

with § 1951.909 of this part and release a divorced spouse from liability on the debt in accordance with § 1951.909(a) of this part.

[62 FR 10121, Mar. 5, 1997]

**§ 1951.904 Mediation, reviews and appeals.**

(a) *Participant rights.* (1) For loan servicing under this subpart, mediation or a voluntary meeting of creditors will be offered if the DALR\$ calculations indicate that a feasible plan of operation cannot be developed considering all primary loan service programs, Softwood Timber, and Conservation Contracts. In states with a USDA Certified Mediation Program, mediation will be offered. In all other states, a voluntary meeting of creditors will be offered.

(2) Any negotiation of an Agency appraisal must be completed prior to the meeting of creditors or mediation.

(3) If the borrower does not request mediation or a voluntary meeting of creditors as offered in Exhibit E of this subpart within 45 days, the servicing official will issue the appropriate "Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights."

(4) Whenever the servicing official makes a decision that will adversely affect a participant, the participant will be informed that the decision can be reviewed in accordance with 7 CFR part 780 and indicate whether it can be appealed to the USDA National Appeals Division (NAD) according to regulations set forth in 7 CFR part 11. Nonprogram (NP) participants are not entitled to appeal rights.

(b) *Non-appealable decisions.* The following types of decisions are not appealable:

(1) Decisions made by parties outside the agency, even when those decisions are used as a basis for the agency's decisions.

(2) Decisions that do not meet the eligibility requirements of 7 CFR part 11.

(3) Interest rates as set forth in Agency procedures, except appeals alleging application of the incorrect interest rate.

(4) Refusal to request or grant an administrative waiver permitted by program regulations.

(5) Denials of assistance due to lack of funds.

(6) In cases where the adverse decision is based on both appealable and non-appealable actions, the adverse action is not appealable.

(7) Determinations previously made by the Agency that have been appealed, and a NAD decision adverse to the participant has been entered; or upon which the time frame for appeal has expired with no appeal being requested.

(c) *Next-level review.* Any adverse decision, whether appealable or non-appealable, may be reviewed in accordance with 7 CFR part 780.

(d) *NAD review.* (1) A participant may request that NAD review the Agency's determination that the decision may not be appealed.

(2) A participant may request that NAD review any decision that is appealable.

(3) NAD will review the participant's request in accordance with 7 CFR part 11.

(e) *Agency actions pending outcome of appeal.* Assistance will not be discontinued pending the outcome of an appeal of any adverse action. Releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

(f) *Time limits.* Time limits for action under this subpart will be tolled during the pendency of an appeal, but not during the pendency of a request that NAD determine that a matter is or is not appealable.

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**§ 951.905 [Reserved]**

**§ 1951.906 Definitions.**

As used in this subpart, the following definitions apply:

*Borrower.* An individual or entity which has outstanding obligations to the agency under any Farm Loan Programs (FLP) loan, without regard to whether the loan has been accelerated. This does not include any such debtor whose total loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers.

Borrower also includes any other party liable for the FLP debt. Nonprogram (NP) borrowers are not considered borrowers for the purposes of this subpart.

*CONACT or CONACT property.* Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this part, it shall also be construed to cover property which secured other FLP loans.

*Conservation contract.* A contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for cancellation of a portion of an outstanding FLP debt. Relief obtained in this manner is not considered debt forgiveness as defined in this section.

*Consolidation.* The combining and re-scheduling of the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans. EM actual loss loans will not be consolidated.

*Current market value buyout.* Termination of a borrower's loan obligations to the agency in exchange for payment of the current appraised value of the security property, less any prior liens.

*Debt forgiveness.* For the purposes of loan servicing, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Agency. Included, but not limited to, are losses from a writedown or writeoff under this subpart, subpart J of this part, subpart B of part 1956 of this chapter, after discharge under the bankruptcy code, and associated with release of liability. Debt cancellation through conservation contracts is not considered debt forgiveness under this subpart.

*Debt settlement.* The settlement of debts owed the United States for FLP loans. The types of debt settlement programs are: compromise, adjustment, cancellation and chargeoff. These programs are administered in accordance with subpart B of part 1956 of this chapter. Any action through debt settlement which results in a loss to the Agency will be considered debt forgiveness.

*Deferral.* An approved delay in making regularly scheduled payments, including softwood timber (ST) loans.

Deferral is not considered debt forgiveness.

*Delinquent borrower.* A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

*Entity.* A corporation, partnership, joint operation, or cooperative.

*Farm Loan Programs (FLP) loans.* This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

*Farm plan.* Form FmHA 431-2, "Farm and Home Plan," or other plans or documents acceptable to the agency that will accurately reflect the production and financial management of the farming operation for one production cycle. The agency will not require the use of consolidated financial statements.

*Feasible plan.* A feasible plan must be based upon the applicant or borrower's actual records that show the farming operation's actual income, production and expenses. These records will include income tax returns and supporting documents (hereafter called income tax records). The records must be for the most recent five-year period or, if the borrower has been farming less than five years, for the period which the borrower has farmed. For borrowers who have been farming for less than five years, other available records will be used in the order listed in section §1924.57(d)(1) of subpart B of part 1924 of this chapter to complete a five-year history. Future production yields will be based on an average of the most recent past five years' actual production yields. Borrowers with yields affected by disasters in at least two of the five most recent years may exclude the crop year with the lowest actual yield. In addition, in accordance with section §1924.57(d)(1) of subpart B of part 1924 of this chapter, if the applicant's remaining disaster years' yields are less than the County average yield, and the borrower's yields were affected by the disaster, County average yields will be used for those years. If County average yields are not available, State average yields will be used. These

records will be used along with realistic anticipated prices, including any planned FLP loan payments, to determine that the income from the farming operation, and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and taxes which are due during the projected farm business accounting period.

(2) Meet scheduled payments on all debts.

(3) Meet up to 110 percent, but not less than 100 percent, of the amount indicated for payment of farm operating expenses, debt servicing obligations and family living expenses. The Agency will assume that a borrower needs this margin to meet all obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the farm and home plan shows less than such a margin. In no case will a borrower with a cash flow of less than 100 percent receive restructuring.

(d) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower, which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

*Financially distressed.* A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered as in financial distress if it is determined that they will not be able to project a feasible plan of operation for the next business accounting period.

*Foreclosed.* The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

*Good faith.* An eligibility requirement for Primary Loan Servicing and Current Market Value Buyout. Borrowers are considered to have acted in "good faith" if they have demonstrated "honesty" and "sincerity" in com-

plying with the requirements of Form 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and any other written agreements made with the agency, as documented in the case file. In addition, the agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion from the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack "good faith" if the sole basis for such a determination was the disposition of normal income security (§1962.4 of subpart A of part 1962 of this chapter) prior to October 14, 1988, without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that could have been approved according to §1962.17 of subpart A of part 1962 of this chapter.

*Homestead Protection.* The right of a former owner to apply to lease, with an option to purchase the Homestead Protection property, not to exceed 10 acres.

*Homestead Protection property.* This refers to the principal residence which secured a FLP loan.

*Indian Reservation.* Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

*Limited Resource Program.* A reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

*Liquidated.* The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's

## § 1951.907

## 7 CFR Ch. XVIII (1-1-03 Edition)

accounts. Collection-only accounts are not considered liquidated.

*Loan service program.* A Primary Loan Servicing program or a Preservation Loan Servicing program (Homestead Protection) for FLP loan borrowers.

*New application.* An application submitted on or after November 28, 1990, for loan servicing programs. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990.

*Nonessential assets.* Nonessential assets are those in which the borrower has an ownership interest, that:

(1) Do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation (see 1962.17 of subpart A of part 1962 of this chapter); and

(2) Are not exempt from judgment creditors or in a bankruptcy action. Each State Executive Director, with the guidance of the Office of the General Counsel, will issue a State Supplement to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with statute.

*Nonprogram (NP) loan.* An NP loan results when a loan is made to an ineligible applicant or transferee in connection with a loan assumption and sale of inventory properties at ineligible terms. Borrowers originally determined eligible by the agency and found to be ineligible after the loan was made due to an agency error are not considered to have nonprogram loans.

*Preservation loan service program.* See Homestead Protection.

*Primary loan service program.* Primary loan service program means:

(1) Loan consolidation, rescheduling, or reamortization;

(2) Interest rate reduction, including use of the limited resource program;

(3) Loan restructuring, including deferral, or writing down of the principal or accumulated interest; or

(4) Any combination of the above.

*Reamortization.* Reamortization is rearranging the installment payments of a real estate loan, and may include changing the interest rate and terms of a loan made for Subtitle A purposes.

*Rescheduling.* Rescheduling is rewriting the rates and/or terms of OL, SL,

EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

*Writedown.* For purposes of this subpart, writedown is reducing a borrower's debt to an amount that will result in a feasible plan of operation.

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### § 1951.907 Notice of Loan Service Programs.

In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the County Supervisor will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of first class mailing.

(a) *Notification of borrowers who file bankruptcy.* The account will be serviced in accordance with instructions from the Regional Office of the General Counsel (OGC), and in accordance with §1962.47(a)(3) of subpart A of part 1962 of this chapter.

(b) *Notification of borrowers who have been discharged in bankruptcy or who have plans confirmed by bankruptcy courts.* If the borrower has been discharged in bankruptcy or the borrower is operating under a confirmed plan, the account will be serviced in accordance with instructions from the Regional OGC and in accordance with §1962.47 (a) or (c) of subpart A of part 1962 of this chapter.

(c) *Notification of borrowers 90 days past due on payments.* FLP borrowers who are at least 90 days past due (60 days delinquent) will be sent Exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. If the borrower submits an incomplete application, see paragraph (e) of this section for procedures on requesting additional information. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with §1951.907(e). In addition to the requirements set forth above, servicing officials will provide Attachments 1 and 2 of Exhibit A of this subpart to these borrowers, as set forth below:

(1) At the time an application is made for participation in an FLP loan