loan servicing. However, some of the eligibility requirements for conservation loans will be waived under this interim rule. Exceptions

under the new Conservation Loan program for applicants who meet the LO-Doc requirements include; no test for credit, cash flow, historical performance, farm operating plan, year end analysis, graduation to other credit, or meet the definition of family size farmer.

Applicants who meet the eligibility requirements for direct loan servicing assistance will provide information to the local agency office serving the county in which their business is headquartered. The information is necessary to thoroughly evaluate the applicant's request for a direct loan and is used by agency officials to:

- Ensure that when loan funds are used to carry out qualified conservation projects.
- Ensure that a loan is adequately secured.
- Ensure the applicant meets the statutorily established program eligibility requirements.

The Agency estimates 50 percent of the farmers who apply for direct loan annually will meet the eligibility requirements for LO-Doc Conservation loan. For those applicants who do not meet the requirements the general nature of a loan from the agency is very similar to that of any commercial creditor. Legislation requires the agency to actively supervise these applicants and provide credit counseling, management advice, and financial guidance. Thus, the monitoring, reporting, evaluation, and consent requirements of this supervision increase the information collection burden on agency applicants above those imposed by commercial creditors.

The information collection requirements established in 7 CFR 765 are described below and on the attached form FSA-85-1, Reporting and Recordkeeping Requirements.

Direct Loan Servicing-Regular

FSA-2025 “Notification of Approval and Borrower Responsibilities” Revised

7 CFR 765.203(a) and 766.204

When the agency approves a borrower's request for transfer and assumption, the agency notifies the transferee of the approval by sending FSA-2025 which sets the terms and conditions the transaction will be completed. In addition, FSA-2025 notifies the transferee of the responsibilities to which agency borrowers are required to adhere. Further, when the agency approves a borrower's request for shared appreciation amortization, the agency notifies the borrower of the terms and conditions of the reamortization with FSA-2025. Under both circumstances, borrowers read and sign FSA-2025, even if they do not accept the agency's terms. The agency estimates that 13 transferees and 1 borrower requesting shared appreciation will read and sign FSA-2025 and it will take 20 minutes each.

FSA-2060 “Application for Partial Release, Subordination or Consent”

7 CFR 765.205 (a)(1); 7 CFR 765.206(a); 7 CFR 765.253; 7 CFR 765.351; 7 CFR 765.351(b) (1); 7 CFR 766.354

Borrowers must obtain agency consent before they enter into transactions affecting agency real estate and chattel security. Such transactions include, but are not limited to, sale or exchange of security, granting a right-of-way, granting junior liens, and cutting, removing, or leasing timber, gravel, oil, gas, coal or other minerals. Borrowers requesting subordination of the agency's lien to obtain credit from other sources must obtain the agency's consent. Further, borrowers who want to cease farming must request agency consent. Lastly, borrowers requesting to voluntarily convey or liquidate real estate security must request agency consent.

In all cases, borrowers complete FSA-2060. The agency reviews the information provided on FSA-2060 and if the request is in the agency's best financial interest, it approves it. The agency expects to receive 150 FSA-2060 forms annually, and the time to complete each is estimated to be 30 minutes. However, all parties that have executed the promissory note are required to sign FSA-2060; therefore, the number of signatures required is estimated to be 224 (92 individuals; 89 for joint operations; and 43 entity members are included in this number).

FSA-2425 “Canceling Undisbursed Loan Funds”

7 CFR 765.152(b)(7)

At the time of loan making the agency obligates the total amount of the loan requested. Under certain circumstances, such as when loan funds will be used to conduct construction or development, or buy security over a period of time, the borrower may not need to utilize all the funds obligated. In those circumstances, the borrower must request the undisbursed funds be refunded back to the loan for which the funds were obligated. The agency estimates that 12 borrowers will complete FSA-2425 per year, and the time to complete it is estimated at 10 minutes.

FSA-2476 “Transfer of Real Estate Security”

7 CFR 765.401(b)

Borrowers must request and obtain agency consent before selling or transferring security to another party. Borrowers and transferees are required to complete FSA-2476 that provides a record for the agreements reached between borrowers and transferees regarding the agency's real estate security. The agency estimates that 10 FSA-2476 forms will be completed every year and it will take 15 minutes for each borrower and 15 minutes for each transferee to complete, as the borrower and transferee have already come to an agreement on the terms and conditions of the transfer before they initiate completion of FSA-2476.

FSA-2489 “Assumption Agreement” Revised

7 CFR 765.401(a)(2)

The agency may approve a security transfer and the corresponding loan assumption to obligate a new borrower to repay an existing borrower's agency debt. The agency completes FSA-2489, which details the existing indebtedness, security, existing and new borrowers, and sets forth the amount, terms and conditions for the assumed debt. The new borrower must read and execute FSA-2489. By executing FSA-2489, the transferee becomes personally liable for the borrower's debt and assumes the full responsibilities and obligations of the debt transferred. The agency

estimates that 13 FSA-2489 forms will be executed per year and the estimated time to execute each is 20 minutes.

Non-form collections

Conditions for Consent to Junior Lien

7 CFR 765.206(b)(2)

Borrowers requesting agency consent to obtain a junior lien on property that serves as security for agency loans are required to provide a copy of the operating plan they submitted to the junior lienholder. The operating plan is needed for the agency to ensure that the borrower has the ability to make payments on the junior lien as well as on all agency loans. The agency estimates that 16 borrowers will provide a copy of the operating plan, and the time is estimated to be 10 minutes per response because the borrower has already completed the operating plan provided to the junior lienholder.

Junior Lienholder Agreement

7 CFR 765.206(b)(4)

If state law does not provide it, when a borrower obtains a loan that is secured by the same collateral as the agency loan, the junior lienholder must agree in writing not to foreclose on its security instrument before providing notification to the agency. The agency estimates that 16 borrowers per year obtain a junior lien. Therefore, the agency assumes that 16 junior lienholders will provide written agreements to the agency, and the time to complete each is estimated to be 10 minutes.

Request for Severance Agreement

7 CFR 765.207

Borrowers obtaining a loan from a commercial lender to purchase an item to be fixed to the real estate that serves as security for the agency's loan, may request the agency to provide a severance agreement, acknowledging that the item is not part of the real estate. Examples include irrigation equipment, dairy milking equipment, and silos. The agency estimates that 6 borrowers request severance agreements. The time to complete each is estimated to be 10 minutes. This is an existing, previously unapproved collection.

Request to Lease Security – Copy of Lease

7 CFR 765.251(c) and 7 CFR 765.252

Borrowers who want to lease real estate or minerals that serve as security for an agency loan, must request agency consent. In order for the agency to grant consent for real estate leases, the borrower must provide a copy of the lease, documenting that the term of consecutive leases does not exceed three years, or five years if the lessee is related to the borrower by blood or marriage, and the lease does not contain an option to purchase. Further, the borrower must be unable to graduate to commercial credit, and not be ineligible for benefits as a result of disqualification for Federal crop insurance fraud.

To obtain agency consent for mineral leases, borrowers must document that the lease will not adversely affect the agency's interest in the security. It is estimated that 8 borrowers per year will request agency consent to lease security, and the time to prepare it is estimated to be 20 minutes to provide a copy of the lease.

Request to Cease Operating Security – Copy of Lease

7 CFR 765.251(c) and 7 CFR 765.253

The agency's authorizing statute, its loan documents, as well as its regulations, require a borrower to operate the security acquired with agency loan funds. If borrowers cannot continue operating the security, they may request agency consent to cease operating it. To receive agency consent, borrowers must document that they will be actively involved in the continued management of the farm; the failure to operate the security is due to age or poor health; the failure to operate the security is for reasons beyond the borrower's control; and the borrower will resume operating the farm within three years. This is estimated to occur about 8 times per year and the time to complete the documentation required is estimated to be 30 minutes per response.

Borrower Request, Lienholder Consent, and Borrower Assignment to Use Timber, Gravel, Oil, Gas, Coal, or Mineral Proceeds

7 CFR 765.351(b)(2)

Borrowers for whom the agency has approved a request to sell timber, gravel, oil, gas, coal, or minerals serving as security for agency loans, must assign to the agency any compensation received for damages to the surface or the real estate security resulting from the exploration for or recovery of minerals. Any remaining funds, after the real estate has been repaired, must be remitted to lienholders in order of priority, or the borrower may request lienholders' consent to use proceeds for an authorized loan purpose. The agency estimates that 2 borrowers will request consent from 5 lienholders to use proceeds from the sale of timber, gravel, oil, gas, coal, or minerals for an authorized loan purpose. It is further estimated that both borrowers will assign compensation received for damages to the surface to the agency. The time for the borrower to complete the assignment to the agency and the request to the lienholder is estimated to be 25 minutes (15 minutes for the assignment to the agency and 10 minutes for lienholder consent), and 15 minutes for the lienholder to complete the consent. This is an existing collection.

Withdrawal of obligated party

7 CFR 765.406(b)(4)

A jointly liable individual can be released from liability if they provide documentation that includes a divorce decree (or similar), and document that the remaining liable party can pay the loan. This is estimated to occur 11 times a year and require the borrower to expend one half hour providing the necessary documentation.

Travel Time

The agency estimates that 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 194 hours of travel time.

Note: There is no travel time imposed on lenders or financial institutions providing information on behalf of the borrower.

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, providers of borrower training, etc.) 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.

Agency personnel with expertise in making loans, have reviewed the information collections required under this CFR part to eliminate any duplicative 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. 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 with other USDA agencies 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 relies on current information to carry out the business of the program as intended with this interim rule. Failure to collect information will result in insufficient data necessary to properly administer CL in a financially sound manner.

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 proprietary 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.

This is a new information collection package. The 60-day comment period will be incorporated into the interim rule.

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.

All information collected is treated as confidential. Agency policy prohibits the giving out of individual information. This information is handled according to the Privacy Act and Freedom of Information Act.

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 is of a financial nature. As a condition for the receipt of program benefits, respondents 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 FSA’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.....	274
Reports Filed Per Person.....	1.07
Total Annual Responses.....	286
Total Annual Burden Hours.....	306

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

Respondent’s Cost per Hour -	Farmers-Applicants	\$20.53
-	Business-Lenders/Agents	\$30.39
Total Annual Respondent Cost - Farmers.....	302 Hours x \$20.53 = \$ 6,200	
- Business.....	4 Hours x \$30.39 = <u>\$122.00</u>	
- Total	\$6,322.00	

Respondent cost per hour was derived by using U.S. Bureau of Labor Statistics Occupational Employment and Wages, May 2008, Table 11-9012-Farmers and Ranchers. The U.S. mean household income, as measured by the Bureau of Labor is \$42,710 annually or \$20.53 hourly.

Respondent cost per hour was derived by using U.S. Bureau of Labor Statistics Occupational Employment and Wages, May 2008, Table 13-2072-Loan Officers. The U.S. mean for loan officers income, as measured by the Bureau of Labor is \$63,210 annually or \$30.39 hourly.

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 the 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.

The estimated annualized cost to the Federal Government is: \$828,025.

Agency employees review information provided by sellers, buyers/applicants and third parties and make eligibility and feasibility determinations. The agency estimates that its employees spend 22,379 hours reviewing and processing the collections included in this docket.

Averaging the GS-9 through GS-12 (2010 RUS-Salary Table) salaries indicates an average employee salary of \$56,480 per year. Standard adjustments recommended by FSA's Budget Division of 33.3% are added for benefits and miscellaneous expenses (\$18,808), for a total average cost for a Farm Loan Program employee salary of \$75,288 per year, which divided by 2080 hours equals an hourly salary of \$36.19. (Rounded to \$37.00) <http://www.opm.gov/oca/10tables/pdf/RUS.pdf>

Note: The agency utilized the County Office Workload for FY 2007 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.

This is new information collection for the Conservation Loan Program.

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 available electronically at 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 forms with the new expiration date each time the approval is renewed. This increases printing costs for 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 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 borrowers. Information collected is stored at the Service Center.