

**Solely New Funds/Excluded Debt Home Quarter Protection (HQP)
Class Exclusion Order**

This Order is amended by the Order of the FLSB on August 16, 2017

Whereas Section 44, subsection (12) of *The Saskatchewan Farm Security Act*, R.S.S. 1988, provides in part as follows:

“(12) Subject to subsection (13), the Board may make orders excluding any mortgage or class of mortgages from the operation of this section where, in the opinion of the Board, it is in the best interests of the farmer.”

And whereas the Board is of the opinion that it is in the best interests of farmers that the attributes of the Solely New Funds HQP class exclusion order, and the Readvance on HQP Excluded Mortgages class exclusion order, be combined and apply to both existing HQP excluded mortgages and to new mortgages.

THE FARM LAND SECURITY BOARD THEREFORE ORDERS this 1st day of January, A.D. 2014, pursuant to subsection 44(12) of *The Saskatchewan Farm Security Act* (the Act), that a class of mortgages known as “Solely New Funds/Excluded Debt Mortgages” be excluded from the operation of Section 44 of the Act.

A Solely New Funds/Excluded Debt Mortgage is either:

- a) a mortgage to secure a “solely new funds” advance; or,
- b) a mortgage to secure a “solely new funds” advance together with HQP excluded mortgage debt owed to the subject mortgagee.

The following conditions apply:

- 1) the “solely new funds” advance is not to pay out or refinance non-excluded debt owed to the mortgagee or its affiliates, and subject to 2);
- 2) at the sole discretion of the farmer, funds advanced under a revolving credit loan secured to the mortgagee, may be used to pay regularly scheduled loan payments with the mortgagee or its affiliates, excluding prepayments greater than the next regularly scheduled payment, demand payments, and end of term payments. There is no obligation on the mortgagee to monitor the use of the funds and inadvertence by the mortgagee in accepting payments by the farmer contrary to the terms of the Order will not affect the application, enforceability and integrity of the Order;
- 3) the mortgagee is a recognized financial institution as defined in Part I of the Act;
- 4) the homestead secured under the mortgage is registered in the name of the borrower or is being acquired by the borrower with the subject advance;
- 5) at the time the new advance is given, the homestead mortgagor, the homestead mortgagor’s spouse, and the mortgagee jointly or separately execute the two **Solely New Funds/Excluded Debt Mortgage Statutory Declarations** prescribed by the Farm Land Security Board.



Witness


Board Chairperson



**Solely New Funds / Excluded Debt Home Quarter Protection (HQP)
Class Exclusion Order (August 16, 2017)
STATUTORY DECLARATION - CREDITOR**

I, _____, representing _____
(Mortgagee representative) *(Name of financial institution)*

do solemnly declare to have personal knowledge of the statements made herein concerning the following mortgage:

Name(s) of Homestead mortgagor(s): _____
Mortgage amount: _____
Mortgage date (dd-mmm-yyyy): _____
Legal land description(s)
of homestead(s) subject to mortgage: _____
Mortgage Amended amount, if applicable: _____
Mortgage Amendment date, if applicable: _____

I do solemnly declare that:

- A. the mortgage is solely to secure new funds or is solely to secure new funds together with mortgage debt excluded from Home Quarter Protection (HQP) by:
 - Section 44 (12.3) of *The Saskatchewan Farm Security Act* (solely to purchase or make improvements to the homestead);
 - a Farm Land Security Board issued HQP Exclusion Order;
 - a Farm Land Security Board HQP Class Exclusion Order;
- B. no debt or other obligation now being secured pursuant to the terms of the mortgage is debt owed to the mortgagee or its affiliates, excepting HQP excluded debt;
- C. no debt was improperly added to the HQP excluded mortgage after it was excluded from HQP;
- D. I understand advances under a revolving credit loan secured to the mortgage:
 - 1) may, at the sole discretion of the farmer, be used to pay regularly scheduled loan payments with the mortgagee or its affiliates;
 - 2) are not to be used for prepayments greater than the next regularly scheduled payment, payment of principal outstanding at the end of term, or for demand payments with the mortgagee or its affiliates. However, there is no obligation that the mortgagee monitor the revolving credit funds advances; and inadvertence by the mortgagee in accepting payments made by the farmer which are contrary to the terms of the Solely New Funds/Excluded Debt HQP Class Exclusion Order (August 16, 2017) will not affect the application, enforceability or integrity of the Order;

- E. the mortgagee is a recognized financial institution as defined in Part I of the Act;
- F. the homestead secured under the mortgage is registered in the name of the borrower or is being acquired by the borrower with the subject advance.

I make this solemn declaration for the purposes of establishing the mortgagee’s understanding and agreement that by signing this declaration the noted mortgage will be subject to the Solely New Funds/Excluded Debt HQP Class Exclusion Order (August 16, 2017). I make this solemn declaration conscientiously believing all the statements herein to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the _____)
)
 of _____, in the Province)
)
 of Saskatchewan, this _____ day)
)
 of _____, 2____.)

(Mortgagee representative signature)

 A COMMISSIONER FOR OATHS for Saskatchewan.
 My appointment expires: _____

NOTE: It is an offence under the Criminal Code of Canada to make a statement by solemn declaration knowing that the statement is false.

**Solely New Funds / Excluded Debt Home Quarter Protection (HQP)
Class Exclusion Order (August 16, 2017)
STATUTORY DECLARATION - FARMER**

I/We, the homestead mortgagor(s)¹ and non-mortgaging spouse(s)² identified below, of _____ do solemnly declare to have personal knowledge of the statements made herein concerning the following mortgage given to _____:

(Town or city) *(Name of financial institution/mortgagee)*

¹ Name(s) of Homestead mortgagor(s): _____

² Name(s) of non-mortgaging spouse(s): _____

Mortgage amount: _____

Mortgage date (dd-mmm-yyyy): _____

Legal land description(s)
of homestead(s) subject to mortgage: _____

Mortgage Amended amount, if applicable: _____

Mortgage Amendment date, if applicable: _____

I/We do solemnly declare that:

- A. the mortgage is solely to secure new funds or is solely to secure new funds together with mortgage debt excluded from Home Quarter Protection (HQP) by:
 - Section 44 (12.3) of *The Saskatchewan Farm Security Act* (solely to purchase or make improvements to the homestead);
 - a Farm Land Security Board issued HQP Exclusion Order;
 - a Farm Land Security Board HQP Class Exclusion Order;
- B. no debt or other obligation now being secured pursuant to the terms of the mortgage is debt owed to the mortgagee or its affiliates, excepting HQP excluded debt;

I/We understand and agree that:

- C. advances under a revolving credit loan secured to the mortgage:
 - 1) may, at the sole discretion of the farmer, be used to pay regularly scheduled loan payments with the mortgagee or its affiliates;
 - 2) will **not** be used for prepayments greater than the next regularly scheduled payment, payment of principal outstanding at the end of term, or for demand payments with the mortgagee or its affiliates;
- D. payments made at the sole discretion of the farmer that are disallowed by clause C above will not affect the enforceability or integrity of the Solely New Funds/Excluded Debt HQP Class Exclusion Order (August 16, 2017).

- E. the mortgagee has no obligation to monitor the use of revolving credit funds, and inadvertence by the mortgagee in accepting payments made by the farmer which are contrary to the terms of the Solely New Funds/Excluded Debt HQP Class Exclusion Order (December 10, 2015), will not affect the application, enforceability or integrity of the Order. The mortgagee has the right to, but not the obligation to, reverse any disallowed payment.

I/We make this solemn declaration for the purposes of establishing our understanding and agreement that by signing this declaration the noted mortgage will be subject to the Solely New Funds/Excluded Debt HQP Class Exclusion Order (August 16, 2017) and will thereby be excluded from Home Quarter Protection. I/We make this solemn declaration conscientiously believing all the statements herein to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the _____)	_____
of _____, in the Province)	(Homestead mortgagor or non-mortgaging spouse)
of Saskatchewan, this _____ day)	_____
of _____, 2 _____.)	(Homestead mortgagor or non-mortgaging spouse)
)	_____
)	(Homestead mortgagor or non-mortgaging spouse)

 A Commissioner for Oaths for Saskatchewan
 My appointment expires: _____

NOTE: It is an offence under the *Criminal Code of Canada* to make a statement by solemn declaration knowing that the statement is false.

**Home Quarter Protection (HQP) Solely New Funds/Excluded Debt (SNF/ED)
Class Exclusion Order
Decision Guide for Users – August 16, 2017**

The Solely New Funds¹/Excluded Debt² Order permits the following:

- SNF loans to be secured by a new home quarter mortgage; or
- SNF loans to be secured to an existing mortgage that is excluded from HQP; or
- SNF debt and HQP excluded mortgage debt to be secured by a new mortgage.

The prescribed/accompanying statutory declarations replace the requirement to apply to the Farm Land Security Board (Board) to exclude the mortgage from HQP. A co-application to the Board is **not** required.

The following is provided as a Solely New Funds/Excluded Debt Class Exclusion Order **decision guide**.

Step 1. Solely New Funds Definition - Ensure the following applies:

- New lending from the mortgage creditor, including loans to refinance debt with any non-affiliated creditor;
- New revolving credit loans with the following conditions:
 - (1) at the sole direction of the farmer, SNF funds advances from the revolving credit loan may pay regularly scheduled loan payments with the mortgagee or its affiliates;
 - (2) SNF's advanced under the revolving credit loan may **not** be used for prepayments greater than the next regularly scheduled payment, payment of principal outstanding at the end of term, or demand payments by the mortgagee or its affiliates.

SNF loans, advances, credit, etc. cannot include any debt owed to the mortgagee or its affiliates except as stated in (1) and (2) above.

Step 2. Excluded Debt Definition (categories):

- HQP excluded mortgage debt must fit one of the following categories.
 - (1) The debt was solely to purchase and/or improve the homestead. Section 44(12.3) of the Act applies.
 - (2) The mortgage was executed prior to June 24, 1988 and is subject to a Provincial Mediation Board exclusion order. Section 44(12.3) of the Act applies.
 - (3) The farm land became a homestead after the mortgage was given. Sections 44(15 to 17) of the Act apply.
 - (4) The mortgage was excluded from HQP by the FLSB.
 - (5) The mortgage is subject to a HQP class exclusion order.

If the existing mortgage fits one of the above categories, obtain a copy of the Order/Class Exclusion Order and any respective statutory declaration(s), or document how the mortgage fits category 1 or 3.

Non-excluded debt: If the new loan includes any existing debt to the mortgagee or its affiliates which is not excluded from HQP, make an application to the Board.

¹ See Step 1 for a definition of SNF.

² See Step 2 for a definition of Excluded Debt

Step 3. Ensure no debt was added to the mortgage after it was excluded from HQP:

- For a mortgage made solely to purchase or improve the homestead, ensure the mortgage continues to secure only the purchase and/or improvement loan(s).
- For mortgages executed prior to June 24, 1988, which include a homestead, ensure no debt was added to the mortgage without obtaining a new HQP exclusion order.
- If the mortgaged land became a homestead after the mortgage was given, ensure no debt was added after the homestead existed, without obtaining an HQP exclusion order.
- For mortgages subject to a Board issued exclusion order, ensure no debt was added to the mortgage after the order issued.
- In cases where a mortgage is subject to the “HQP Class Exclusion Order for Mortgages Made to Purchase Farmland Including a Homestead”, ensure the mortgage only secures the original purchase loan.
- In cases where any other class exclusion order was relied upon, ensure no debt was added to the mortgage after the applicable statutory declaration was signed.

Step 4. Qualify the Creditor:

- The mortgage creditor must be a recognized financial institution as defined in Part I, Section 2(1)(w) of *The Saskatchewan Farm Security Act*.

Step 5. Qualify the Homestead:

- The homestead secured under the mortgage must be:
 - registered in the name of the **borrower** or being acquired by the borrower with the solely new funds advance
 - A homestead mortgage in support of a third party loan guarantee **does not qualify** for the Solely New Funds/Excluded Debt class exclusion order. This scenario must come to the Board.
e.g.; A SNF loan to a farm company guaranteed by a homestead titled in the shareholder’s personal names must come to the Board.

Step 6. Execute the two SNF/Excluded Debt Statutory Declarations:

- The SNF/Excluded Debt statutory declarations replace the requirement for a co-application to the Board. These statutory declarations become an important piece of the creditor’s loan security documentation.
- **The creditor must be able to produce the SNF/Excluded Debt Statutory Declarations to convince the court the mortgage is not subject to HQP.**
- All homestead mortgagors and their spouses must execute the “Farmer” SNF/Excluded Debt Statutory Declaration.
- The creditor must execute the “Creditor” SNF/Excluded Debt Statutory Declaration.
- Statutory declarations must be signed at the time the new SNF loan is given.
- All homestead mortgagors and spouses do not have to sign the statutory declaration at the same time and place.
- **Do not send** a copy of the SNF/Excluded Debt Statutory Declaration to the Board.

Step 7. Mortgage Amending Agreements (MAA):

- If a MAA is not involved, strike out this section.
- State the date the MAA was signed.
- State the amount the amended mortgage secures. If the amount remains the same as the original mortgage state the original mortgage amount.

An application for a Board-issued exclusion order is required whenever:

- The new loan does not qualify as a SNF loan.
- Debt was improperly added to a HQ mortgage.
- The existing HQP excluded mortgage did not truly qualify for its exclusion order.
- The creditor is **not** a recognized financial institution as defined in Part I of the Act.
- The HQ mortgagor is not the borrower.

A new application will allow the Board to consider both the existing mortgage debt and the new SNF loan. The fact the creditor is prepared to lend new money is persuasive to the Board issuing a new Order.