

March 2021



Farm Service Agency **Electronic News Service**

# BULLETIN

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## Farm Service Agency Annual Policy Reminders

The Farm Service Agency (FSA) works hard to get information to you in a timely manner regarding our programs and policies. This news bulletin provides a list of important FSA annual policy reminders. Many of these reminders include important information that will assist you in maintaining federal farm program eligibility for your operation. Sending all program reminders in this one, nationally issued news bulletin places all of the annual reminders in one location providing a single reference on maintaining eligibility for USDA programs.

If you have any questions, please contact your local FSA office. You can find contact information at [Farmers.gov/service-center-locator](http://Farmers.gov/service-center-locator). For more information visit the FSA website [fsa.usda.gov](http://fsa.usda.gov) or ask a specific question online at [ask.usda.gov](http://ask.usda.gov).

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## Administrative Policy Reminders

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### Changing Bank Accounts

FSA program payments are issued electronically into your bank account. In order to make timely payments, you need to notify your FSA servicing office if you close your account or if your bank

information is changed for whatever reason (such as your financial institution merging or being purchased). Payments can be delayed if FSA is not notified of changes to account and bank routing numbers.

For some programs, payments are not made until the following year. For example, payments for crop year 2020 through the Agriculture Risk Coverage and Price Loss Coverage program aren't paid until 2021. If the bank account was closed due to the death of an individual or dissolution of an entity or partnership before the payment was issued, please notify your local FSA office as soon as possible to claim your payment.

## **Civil Rights/Discrimination Complaint Process**

As a participant or applicant for programs or activities operated or sponsored by USDA you have a right to be treated fairly. If you believe you have been discriminated against because of your race, color, national origin, gender, age, religion, disability, or marital or familial status, you may file a discrimination complaint. The complaint should be filed with the USDA Office of Civil Rights within 180 days of the date you became aware of the alleged discrimination. To file a complaint of discrimination, write U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington DC 20250-9410 or call 202-260-1026 (voice or TDD), USDA is an equal opportunity provider, employer and lender. A complaint must be filed within 180 calendar days from the date the complainant knew, or should have known, of the alleged discrimination.

## **Power of Attorney**

FSA has a power of attorney form available that enables persons and legal entities to designate another person to conduct business on behalf of the person or legal entity. If you are interested, please contact our office or any FSA office near you for more information. FSA's power of attorney form and provisions do not apply to farm loan programs.

## **Reasonable Accommodations**

Special accommodations will be made upon request for individuals with disabilities, vision impairment or hearing impairment. If accommodations are required, individuals should contact the county FSA office directly or by phone or Federal Relay Service at 1-800-877-8339.

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## **Farm Program Policy Reminders**

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### **Annual Review of Payment Eligibility for New Crop Year**

FSA and NRCS program applicants benefits are required to submit a completed CCC-902 (Farming Operation Plan) and CCC-941 Average Gross Income (AGI) Certification and Consent to Disclosure of Tax Information for FSA to determine the applicant's payment eligibility and establish the maximum payment limitation applicable to the program applicant.

Participants are not required to annually submit new CCC-902s for payment eligibility and payment limitation purposes unless a change in the farming operation occurs that may affect the previous determination of record. A valid CCC-902 filed by the participant is considered to be a continuous certification used for all payment eligibility and payment limitation determinations applicable for the program benefits requested.

Participants are responsible for ensuring that all CCC-902 and CCC-941 and related forms on file in the county office are updated, current, and correct. Participants are required to timely notify the county office of any changes in the farming operation that may affect the previous determination of record by filing a new or updated CCC-902 as applicable.

Changes that may require a NEW determination include, but are not limited to, a change of:

- Shares of a contract, which may reflect:
  - A land lease from cash rent to share rent
  - A land lease from share rent to cash rent (subject to the cash rent tenant rule)
  - A modification of a variable/fixed bushel-rent arrangement
- The size of the producer's farming operation by the addition or reduction of cropland that may affect the application of a cropland factor
- The structure of the farming operation, including any change to a member's share
- The contribution of farm inputs of capital, land, equipment, active personal labor, and/or active personal management
- Farming interests not previously disclosed on CCC-902 including the farming interests of a spouse or minor child
- Certifications of average AGI are required to be filed annually for participation in an annual USDA program. For multi-year conservation contracts and NRCS easements, a certification of AGI must be filed prior to approval of the contract or easement and is applicable for the duration of the contract period.

Participants are encouraged to file or review these forms within the deadlines established for each applicable program for which program benefits are being requested.

### **Payment Limitation**

Program payments may be limited by direct attribution to individuals or entities. A legal entity is defined as an entity created under Federal or State law that owns land or an agricultural commodity, product or livestock. Through direct attribution, payment limitation is based on the total payments received by a person or legal entity, both directly and indirectly. Qualifying spouses are eligible for a separate payment limitation.

Payments and benefits under certain FSA programs are subject to some or all of the following:

- payment limitation by direct attribution (including common attribution)
- payment limitation amounts for the applicable programs
- substantive change requirements when a farming operation adds persons, resulting in an increase in persons to which payment limitation applies
- actively engaged in farming requirements
- cash-rent tenant rule
- foreign person rule
- average AGI limitations
- programs subject to AGI limitation

No program benefits subject to payment eligibility and limitation will be provided until all required forms for the specific situation are provided and necessary payment eligibility and payment limitation determinations are made.

Payment eligibility and payment limitation determinations may be initiated by the County Committee or requested by the producer.

Statutory and Regulatory rules require persons and legal entities, provide the names and Tax Identification Numbers (TINs) for all persons and legal entities with an ownership interest in the farming operation to be eligible for payment.

Payment eligibility and payment limitation forms submitted by persons and legal entities are subject to spot check through FSA's end-of-year review process.

Persons or legal entities selected for end-of-year review must provide the County Committee with operating loan documents, income and expense ledgers, canceled checks for all expenditures, lease and purchase agreements, sales contracts, property tax statements, equipment listings, lease agreements, purchase contracts, documentation of who provided actual labor and management, employee time sheets or books, crop sales documents, warehouse ledgers, gin ledgers, corporate or entity papers, etc.

A finding that a person or legal entity is not actively engaged in farming results in the person or legal entity being ineligible for any payment or benefit subject to the actively engaged in farming rules.

Noncompliance with AGI provisions, either by exceeding the applicable limitation or failure to submit a certification and consent for disclosure statement, will result in payment ineligibility for all program benefits subject to AGI provisions. Program payments are reduced in an amount that is commensurate with the direct and indirect interest held by an ineligible person or legal entity in any legal entity, general partnership, or joint operation that receives benefits subject to the average AGI limitations.

If any changes occur that could affect an actively engaged in farming, cash-rent tenant, foreign person, or average Adjusted Gross Income (AGI) determination, producers must timely notify the County FSA Office by filing revised farm operating plans and/or supporting documentation, as applicable. Failure to timely notify the County Office may adversely affect payment eligibility.

## **Acreage Reporting**

Timely filing an accurate crop and acreage report by the acreage reporting date at your local FSA office can prevent the loss of benefits for a variety of programs.

Failed acreage is acreage that was timely planted with the intent to harvest, but because of disaster related conditions, the crop failed before it could be brought to harvest.

Prevented planting must be reported no later than 15 days after the final planting date. Annual acreage reports are required for most FSA programs. Annual crop reporting deadlines vary based on region, crop, perennial vs. annual crop type, Noninsured Crop Disaster Assistance Program (NAP) or non-NAP crop and fall or winter seeding. Consult your local FSA office for deadlines in your area.

## Change in Farming Operation

If you have bought or sold land, or if you have picked up or dropped rented land from your operation, make sure you report the changes to the office as soon as possible. You need to provide a copy of your deed or recorded land contract for purchased property. Failure to maintain accurate records with FSA on all land you have an interest in can lead to possible program ineligibility and penalties. Making the record changes now will save you time this spring. Update signature authorization when changes in the operation occur. Producers are reminded to contact the office if there is a change in operations on a farm so that records can be kept current and accurate.

## Controlled Substance

Program participants convicted under federal or state law of any planting, cultivating, growing, producing, harvesting or storing a controlled substance are ineligible for program payments and benefits. If convicted of one of these offenses, the program participant shall be ineligible during that crop year and the four succeeding crop years for price support loans, loan deficiency payments, market loan gains, storage payments, farm storage facility loans, Noninsured Crop Disaster Assistance Program payments or disaster payments.

Program participants convicted of any federal or state offense consisting of the distribution (trafficking) of a controlled substance, at the discretion of the court, may be determined ineligible for any or all program payments and benefits:

- for up to 5 years after the first conviction
- for up to 10 years after the second conviction
- permanently for a third or subsequent conviction

Program participants convicted of federal or state offense for the possession of a controlled substance shall be ineligible, at the discretion of the court, for any or all program benefits, as follows:

- up to 1 year upon the first conviction
- up to 5 years after a second or subsequent conviction

## Reconstitutions

To be effective for the current Fiscal Year (FY), farm combinations and farm divisions must be requested by **Aug. 1 of the FY**. A reconstitution is considered to be requested when all:

- of the required signatures are on form FSA-155
- other applicable documentation, such as proof of ownership, is submitted

## Farm Service Agency (FSA) and Risk Management Agency (RMA) to Prevent Fraud, Waste, and Abuse

FSA and RMA jointly support the prevention of fraud, waste and abuse of the Federal Crop Insurance Program. FSA has been, and will continue to, assist RMA and insurance providers by monitoring crop conditions throughout the growing season. FSA will continue to refer all suspected cases of fraud, waste and abuse directly to RMA. Producers can report suspected cases to the county office staff, the RMA office or the Office of the Inspector General.

## Foreign Buyers Notification

The Agricultural Foreign Investment Disclosure Act (AFIDA) requires all foreign owners of U.S. agricultural land to report their holdings to the Secretary of Agriculture. Foreign persons who have purchased or sold agricultural land in the county are required to report the transaction to FSA within 90 days of the closing. Failure to submit the [AFIDA form](#) could result in civil penalties of up to 25 percent of the fair market value of the property. County government offices, realtors, attorneys and others involved in real estate transactions are reminded to notify foreign investors of these reporting requirements. The data gained from these disclosures is used in the preparation of periodic reports to the President and Congress concerning the effect of such holdings upon family farms and rural communities. Click [here](#) for more information on AFIDA.

## Adjusted Gross Income Requirements

The average Adjusted Gross Income (AGI) limitation for FSA and NRCS administered programs is \$900,000. A person or legal entity, is eligible to receive, directly or indirectly, certain program payments or benefits if the average AGI of the person or legal entity (including the legal entity's members) is \$900,000 or less for the three taxable years preceding the most immediately preceding complete taxable year.

For more information on payment limitation and payment eligibility by program, contact your local FSA office or visit [FSA's payment eligibility website](#) for more details.

## Signature Policy

Using the correct signature when doing business with FSA can save time and prevent a delay in program benefits. The following are FSA signature guidelines:

- Married individuals must sign their given name.

Example—Mary Doe and John Doe are married. When signing FSA forms, each must use their given name, and may not sign with the name of their spouse. Mrs. Mary Doe may not sign documents as Mrs. John Doe.

- For a minor, FSA requires the minor's signature and one from the minor's parent.

Note, by signing a document with a minor, the parent is liable for actions of the minor and may be liable for refunds, liquidated damages, etc.

When signing on one's behalf the signature must agree with the name typed or printed on the form or be a variation that does not cause the name and signature to be in disagreement. Example - John W. Smith is on the form. The signature may be John W. Smith or J.W. Smith or J. Smith. Or Mary J. Smith may be signed as Mrs. Mary Joe Smith, M.J. Smith, Mary Smith, etc.

FAXED signatures will be accepted for certain forms and other documents provided the acceptable program forms are approved for FAXED signatures. Producers are responsible for the successful transmission and receipt of FAXED information.

Examples of documents not approved for FAXED signatures include:

- Promissory note
- Assignment of payment
- Joint payment authorization
- Acknowledgement of commodity certificate purchase

Spouses may sign documents on behalf of each other for FSA and CCC programs in which either has an interest, unless written notification denying a spouse this authority has been provided to the county office.

Spouses cannot sign on behalf of each other as an authorized signatory for partnerships, joint ventures, corporations or other similar entities. Likewise, a spouse cannot sign a document on behalf of the other in order to affirm the eligibility of oneself.

Any member of a general partnership can sign on behalf of the general partnership and bind all members unless the Articles of Partnership are more restrictive. Spouses may sign on behalf of each other's individual interest in a partnership, unless notification denying a spouse that authority is provided to the county office. Acceptable signatures for general partnerships, joint ventures, corporations, estates, and trusts must consist of an indicator "by" or "for" the individual's name, individual's name and capacity, or individual's name, capacity, and name of entity.

For additional clarification on proper signatures contact your local FSA office.

### **Conservation Reserve Program (CRP) - Annual Certification**

Before an annual rental payment can be issued, participants must certify to contract compliance using either the [FSA-578, Report of Acreage](#), or CCC-817U, Certification of Compliance for CRP.

### **Highly Erodible Land (HEL) and Wetland Conservation Compliance**

Landowners and operators are reminded that in order to receive payments from USDA, compliance with Highly Erodible Land (HEL) and Wetland Conservation (WC) provisions are required. Farmers with HEL determined soils are reminded of tillage, crop residue, and rotation requirements as specified per their conservation plan. Producers are to notify the USDA Farm Service Agency prior to breaking sod, clearing land (tree removal), and of any drainage projects (tiling, ditching, etc.) to ensure compliance. Failure to update certification of compliance, with [form AD-1026](#), triggering applicable HEL and/or wetland determinations, for any of these situations, can result in the loss of FSA farm program payments, FSA farm loans, NRCS program payments, and premium subsidy to Federal Crop Insurance administered by RMA.

### **Highly Erodible Land and Wetland Conservation Certification Must be Filed to Receive FSA Benefits**

The 2014 Farm Bill requires farmers to have a [Highly Erodible Land Conservation and Wetland Conservation Certification \(AD-1026\)](#) on file with their local Farm Service Agency (FSA) office in order to maintain eligibility for premium support on federal crop insurance.

Since enactment of the 1985 Farm Bill, eligibility for most commodity, disaster and conservation programs has been linked to compliance with the highly erodible land conservation and wetland conservation provisions. The 2014 Farm Bill continues the requirement that producers adhere to conservation compliance guidelines to be eligible for most programs administered by FSA and the Natural Resources Conservation Service (NRCS). This includes financial assistance from the

Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs, the Conservation Reserve Program (CRP), livestock disaster assistance programs, Marketing Assistance Loans (MALs) and most programs implemented by FSA. It also includes the Environmental Quality Incentives Program (EQIP), the Conservation Stewardship Program (CSP) and other conservation programs implemented by NRCS.

Producers certify to conservation compliance at FSA with form AD-1026. This is a continuous certification that only requires updates when changes occur. A producer will be ineligible for any premium support paid by Federal Crop Insurance Corporation on their policy or plan of insurance if they do not have a completed AD-1026 on file with FSA certifying compliance on or before the premium billing date for their policy or plan of insurance, unless otherwise exempted.

When a producer completes and submits the AD-1026 certification form, FSA and NRCS staff will review the associated farm records and outline any additional actions that may be required to meet the required conservation compliance provisions.

Form AD-1026 is available at USDA Service Centers and online at: [fsa.usda.gov](https://fsa.usda.gov). Please contact your local USDA Service Center for more information.

## **Marketing Assistance Loans and Loan Deficiency Payments**

The 2018 Farm Bill extends loan authority through 2023 for Marketing Assistance Loans (MALs) and Loan Deficiency Payments (LDPs) for wheat, corn, grain sorghum, barley, oats, upland cotton, extra-long staple cotton, long grain rice, medium grain rice, soybeans, other oilseeds (including sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe and sesame seed), dry peas, lentils, small chickpeas, large chickpeas, graded and non-graded wool, mohair, unshorn pelts, honey and peanuts.

To be eligible for a MAL or LDP, producers must comply with conservation and wetland protection requirements and submit an acreage report to account for all cropland on all farms. Additionally, they must have and retain beneficial interest in the commodity until the MAL is repaid or the Commodity Credit Corporation (CCC) takes title to the commodity while also meeting Adjusted Gross Income (AGI) limitations.

LDPs and marketing loan gains available now through 2023 are not subject to adjusted gross income and payment limitation, including actively engaged in farming and cash rent tenant provisions.

In addition to producer eligibility, the commodity must have been produced, mechanically harvested, or shorn from live animals by an eligible producer and be in storable condition. It also must be merchantable for food, feed or other uses, as determined by CCC. Nonrecourse MALs must meet specific CCC minimum grade and quality standards.

Recourse marketing assistance loans are also available for commodities that may be of lower quality due to an element such as high moisture, commodities harvested as other than grain, seed cotton in module form, or for contaminated commodities that are still within merchantable levels of tolerance. Recourse MALs can only be repaid at principal plus accrued interest.

If beneficial interest in the commodity is lost, the commodity loses eligibility for a MAL or LDP and remains ineligible even if the producer later regains beneficial interest. To retain beneficial interest,



the producer must have control and title to the commodity. The producer must be able to make all decisions affecting the commodity including movement, sale and the request for a MAL or LDP. The producer must not have sold or delivered the commodity or warehouse receipt to the buyer.

Producers are responsible for any loss in quantity or quality of commodities pledged as collateral for a farm-stored or warehouse stored loan. CCC will not assume any loss in quantity or quality of the loan collateral regardless of storage location.

The 2018 Farm Bill sets national loan rates. County and regional loan rates are based on each commodity's national loan rate, and they vary by county or region and are based on the average prices and production of the county or region where the commodity is stored.

For all loan-eligible commodities, pledged for a non-recourse loan, except extra-long staple (ELS) cotton, a producer may repay a MAL any time during the loan period at the lesser of the loan rate plus accrued interest and other charges or an alternative loan repayment rate as determined by CCC.

Producers may obtain MALs or receive LDPs on all or part of their eligible production anytime during the loan availability period. The loan availability period runs from when the commodity is normally harvested (or sheared for wool) until specified dates in the following calendar year.

Visit the Farm Service Agency (FSA) website for [posted loan rates](#).

### **Program Incentives for Underserved Producers**

The USDA Farm Service Agency (FSA) reminds producers that FSA offers support to beginning farmers and ranchers, targeted underserved farmers and ranchers, and military veteran farmers and ranchers through program incentives in existing farm programs.

Targeted underserved farmers and ranchers are defined as a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of the group without regard to their individual qualities. For farm program purposes, this category includes African Americans, American Indians and Alaskan Natives, and Hispanics and Asians and Pacific Islanders. Farm program provisions for women producers vary from program to program.

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## **Farm Loan Policy Reminder**

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### **Loans for Targeted Underserved Producers**

The USDA Farm Service Agency (FSA) reminds producers that FSA offers targeted farm ownership and farm operating loans to assist underserved applicants as well as beginning farmers and ranchers.

USDA defines underserved applicants as a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of the group without regard to their individual qualities. For farm loan programs purposes, targeted underserved groups are women, African Americans, American Indians and Alaskan Natives, Hispanics and Asians and Pacific Islanders.

Underserved or beginning farmers and ranchers who cannot obtain credit from a commercial lender can apply for either FSA direct loans or guaranteed loans. Direct loans are made to applicants by FSA. Guaranteed loans are made by lending institutions who arrange for FSA to guarantee the loan. FSA can guarantee up to 95 percent of the loss of principal and interest on a loan. The FSA guarantee allows lenders to make agricultural credit available to producers who do not meet the lender's normal underwriting criteria.

The direct and guaranteed loan program provides for two types of loans: farm ownership loans and farm operating loans. In addition to customary farm operating and ownership loans, FSA now offers microloans through the direct loan program. The focus of microloans is on the financing needs of small, beginning farmer, niche and non-traditional farm operations. Microloans are available for both ownership and operating finance needs. Visit FSA online for more information on [microloans](#).

To qualify as a beginning farmer, the individual or entity must meet the eligibility requirements outlined for direct or guaranteed loans. Additionally, individuals and all entity members must have operated a farm for less than 10 years. Applicants must materially or substantially participate in the operation.

Visit [FSA's farm loan programs website](#) for more information on loans and targeted underserved and beginning farmer guidelines.

## **Farm Loan Programs Guide and Compass**

FSA offers online resources that can help producers understand our programs.

The [Your Guide to FSA Farm Loans](#) guidebook simplifies information on the types of farm loans available; how to apply for a guaranteed loan, direct loan, or land contract guarantee; what you can expect once you submit your application; and most importantly, your rights and responsibilities as an FSA customer.

The [Your FSA Farm Loan Compass](#) guidebook simplifies information regarding the responsibilities of FSA loan borrowers and the loan servicing options available to them.

Spanish language versions of the [Your Guide to FSA Farm Loans](#) and [Your FSA Farm Loan Compass](#) guidebooks are available as well.

## **Disaster Set-Aside (DSA) Program**

FSA borrowers with farms located in designated primary or contiguous disaster areas who are unable to make their scheduled FSA loan payments should consider the Disaster Set-Aside (DSA) program.

DSA is available to producers who suffered losses as a result of a natural disaster\* and is intended to relieve immediate and temporary financial stress. FSA is authorized to consider setting aside the portion of a payment/s needed for the operation to continue on a viable scale.

Borrowers must have at least two years left on the term of their loan in order to qualify.

Borrowers have eight months from the date of the disaster designation to submit a complete application. The application must include a written request for DSA signed by all parties liable for

the debt along with production records and financial history for the operating year in which the disaster occurred. FSA may request additional information from the borrower in order to determine eligibility.

All farm loans must be current or less than 90 days past due at the time the DSA application is complete. Borrowers may not set aside more than one installment on each loan.

The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

**\*Note:** *Beginning in March 2020 and continuing through September 1, 2021, FSA will accept applications for Disaster Set-Aside for impacted borrowers based on the Presidentially Declared COVID-19 Emergency.*

For more USDA disaster assistance program information, visit [farmers.gov/recover](https://farmers.gov/recover) and download the [USDA Disaster Assistance Programs At A Glance brochure](#).

## **Farm Loan Graduation Reminder**

FSA Direct Loans are considered a temporary source of credit that is available to producers who do not meet normal underwriting criteria for commercial banks.

FSA periodically conducts Direct Loan graduation reviews to determine a borrower's ability to graduate to commercial credit. If the borrower's financial condition has improved to a point where they can refinance their debt with commercial credit, they will be asked to obtain other financing and partially or fully pay off their FSA debt.

By the end of a producer's operating cycle, the Agency will send a letter requesting a current balance sheet, actual financial performance and a projected farm budget. The borrower has 30 days to return the required financial documents. This information will be used to evaluate the borrower's potential for refinancing to commercial credit.

If a borrower meets local underwriting criteria, FSA will send the borrower's name, loan type, balance sheet and projected cash flow to commercial lenders. The borrower will be notified when loan information is sent to local lenders.

If any lenders are interested in refinancing the borrower's loan, FSA will send the borrower a letter with a list of lenders that are interested in refinancing the loan. The borrower must contact the lenders and complete an application for commercial credit within 30 calendar days.

If a commercial lender rejects the borrower, the borrower must obtain written evidence that specifies the reasons for rejection and submit to their local FSA farm loan office.

If a borrower fails to provide the requested financial information or to graduate, FSA will notify the borrower of noncompliance, FSA's intent to accelerate the loan, and appeal rights.

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## Questions?

Please contact your local [FSA Office](#).

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USDA is an equal opportunity provider, employer and lender. To file a complaint of discrimination, write: USDA, Office of the Assistant Secretary for Civil Rights, Office of Adjudication, 1400 Independence Ave., SW, Washington, DC 20250-9410 or call (866) 632-9992 (Toll-free Customer Service), (800) 877-8339 (Local or Federal relay), (866) 377-8642 (Relay voice users).

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