

# Memorandum



|  |   |
|--|---|
| Subject  | Date  |
| Proposed Bankruptcy Plan Language for<br>Farm Service Agency (FSA) | January 11, 2010                              |
| To   | From  |
| SD Bankruptcy Bar  | AUSA Stephanie Bengford<br>AUSA Cheryl Dupris |

Below are suggestions regarding standard plan language for treatment of the Farm Service Agency (FSA). This memo is provided for you to consider issues which could arise relating to the treatment of the FSA in your bankruptcy plan. The FSA will evaluate the facts of each case when determining whether to file objections to a bankruptcy plan.

## **ITEMS TO CONSIDER INCLUDING:**

### **1. General Language acknowledging FSA's Claim:**

FSA filed a proof of claim showing an allowed claim in the amount of \$[add amount], consisting of a secured claim in the amount of \$[add amount] and an unsecured claim in the amount of \$ [add amount].

Debtor(s) [assume(s)/reject(s)] the following farm program contracts which Debtor(s) [have/has] with FSA: [list contracts].

### **2. General Language as to FSA's Secured Claim:**

Farm Service Agency (FSA) has a security interest in the following [personal/real property]:

#### Personal Property

[Example - Chattel including livestock, equipment, machinery, and crops [specify which crops] via security agreement(s) dated [add dates]

#### Real Property

[include description of real property] via mortgage(s) dated [add dates] and filed of record at [add filing information]

Debtor(s) shall make the following payments yearly to FSA during the Plan, with the first payment to be made on [add annual payment due date]:

| <u>Amount</u> | <u>Interest Rate</u>                             | <u>Term (years)</u> | <u>Annual Payment Due</u> |
|---------------|--|---------------------|---------------------------|
|               | [contact counsel<br>for FSA for current<br>rate] |                     |                           |

The first payment under the Plan will be paid on the annual payment due date designated above. Subsequent payments will be made each year on the [specify annual payment due date]. The claim is all due and payable by [add date to be paid in full by] date. If Debtor(s) make(s) a late payment, additional interest will accrue.

Farm Service Agency's [lien(s)/security interest] will remain until the secured claim plus interest is paid in full. If the secured claim is paid in full prior to completion of the Plan, FSA's lien is not required to be released until Debtor('s)(s') Plan is discharged should FSA also have an unsecured claim as part of the bankruptcy. FSA is allowed to file any necessary documents during the pending bankruptcy to maintain its presently perfected security interest/lien(s).

Debtor(s) shall continue to cooperate and comply with all FSA administrative loan servicing requirements and the terms of all notes, security agreements, loan documents, and agreements between the Debtor(s) and FSA; during the bankruptcy Plan and thereafter, the Debtor('s)(s') loan(s) with FSA shall continue to be serviced according to these provisions. The provisions shall include, but are not limited to, allowing inspections of security; reporting of sales as to any secured chattel and losses of any secured chattel, including death losses of livestock; executing FSA Forms, UCC-1s, financial statements, security agreements, et cetera; allowing for the right of set off pursuant to 11 U.S.C. § 553 and 31 U.S.C. § 3716; and any other FSA requirements which are required of Debtor(s) pursuant to FSA regulations or applicable statutes whether for the purpose of requesting subordinations, purchasing or disposing of security, or for any other purpose, to the extent that such FSA requirements and agreements are not in conflict with the Debtor('s)(s') confirmed bankruptcy Plan.

### **3. General Language as to FSA's Unsecured Claim:**

The unsecured claim of Farm Service Agency (FSA) will be paid pursuant to the terms of paragraph [add number] of the bankruptcy Plan. Any unsecured debt remaining after discharge will be discharged pursuant to the Bankruptcy Code.

[This paragraph is not required again if Debtor also has a secured claim.]  
Debtor(s) shall continue to cooperate and comply with all FSA administrative loan servicing requirements and the terms of all notes, security agreements, loan

documents, and agreements between the Debtor(s) and FSA; during the bankruptcy Plan and thereafter, the Debtor('s)(s') loan(s) with FSA shall continue to be serviced according to these provisions. The provisions shall include, but are not limited to, allowing inspections of security; reporting of sales as to any secured chattel and losses of any secured chattel, including death losses of livestock; executing FSA Forms, UCC-1s, financial statements, security agreements, et cetera; allowing for the right of set off pursuant to 11 U.S.C. § 553 and 31 U.S.C. § 3716; and any other FSA requirements which are required of Debtor(s) pursuant to FSA regulations or applicable statutes whether for the purpose of requesting subordinations, purchasing or disposing of security, or for any other purpose, to the extent that such FSA requirements and agreements are not in conflict with the Debtor('s)(s') confirmed bankruptcy Plan.