

FLP loans bought out. These notes will be marked "Satisfied at Current Market Value" and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing real estate debts written down in full or written off as a result of Primary Servicing will be returned to the debtor at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a market value buyout, the original and copies of the notes will be marked "Satisfied by Approved Current Market Value Buyout." For writedown in full, the original and copies of the notes will be marked "Satisfied by Approved Debt Writedown." If a note is only partially written-down, it will be returned to the debtor when paid in full. The original and copies of such notes will be marked "Satisfied by Approved Partial Writedown." Original chattel security notes will be marked "Satisfied at Current Market Value" and released to the debtor upon payment of their current market value in a buyout.

[62 FR 10124, Mar. 5, 1997]

§ 1951.910 Consideration of borrower's other assets for new applications.

If a delinquent borrower has other assets that are not serving as collateral for the FLP debt, the servicing official will determine whether these assets are nonessential, as defined in § 1951.906 of this subpart.

(a) *Nonessential assets.* The net recovery value (NRV) of nonessential assets must be considered when the borrower's application is processed for loan servicing in accordance with this subpart. The Agency will not write down or write off any debt or portion of a debt that could be paid by liquidation of nonessential assets, or by payment of the loan value of the assets that could be received from non-Agency sources. The loan value of the assets will be considered as the same as the NRV of the assets.

(1) *Determining the value of nonessential assets.* The NRV of the nonessential assets is the market value less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising

costs. The determination of NRV of nonessential assets does not include a deduction for carrying the property in inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440-21, "Appraisal of Chattel Property," for chattels. Borrowers who disagree with the Agency's appraisal may request a negotiated appraisal or appeal in accordance with § 1951.909(i) of this subpart.

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FLP account current, the borrower is not eligible for primary loan servicing including buyout in accordance with this subpart. The borrower, instead, will be sent attachments 5-A and 6-A of exhibit A of this subpart. The servicing official will indicate the values of both the NRV of nonessential assets and the FLP security on attachment 5-A. The borrower's nonessential assets and their NRVs also will be listed on attachment 5-A. The borrower will have 90 days to bring the FLP account current from the date of the receipt of attachments 5-A and 6-A. If the borrower does not pay current within this time period, the account will be accelerated after all appeal rights have been exhausted. If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the nonessential assets will be considered as set out in paragraph (a)(3) of this section.

(3) *Inclusion in NRV.* If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the servicing official will add the NRV of these assets to the NRV of the FLP collateral according to § 1951.909(f) of this subpart. The servicing official will encourage, but not require the borrower to liquidate those nonessential assets and apply the proceeds to his/her outstanding debts. If the borrower liquidates the nonessential assets, or obtains a loan against the equity in such assets, and pays the Agency the NRV of the nonessential assets within 45 days of receiving exhibit E or F of this subpart, as appropriate, the payment will be subtracted from the FLP debt and then the servicing official will

recalculate the debt restructuring without considering the NRV of the nonessential assets. If the borrower does not sell these assets, the servicing official will include their NRV in calculating the debt restructuring and take a lien on the assets at the time of closing the restructured loan.

(b) *Lien on certain assets.* Delinquent borrowers must pledge certain assets, essential and nonessential, unencumbered to the Agency as security at the time FLP loans are restructured, as follows:

(1) The best lien obtainable will be taken on all assets owned by the borrower. When the borrower is an entity, the best lien obtainable will be taken on all assets owned by the entity, and all assets owned by all members of the entity. Different lien positions on real estate are considered separate and identifiable collateral.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 of this chapter apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructuring. The Agency's lien will be taken only at the time of closing the restructured FLP loans.

[62 FR 10132, Mar. 5, 1997]

§ 1951.911 Homestead protection.

(a) *General.* If the Agency has only chattel property as security, preservation servicing will not be offered. Borrowers who submitted a complete ap-

plication prior to April 4, 1996 will be considered for leaseback/buyback in accordance with the previous CFR volume containing revisions as of January 1, 1996 and Agency procedures, (available in any county office.) Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over that reservation should be handled in accordance with § 1955.66(d) of subpart A of part 1955 of this chapter.

(b) *Homestead protection.* Borrowers and former borrowers who had or have an FLP loan secured by the real property containing the dwelling owned by them and used as their principal residence may apply for homestead protection before or after the Agency acquires the property. Real property that is in inventory as of the effective date of the statute or is acquired in the future will be considered for homestead protection as set forth in this subpart.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit borrowers or former borrowers to retain their dwellings through a lease or purchase. Such lease or purchase could permit these individuals to have a home and providing an opportunity to continue to farm.

(2) *Notification and processing.* If a feasible plan for restructuring debt cannot be developed using Primary Loan Service programs, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart that the Agency will continue with the processing of Preservation Service programs, if applicable. A borrower who desires homestead protection must request it in accordance with § 1951.907. A borrower who meets the eligibility requirements of paragraph (b)(3) of this section will be permitted to retain possession of the homestead, in accordance with paragraph (b)(2)(ii) of this section, before title is acquired or under a lease with an option to purchase after title is acquired.

(i) *Determining homestead protection property.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and