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Subtitle B—Regulations of the Department of Agriculture (Continued)

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS—COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE (CONTINUED)

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EDITORIAL NOTE: Chapter XVIII—Rural Housing Service, Rural Business–Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture, is continued in the volume containing 7 CFR part 2000 to end.

EDITORIAL NOTE: Nomenclature changes to chapter XVIII appear at 59 FR 66443, Dec. 27, 1994, 61 FR 1109, Jan. 16, 1996 and 61 FR 2899, Jan. 30, 1996.

PART 1950—GENERAL

Subparts A–B [Reserved]

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Subparts A–B [Reserved]

Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

§ 1950.101 Purpose.

Borrowers with accounts serviced by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) who have entered or who are entering military service will require special treatment. This subpart prescribes the authorities, policies, and routines for servicing such cases in addition to those contained in other FmHA or its successor agency under Public Law 103–354 regulations.

[45 FR 43152, June 26, 1980]

§ 1950.102 General.

(a) FmHA or its successor agency under Public Law 103–354 will do everything possible to assist borrowers entering the armed forces to adjust their affairs in contemplation of military service. It is not the policy FmHA or its successor agency under Public Law 103–354 to renew, postpone, or modify annual installments due under a promissory note because of the borrower's entry into the armed services. However, under the Soldiers' and Sailors' Civil Relief Act of 1940, the property of a borrower in the armed forces cannot validly be seized or sold by foreclosure or otherwise during the borrower's tenure of service, or for three months thereafter, except (1) pursuant to an agreement entered into by the borrower after having been accepted for service, or (2) by order of the Court. Any person causing an invalid sale to be made is guilty of a misdemeanor. Regardless of the foregoing, the long-time interest of the borrower can best be served by prompt and satisfactory arrangements for the use and protection, or disposition, of the security property in accordance with the policies expressed herein. Upon request, OGC will inform the State Director with respect to relief which may be secured by a borrower under the Soldiers' and Sailors' Civil Relief Act of 1940.

(b) In connection with Multiple Housing loans to individuals, references to County Supervisor and County Office in this subpart will be read as District Director and District Office.

[50 FR 45763, Nov. 1, 1985]

§ 1950.103 Borrower owing FmHA or its successor agency under Public Law 103–354 loans which are secured by chattels.

(a) *Policy*. (1) Borrowers who owe loans *other than* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing loans for farm service buildings (RHF). When information is received that a borrower is entering the armed forces, the County Supervisor will be responsible for contacting the borrower immediately for the purpose of reaching an understanding concerning the actions to take in connection with the FmHA or its successor agency under Public Law 103–354 loan indebtedness. The borrower will be permitted to retain the chattel security if arrangements can be worked out which are satisfactory to the borrower and FmHA or its successor agency under Public Law 103–354. However, because

of the nature of chattel security, the borrower will be informed of the usual depreciation of such property and will be encouraged to sell the property and apply the proceeds to the loan(s). In most cases, the interests of both the borrower and the Government can best be served by arranging for a voluntary sale of the security. A borrower retaining security will be expected to make payments on the loan(s) equal to the scheduled payments.

(2) *Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO, and/or RHF loans.* If the borrower is delinquent in accordance with subpart S of part 1951 of this chapter, or otherwise in default, the County Supervisor will send exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. If the borrower is not delinquent, the County Supervisor will explain the options set out in paragraph (b) of this section.

(b) *Methods of handling.* In carrying out the above policy, the cases of borrowers entering the armed forces will be handled in accordance with one of the following methods:

(1) Voluntary sale of security. This will be accomplished in accordance with §1962.41 of subpart A of part 1962 of this chapter. Any necessary forms will be signed:

(i) Before being accepted for service in the armed forces, if the sale is to be completed before the borrower is accepted for service, or

(ii) After being accepted for service, if the sale cannot be completed before the borrower is so accepted. For this purpose, an individual will be considered as accepted for service after being ordered to report for induction, or, if in the enlisted reserve, after being ordered to report for service in the armed forces.

(2) Assumption of indebtedness. This will be accomplished in accordance with §1962.34 of subpart A of part 1962 of this chapter.

(3) Arrangements with third persons. When the borrower arranges with a relative or other reliable person to maintain the security in a satisfactory manner and to make scheduled payments, the State Director is authorized to approve the arrangement. In such a case, the borrower will be required to execute a power of attorney, prepared or approved by OGC, authorizing an attorney-in-fact to act for the borrower during the latter's absence.

(4) Possible legal actions. If the borrower fails or refuses to cooperate in the servicing of the loan indebtedness secured by chattels in accordance with one of the methods set forth in this section, the borrower's case folder will be forwarded to the State Director for referral to OGC for legal advice as to the steps to be taken in protecting the Government's interest.

(c) *Statements of accounts and transfers.* Borrowers entering the armed forces will be requested to designate mailing addresses for the delivery of statements of account. Any changes in these addresses will be processed on Form FmHA or its successor agency under Public Law 103–354 450–10, ''Advice of Borrower's Change of Address or Name,'' with appropriate explanations. Under this procedure, a statement of account may be mailed to a location other than where the account is maintained and serviced. This is a deviation from the established procedure. These cases will not be transferred unless the security, when retained by the borrower in accordance with paragraph (b)(3) of this section, is moved into another County Office territory. Then the transfer will be processed through the use of Form FmHA or its successor agency under Public Law 103–354 450–5, ''Application to Move Security Property and Verification of Address,'' and Form FmHA or its successor agency under Public Law 103–354 450–10 with appropriate explanations. In cases when assumption agreements have been executed, statements of account will be mailed to the assuming borrower. Cases involving assumption agreements will be transferred when the assuming borrower moves from one County Office territory to another.

[45 FR 43152, June 26, 1980, as amended at 50 FR 45763, Nov. 1, 1985; 52 FR 26133, July 13, 1987; 55 FR 40646, Oct. 4, 1990]

§ 1950.104 Borrower owing FmHA or its successor agency under Public Law 103–354 loans which are secured by real estate.

County Supervisors, to the greatest extent possible, should keep themselves informed of the plans of borrowers with FmHA or its successor agency under Public Law 103–354 loans secured by real estate who may enter the armed forces. They should encourage any borrower who is definitely entering the armed forces to consult with them before the borrower's military service begins concerning the most advantageous arrangements that can be made regarding the security. County Supervisors will assist these borrowers in working out mutually satisfactory arrangements. Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO, ST, and/or RHF loans and who are delinquent or otherwise in default must be sent exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. The County Supervisor will follow the directions in subpart A of part 1965 of this chapter for liquidating real estate security. FO, SW, RL, OL, EE, EM, SL, EO, ST and/or RHF borrowers who are not delinquent will have their accounts handled as set out in the following paragraphs.

(a) *Power of attorney*. Borrowers entering the armed forces who retain ownership of the security should be encouraged to execute a power of attorney authorizing the person of their choice to take any actions necessary to insure proper use and maintenance of the security, payment of insurance and taxes, and repayment of the loan. No FmHA or its successor agency under Public Law 103–354 employee will act as attorney-in-fact for a borrower. The State Director will consult with OGC concerning any limitations upon the use of a power of attorney under local law and the circumstances under which the power of attorney should be exercised. In general, either spouse may act as attorney-in-fact for the other spouse, but, in a few States, a spouse cannot exercise the power of attorney in connection with a sale or encumbrance of the homestead. In a majority of States, a power of attorney is revoked by the death of a person granting the power, but, in some States, the power of attorney executed by a person in the armed services remains valid until actual notice is received of the death of the person granting the power. A power of attorney should not be used in conveying title to the farm except in those States where the power is good until actual notice of death. The State Director will request OGC to prepare a satisfactory form of power of attorney which may be duplicated in the State Office and furnished to County Supervisors with a State supplement concerning its use.

(b) *Borrower retains ownership of the security*. When a borrower retains ownership of the security, FmHA or its successor agency under Public Law 103–354 will assist in making arrangements for the use of the security which will protect the interests of both the Government and the borrower.

(1) *Leasing*. It will be more satisfactory if the security is leased under a written lease in accordance with equitable leasing policies and applicable FmHA or its successor agency under Public Law 103–354 procedures. The borrower should make arrangements for the rental income to be used for regular payments on the loan in order to avoid the accumulation of unpaid interest. The borrower also should make arrangements for the payment of taxes and insurance and maintenance of the security to avoid having these charges paid by the Government and then charged to the account. It would be desirable to provide that the lease will continue for the duration of the borrower's military service unless either party gives written notice of earlier cancellation of the lease.

(2) *Operation by family*. When a borrower wishes to have the farm occupied and operated by family members or relatives without a written lease, the County Supervisor should advise the borrower as to whether or not the proposed arrangements will be in the best interests of the borrower and the Government. When the farm is to be operated by relatives, the hazards and disadvantages to the borrower and the Government which are inherent in unwritten contracts will be discussed, and every effort will be made to induce the

borrower to enter into formal contractual arrangements whenever possible to do so.

(c) *Borrower does not retain ownership of the security*. The security may be transferred to another approved applicant or sold in accordance with applicable procedure.

(d) *Borrower abandons the security or fails to make satisfactory arrangements*. This paragraph does *not* apply to borrowers with FO, SW, RL, OL, EE, EM, SL, EO, ST and/or RHF loans. Those borrowers should be sent exhibit A and the appropriate attachments as outlined in subpart S of part 1951 of this chapter. When a borrower abandons the security or fails to make satisfactory arrangements for maintenance of the security and payment of taxes, insurance, and installments on the loan, the County Supervisor will send a complete report on the case to the State Director. The report will include all the information that can be obtained regarding the borrower's plans for the security and any evidence to indicate that abandonment has, in fact, taken place. In these instances, it must be recognized that the borrower may have entered into verbal arrangements for the care of the security without properly advising the County Supervisor. Whether such cases may be construed to be in violation of the provisions of the mortgage, so as to support foreclosure by order of the Court under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, will need to be determined on an individual case basis by the State Director and OGC. Clear-cut abandonment cases or instances in which the borrower fails to take action to transfer or sell the property, while evidencing no interest in it or desire to retain it, will be processed in accordance with applicable procedures.

(e) *Statement of account*. Borrowers entering the armed forces who retain ownership of the security will be requested to designate mailing addresses for the delivery of statements of account. Any changes in addresses will be processed on Form FmHA or its successor agency under Public Law 103–354 450–10 with appropriate explanations.

[45 FR 43152, June 26, 1980, as amended at 50 FR 45764, Nov. 1, 1985; 52 FR 26134, July 13, 1987; 55 FR 40646, Oct. 4, 1990]

§ 1950.105 Interest rate.

(a) The Soldiers and Sailors Relief Act requires that the effective interest rate charged a borrower who enters active military duty after a loan is closed will not exceed 6 percent. This applies only to full-time active military duty and does not include military reserve status or National Guard participation.

(b) As soon as the County Supervisor verifies that a borrower is on active duty, the County Supervisor will send the borrower a letter which states that the interest rate on the borrower's FmHA or its successor agency under Public Law 103–354 loans will not exceed 6 percent. At the same time, the County Supervisor will send the Finance Office a memorandum which states that the borrower is on active duty and that interest of not more than 6 percent should accrue on the borrower's loans, effective as of the date of the memorandum or as of the date of the last payment, whichever is later, until further notice. If a borrower's interest rate on any loan is less than 6 percent, the loan will continue to accrue interest at the lower rate. The assistance under this section may not be retroactively applied.

(c) As soon as the County Supervisor verifies that a borrower is no longer on active duty, the County Supervisor will send the Finance Office a memorandum advising them to terminate the 6 percent interest rate. The rate will revert to the note rate (or the payment assistance rate), effective with the next scheduled payment. The 6 percent interest rate will not be cancelled retroactively.

(d) Additional directions for handling Single Family Housing Loans are contained in subpart G of part 1951 of this chapter.

[52 FR 26134, July 13, 1987, as amended at 60 FR 55122, Oct. 27, 1995]

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1951.1000 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

EDITORIAL NOTE: Some of the exhibits referenced in this part 1951 are not published in the Code of Federal Regulations. Exhibits are available in any FmHA or its successor agency under Public Law 103–354 office.

Subpart A—Account Servicing Policies

SOURCE: 50 FR 45764, Nov. 1. 1985, unless otherwise noted.

§ 1951.1 Purpose.

This subpart sets forth the policies and procedures to use in servicing Farmer Program loans (FP) which include Softwood Timber (ST), Operating Loan (OL), Farm Ownership (FO), Soil and Water (SW), Recreation Loan (RL), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), and Rural Housing Loan for farm service buildings (RHF) accounts. This subpart also applies to Rural Rental Housing Loan (RRH), Rural Cooperative Housing Loan (RCH), Labor Housing Loan (LH), Rural Housing Site Loan (RHS), and Site Option Loan (SO) accounts not covered under the Predetermined Amortization Schedule System (PASS). Loans on PASS will be administered under subpart K of part 1951 of this chapter. Cases involving unauthorized assistance will be serviced under Subparts L and N of this part. Cases involving graduation of borrowers to other sources of credit will be serviced under Subpart F of this part.

[52 FR 26134, July 13, 1987]

§ 1951.2 Policy.

Borrowers are expected to pay their debts to the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) in accordance with their agreements and ability to pay. They will be encouraged to pay ahead of schedule, consistent with sound financial management. When borrowers have acted in good faith and have exercised due diligence in an effort to pay their indebtedness but cannot pay on schedule because of circumstances beyond their control, servicing actions will be consistent with the best interests of the borrower and the Government. It is the policy of this agency to service borrower loan account without regard to race, color, religion, sex, marital status, national origin, age, physical or mental handicap (borrower must possess the capacity to enter into a legal contract for services).

§ 1951.3 Authorities and responsibilities.

County Supervisors and District Directors are responsible for servicing all FmHA or its successor agency under Public Law 103–354 accounts serviced by the County and District Offices as prescribed by this subpart under the general guidance and supervision of District Directors and State Office personnel. Full use will be made of the County Office Management System in account servicing. For the purposes of this Subpart, all references to ''County Supervisor'' shall be construed to mean ''District Director'' for all loans serviced by the District Office.

§§ 1951.4–1951.5 [Reserved]

§ 1951.6 Handling payments.

(a) *Payments on Rural Housing (RH) loans.* Payments on RH loans will be handled in accordance with subparts B and G of this part.

(b) *Payments for other than RH, FO and SW loans.* These payments will be handled in accordance with part 1951, subpart B.

(c) *Payments for FO and SW loans.* (1) Payments made through the County Office without direct payment coupons for FO and SW loans will be handled in accordance with part 1951, subpart B.

(2) Payments for FO and SW individual loans made through the County Office with Form FmHA or its successor agency under Public Law 103–354 370–46A, Expanded Direct Payment Coupon, will be handled as follows:

(i) County Supervisors may put FO and SW individual borrowers on the Expanded Direct Payment Coupon system if the borrower only needs limited credit counseling or only makes one annual installment payment per year on the loan.

(ii) For new loans, the County Supervisor will indicate by checking the appropriate block on Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request For Obligation of Funds,'' that for selected borrowers Expanded Direct Payment Coupons are to be mailed to the County Office.

(iii) An existing loan borrower may be put on or taken off this Expanded Direct Payment Coupon system by filling out Form FmHA or its successor agency under Public Law 103–354 1951–34, ''Direct Payment Plan Change,'' in accordance with the Forms Manual Insert (FMI) and entering it via the field office terminal system.

(iv) Payments must be made by check or money order payable to the Farmer Home Administration. If a field office is on concentration banking, the checks and/or money orders are deposited in the concentrator bank. The coupons are forwarded directly to the Finance Office in accordance with concentration banking procedures. If a field office is not on concentration banking, the coupons and checks and/or money orders are placed in one envelope and mailed to the Finance Office with any other items being mailed that day.

(v) The Finance Office, upon receipt of the payment coupon and check or money order, will credit the borrower's account with payment as of the date the payment is received in the field office.

(vi) When the Finance Office received payment coupon number 10, a new supply of coupons will be mailed to the County Office. All 12 payment coupons should be used before using the new supply.

(3) Direct payment for FO and SW loans mailed directly to the Finance Office by the borrower are handled as follows:

(i) The County Supervisor will select the FO and SW borrowers who, in the Supervisor's opinion, are capable of making direct payments to the Financing Office. The County Supervisor will not select borrowers who (A) will need frequent credit counseling, (B) because of the lack of education or other reasons, are not capable of assuming responsibility for making payments directly to the Finance Office, or (C) have payments directly assigned to FmHA or its successor agency under Public Law 103–354, such as milk assignments. The fact that a borrower does not maintain a checking account will not, however, prevent selection for direct payments.

(ii) For new loans the County Supervisor will indicate on Form FmHA or its successor agency under Public Law 103–354 1940–1 the selected borrowers by checking the appropriate box. The payment coupon packet will be forwarded to the County Office at the time the loan is obligated. It will be delivered to the borrower at loan closing, at which time the use of the payment coupons will be explained to the borrower.

(iii) For Assumption Agreements, the packet will be mailed to the borrower at the time the Assumption Agreement is processed in the Finance Office.

(iv) The payment coupons and pre-addressed envelopes, together with instructions on how to use the coupons and a record keeping card, will be asembled into an envelope in which the borrower may retain the records. The Form FmHA or its successor agency under Public Law 103–354 370–46, ''Direct Payment Coupon,'' will be numbered 1–12, even though the borrower may have less or more than 12 payments scheduled during the year.

(v) The Finance Office, upon receipt of Form FmHA or its successor agency under Public Law 103–354 370–46 and a check or money order, will credit the borrower's account with payment as of the date the payment is received by the Finance Office.

(vi) When the Finance Office receives Form FmHA or its successor agency under Public Law 103–354 370–46 for payment number 10, a new supply of Forms FmHA or its successor agency under Public Law 103–354 370–46 will be prepared and mailed to the borrower. All 12 copies of Form FmHA or its successor agency under Public Law 103–354 370–46 should be used before using the new supply.

(vii) If a borrower is on direct payment and receives a subsequent FO or SW loan, the Finance Office will send a set of Form FmHA or its successor agency under Public Law 103–354 370–46 with ''FO'' or ''SW'' in the loan number block. This indicates the borrower has more than one loan of the particular type. The borrower will be instructed by the County Office to send a Form FmHA or its successor agency under Public Law 103–354 370–46 showing the amount and a check or money order for the total payment.

(d) *County Office handling of direct payment accounts.* Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' and Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual (Rural Housing only),'' will be used in the County Office Management System Box. These forms and the transaction records will be maintained as prescribed in FmHA or its successor agency under Public Law 103–354 Instruction 1905–A (available in any FmHA or its successor agency under Public Law 103–354 office). In addition, an orange signal will be placed to the left of Position A on Form FmHA or its successor agency under Public Law 103–354 1905–1 to denote that the borrower is on the direct payment system. If a borrower fails to make payments as agreed, or becomes delinquent in taxes or insurance so that it is necessary for FmHA or its successor agency under Public Law 103–354 to pay taxes or insurance by voucher, the County Supervisor may request the Finance Office to remove the borrower from the direct payment method. If this decision is made, the County Supervisor will contact the borrower and collect the remaining supply of Forms FmHA or its successor agency under Public Law 103–354 370–46 which will be destroyed. The borrower will be informed that payments after that date should be made to the County Office. If at a later date the borrower is making payments on schedule, the County Supervisor may request the Finance Office to put the borrower back on the direct payment method and provided a new set of Forms FmHA or its successor agency under Public Law 103–354 370–46. These changes are made by filling out Form FmHA or its successor agency under Public Law 103–354 1951–34 in accordance with the FMI and entering it via the field office terminal system.

(e) *Account servicing actions retained by the County Office.* For those borrowers who make direct payments to the Finance Office, the County Supervisor will continue to handle the following servicing actions:

(1) Any regular payments a borrower is to make prior to receiving the packet of payment coupons will be made through the County Office in the usual manner.

(2) All payments other than regular payments will be made through the County Office in the usual manner.

(3) The County Supervisor will counsel with borrowers concerning questions they have about their account. If assistance is needed, the County Supervisor will contact the State or Finance Office as appropriate.

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment coupon to the Finance Office. There will also be a noninterest accruing administrative cost charged to the borrower's account for uncollectible items due to insufficient funds. (The amounts of any such administrative charges are available from any FmHA or its successor agency under Public Law 103–354 office.) Therefore, the borrower's payment for the uncollectible item should be for the regular payment amount plus the administrative cost.

(f) *Borrowers receiving other type loans.* If a borrower is on direct payment and subsequently receives another type loan, the original loan may remain on the direct payment system.

(g) *Borrowers with RRH, RCH, or LH, loans on a Predetermined Amortization Schedule System (PASS).* Loans or PASS will be administered under Subpart K of this part.

(h) *Borrowers with RRH, RCH, LH, RHS and SO loans administered under this subpart.* RRH, RCH, LH, RHS and SO loans on a daily interest accrual system (DIAS) for applying payments administered under this subpart are subject to the direct billing and payment requirements in § 1951.506 of Subpart K of this part. All payments are due on the first day of the months following the date shown on the promissory note, except loans with principal and interest bonds issued before May 1,

1985. All payments are considered delinquent for reporting purposes on the 15th day of the month following the payment due date if the unpaid portion of the payment exceeds $15.00.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 29175, Aug. 6, 1987; 54 FR 46844, Nov. 8, 1989]

§ 1951.7 Accounts of borrowers.

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound farm and home planning or budgeting, including plans for debt payment, supplemented by effective followup management assistance. Account servicing, therefore, must begin with initial planning and must be an integral part of analysis and subsequent planning, as well as follow-up management assistance.

(b) *Accounts of collection-only borrowers.* (1) Collection-only borrowers are expected to pay debts to FmHA or its successor agency under Public Law 103–354 in accordance with their ability to pay. Efforts to collect such debts, including use of collection letters and account servicing visits, must be coordinated with other program activities. If these borrowers are unable to pay in full, appropriate debt settlement policies should be promptly applied.

(2) Envelopes addressed to collection-only borrowers will bear the legend ''DO NOT FORWARD.'' When an envelope is returned indicating the borrower has moved, appropriate steps will be taken to determine the borrower's correct address.

(3) Regular County Office employees are generally expected to service the collection-only caseload when it is of moderate size. State Directors may assign additional employees to County Offices having large collection-only caseloads when necessary to service such cases to a prompt conclusion. State Directors may inform the National Office of the need for employing special collection personnel in urban areas having large collection-only caseloads when employees are not available to assign to such areas.

(4) The following actions will be taken in servicing accounts owed by collection-only borrowers:

(i) District Directors will review, yearly, all collection-only cases in each County Office with the County Supervisor as early in *each* fiscal year as possible. They will jointly agree on the actions to take and will complete Form FmHA or its successor agency under Public Law 103–354 451–27, ''Review of Collection-Only Accounts.''

(ii) District Directors will establish with County Supervisors a systematic plan for collecting the accounts or initiating appropriate debt settlement actions during the year.

(iii) County Supervisors will include in their monthly calendars plans for servicing these accounts.

(iv) On visits to County Offices, District Directors will review the progress being made by County Supervisors to insure that goals will be reached.

(v) For collection-only accounts in District Offices, the State Director will review the accounts as required in paragraphs (b)(4)(i) through (b)(4)(iv) of this section and the District Director will service the account.

(c) *Notifying borrowers of payments.* County Supervisors will notify borrowers of the dates and amounts of payments that have been agreed on for all types of accounts. Form FmHA or its successor agency under Public Law 103–354 451–3, ''Reminder of Payment to be Made,'' or similar form approved by the State Director, will be used. The form will not contain any language indicating that an account is delinquent. These notices will be timed to reach borrowers immediately before the receipt of the income from which the payments should be made or before the installment due date on the note, as appropriate, and may include other pertinent information such as a reference to agreements reached during the year and sources of income from which the payment was planned. Such notices need not be sent when frequent payments are scheduled and the borrower customarily makes the payments when due.

(d) *Subsequent servicing.* (1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with subpart S of part 1951 of this chapter.

(2) When a borrower other than a Farmer Program borrower fails to make a payment as agreed, the County

Supervisor will contact the borrower to discuss the reasons why the payment was not made and to develop specific plans, for making the payment. Form FmHA or its successor agency under Public Law 103–354 451–32, ''Notice of Payment Due,'' may be used to notify borrowers who make payments directly to the Finance Office that their payment has not been received. Form FmHA or its successor agency under Public Law 103–354 450–13, ''Request for Assignment of Income From Trust Property,'' may be used when other methods of loan collection fail and debt repayment is possible from trust income. In the event the borrower refuses to make the payment when income is available, or if it is determined that income will not be available to make the payment within a reasonable length of time and will not be available to make future payments, action will be taken to protect the Government's interest in accordance with applicable regulations. Followup actions of subsequent servicing will be noted on appropriate Management System Cards.

(e) *Maintaining records of accounts in County Offices.* Records of the accounts of FmHA or its successor agency under Public Law 103–354 borrowers will be maintained in the County Office on Forms FmHA or its successor agency under Public Law 103–354 1905–1, FmHA or its successor agency under Public Law 103–354 1905–5, FmHA or its successor agency under Public Law 103–354 1905–10, ''Management System Card-Association,'' as provided in FmHA or its successor agency under Public Law 103–354 Instruction 1905–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(f) *Inquiry for Multiple Family Housing (MFH) loans.* Inquiry for all RRH, RCH, LH, RHS and SO loans and grants will be made through field terminals using procedures in the ''MFH Users Procedures'' manual or by contacting the MFH Unit in the Finance Office.

(g) *Inquiry for other than Multiple Family Housing (MFH) loans.* Inquiry for these loan programs will be made through field terminals using procedures in the ''Automated Discrepancy Processing System (ADPS)'' manuals.

(h) *Loan Summary Statements.* Upon request of a borrower, FmHA or its successor agency under Public Law 103–354 issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act. The field office will post on the bulletin board a notice informing the borrower of the availability of the loan summary statement. See Exhibit A for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards a copy of Form FmHA or its successor agency under Public Law 103–354 1951–9, ''Annual Statement of Loan Account,'' to field offices to be retained in borrower files as a permanent record of borrower activity for the year.

(2) Quarterly Forms FmHA or its successor agency under Public Law 103–354 1951–9 are retained in the Finance Office on microfiche. These quarterly statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. If a borrower requests a loan summary statement with data through the most recent quarter, county supervisors may request copies of these quarterly or annual statements by sending Form FmHA or its successor agency under Public Law 103–354 1951–57, ''Request for Loan Summary Statement,'' to the Finance Office.

(3) When a loan summary statement is requested by the borrower, the field office will copy the applicable annual or quarterly Forms FmHA or its successor agency under Public Law 103–354 1951–9. A copy(ies) of Form FmHA or its successor agency under Public Law 103–354 1951–9; a copy of Form FmHA or its successor agency under Public Law 103–354 1951–58, ''Basis for Loan Account Payment Application for Farmer Program Loans;'' and a copy of the promissory note showing borrower installments will constitute the loan summary statement provided to the borrower.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 11457, Apr. 9, 1987; 53 FR 35716, Sept. 14, 1988; 54 FR 10269, Mar. 13, 1989]

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually,

regular payments are derived from farm income, as defined § 1962.4 of subpart A of part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17 (c) of subpart A of part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the lock box facility(s) by direct payment borrowers are considered regular payments.

(b) *Extra payments.* Extra payments are payments derived from:

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of the real estate debt.

(3) Cash proceeds of real property insurance as provided in subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(4) A sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(5) Agricultural Conservation Program payments as provided in subpart A of part 1941 of this chapter.

(6) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

(c) *Refunds.* Refunds are payments derived from the return of unused loan or grant funds, except that the term ''refunds'' as used in Form 1940–17, ''Promissory Note,'' will be construed to mean the return of funds advanced for capital goods, when a loan is made for operating purposes.

[50 FR 45764, Nov. 1. 1985, as amended at 51 FR 4137, Feb. 3, 1986; 53 FR 35717, Sept. 14, 1988; 58 FR 52646, Oct. 12, 1993]

§ 1951.9 Distribution of payments when a borrower owes more than one type of FmHA or its successor agency under Public Law 103–354 loan.

''Distribution'' means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan'') and Form FmHA or its successor agency under Public Law 103–354 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security.''

(a) *Distribution of regular payments.* (1) When a borrower owes more than one type of FmHA or its successor agency under Public Law 103–354 loan, regular payments received from *each crop year's income* will be distributed in accordance with the following priorities:

(i) *First,* to an amount equal to any advances made by FmHA or its successor agency under Public Law 103–354 for the crop year's living and operating expenses. If no advances were made, distribute the payment according to paragraph (a)(1)(ii) of this section. If the amount of the payment was greater than the amount of any advances, the excess should be distributed according to paragraph (a)(1)(ii) of this section.

(ii) *Second,* to FmHA or its successor agency under Public Law 103–354 loans in proportion to the approximate amounts due on each for the year. In determining the amounts due for the year, deduct an amount equal to any advances for the year's living and operating expenses. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year, the excess should be distributed according to paragraph (a)(1)(iii) of this section.

(iii) *Third,* to FmHA or its successor agency under Public Law 103–354 loans in proportion to the delinquencies existing on each. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each

loan for the year *plus* any delinquencies, the excess should be distributed according to paragraph (a)(1)(iv) of this section.

(iv) *Fourth,* as advance payments on FmHA or its successor agency under Public Law 103–354 loans. In making such distribution consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(2) When the County Supervisor determines it is reasonable to expect that the income which will be available for payment on FmHA or its successor agency under Public Law 103–354 debts will be sufficient to pay the installments scheduled for the year under the first and second priorities, collections may be distributed so as to avoid unnecessary delinquencies, and regular payments derived from rental or lease of real estate security after approval of foreclosure or voluntary conveyance will be distributed to the real estate lien of the highest priority.

(3) Payments will be distributed differently than the priorities provided in this section if accounts are out of balance or a different distribution is needed to protect the government's interest.

(4) Any income received from the sale of softwood timber on marginal land converted to the production of softwood timber must be applied on the ST loan(s).

(b) *Distribution of extra payments.* Extra payments will be distributed first to the FmHA or its successor agency under Public Law 103–354 loan having highest priority of lien on the security from which the payment was derived. When the payment is in excess of the unpaid balance of the FmHA or its successor agency under Public Law 103–354 lien having the highest priority, the balance of such payment will be distributed to the FmHA or its successor agency under Public Law 103–354 loan having the next highest priority.

(c) *Application of payments.* After the decision is reached as to the amount of each payment that is to be distributed to the different loan types, application of the payment will be governed by §§ 1951.10 or 1951.11 of this subpart as appropriate.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 26134, July 13, 1987; 53 FR 35717, Sept. 14, 1988]

§ 1951.10 Application of payments on production type loan accounts.

Employees receiving payments on OL, EO, SW codes ''24,'' EM for subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA or its successor agency under Public Law 103–354 431–2) and Form FmHA or its successor agency under Public Law 103–354 1962–1.

(a) *Rules for selection of accounts.* The following rules will govern the selection of accounts and installments to which payments will be applied. As used in this section, ''recoverable costs'' are those which the loan agreement documents say the borrower is primarily responsible for paying and which the government can charge to the borrower's account.

(1) Payments from farm income or from assignments of income will be applied first to accounts with small balances, including recoverable costs, to remove such accounts from the records. Any balance will be applied on debts secured by the lien in the following order:

(i) To amounts due or falling due on loans made in connection with the current year's operations, except:

(A) When funds loaned for the purchase of capital goods were used to meet the current year's operating expenses, payments will be applied first to the final unpaid installments to the extent of the loan funds so used. These payments will be treated as extra payments.

(B) When installments on loans previously made fall due before the installment on the loan for the current year's operations or when such loans are delinquent and it is anticipated that sufficient income will be received to meet the installment on the current year's operations when due, collections may be applied first to installments on loans made in previous years.

(ii) To accounts having the oldest delinquencies, or if no delinquencies, to the oldest unpaid account, except that the amount available for payment on OL and EM loan accounts will be prorated between the two accounts on the basis of:

(A) The delinquent amount owed on each, or

(B) The total amount owed on each if there are no delinquencies.

(2) Non-farm income and payments derived from the sale of real estate security, will be applied to the earliest account secured by the earliest lien covering such security. The amount to be applied to principal will be applied to the final unpaid installment(s).

(3) On partial refunds of loan advances, the amount to be applied to the principal will be applied to the final unpaid installment on the note which evidences such advance; however, a refund of an advance for current farm and home expenses repayable within the year may be applied to the principal on the first unpaid installment on such note as a regular payment.

(4) Total refunds of loan advances will be applied to the notes which evidence such advances.

(5) In applying payments from sources other than those in paragraphs (a)(2), (3), and (4) of this section the borrower has the right to select the loan account or accounts on which such payments will be applied. In the absence of the borrower's selection, such payments generally will be applied in the following order:

(i) To accounts with small balances, including recoverable costs.

(ii) To accounts with the oldest unsecured note(s).

(iii) To accounts with the oldest delinquencies.

(iv) To accounts with the oldest secured note or notes.

(6) Employees receiving collections are authorized to make exceptions to paragraphs (a)(1), (2), and (6) of this section when it is necessary to apply a part of a payment to delinquent accounts to prevent the Federal Statute of Limitations from being asserted as a defense in suits on FmHA or its successor agency under Public Law 103–354 claims.

(b) *Payments in full.* Errors of a significant amount in computation or collection will be called to the attention of the collection official by the Finance Office. The borrower's note will not be returned until the balance on the loan account is paid in full. Claims by or on behalf of the borrowers that the amounts owed have been computed incorrectly will be referred to the Finance Office.

[50 FR 45764, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988; 54 FR 46844, Nov. 8, 1989; 57 FR 18680, Apr. 30, 1992]

§ 1951.11 Application of payments on real estate accounts.

(a) *Regular payments.* If a borrower owes more than one type of real estate loan, or has received initial and subsequent real estate loans on which separate accounts are maintained, payments on such accounts should be applied so as to maintain the note accounts approximately in balance at the end of the year with respect to installments due on the notes, other charges, and delinquencies.

(b) *Refunds and extra payments.* (1) Refunds will be applied to the note representing the loan from which the advance was made.

(2) Extra payments will be applied to the note secured by the earliest mortgage on the property from which the extra payment was obtained.

(3) Funds remaining from an RH grant or a combination loan and grant, after completion of development, will

be refunded. If the borrower received a combination loan and grant, the remaining funds up to the amount of the grant are considered to be grant funds.

(c) *County Office actions.* (1) The collecting official will complete Form FmHA or its successor agency under Public Law 103–354 451–1, ''Acknowledgment of Cash Payment,'' in accordance with the FMI when cash or money orders are received as a payment.

(2) The collection official will complete Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' in accordance with the FMI.

(d) *Finance Office handling.* (1) Regular payment will be handled as follows.

(i) Payments will be applied first to satisfy any administrative costs such as a charge for an uncollectible check. (The amounts of any such charges are available from any FmHA or its successor agency under Public Law 103–354 office.)

(ii) Amounts paid on direct loan accounts will be credited to the borrower's account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied first to a portion of any interest which accrues during the deferral period, second to interest accrued to the date received and third to principal, in accordance with the terms of the note.

(iii) Amounts paid on insured loan accounts will be credited to the borrower's account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied in the following order:

(A) Advances from the insurance funds as shown on the latest *Form FmHA or its successor agency under Public Law 103–354 389–404*, ''Analysis of Accounts Maturing.'' (If the collection is intended for final payment of the loan, or to pay the insurance account in connection with an assumption agreement, the collection will be applied first to the interest accrued on the advance to the date of the payment.)

(B) Principal advanced from the insurance fund.

(C) Unamortized costs.

(D) Amount due for amortized costs for taxes and insurance.

(E) Unpaid loan insurance charges, including the current year's charge, when applicable.

(F) First to a portion of any interest which accrues during the deferral period, second to accrued interest to the date of the payment on the note account and then to the principal balance of the note account in accordance with the terms of the note.

(2) Extra payments and refunds will be credited to the borrower's note account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 and will be applied first to a portion of any interest which accures during the deferral period, second to interest accrued to the date of the receipt and third to principal in accordance with the terms of the note. The amount to be applied to principal will be applied to the final unpaid installment(s). Extra payments and refunds will not affect the schedule status of a borrower except indirectly in connection with the amortization of a direct loan.

(3) The Finance Office will remit final payments promptly to lenders. Other collections (regular, extra, and refunds) applied to a borrower's insured note will be accumulated until the annual installment due date, and will be remitted along with any advances from the insurance fund to the lender within 30 days after the installment due date. All payments to a lender will be credited first to interest to the date of the Treasury check and then to principal. Since the application of a payment to a borrower's account with the Government and the Government's account with a lender is of a different effective date, the balance owed by a borrower to the government and by the Government to a lender ordinarily will not be the same.

[50 FR 45764, Nov. 1, 1985, as amended at 54 FR 46845, Nov. 8, 1989]

§ 1951.12 Changes in the application of loan payments.

(a) *Authority to change payments.* County Supervisors and Assistant County Supervisors are hereby authorized to approve requests for changes in

the application of payments between loan accounts when payments have been applied in error and such requests conform to the policies expressed in this Subpart. However, no change will be made if the payment applied in error resulted in the payment in full of any FmHA or its successor agency under Public Law 103–354 loan and the canceled note or notes have been returned to the borrower.

(b) Form FmHA or its successor agency under Public Law 103–354 1951–7, ''Request for Change in Application.'' Requests for changes in application of payments will be made on Form FmHA or its successor agency under Public Law 103–354 1951–7. For requests which County Supervisors or Assistant County Supervisors are authorized to approve, the County Supervisor or Assistant County Supervisor will sign the original of Form FmHA or its successor agency under Public Law 103–354 1951–7 and forward it to the Finance Office. The Finance Office will send Form FmHA or its successor agency under Public Law 103–354 451–26 to the County Office when the change is made on Finance Office records.

(c) *Changes by the Finance Office in application of remittances.* (1) When reapplication of collection is made by the Finance Office Form FmHA or its successor agency under Public Law 103–354 451–8, ''Journal Voucher for Loan Account Adjustments,'' will be prepared. Form FmHA or its successor agency under Public Law 103–354 451–26 will be forwarded to the County Office to show the reapplication.

(2) When necessary, the Finance Office will correct Form FmHA or its successor agency under Public Law 103–354 451–2 as prepared by the County Office.

[50 FR 45764, Nov. 1, 1985, as amended at 54 FR 18883, May 3, 1989]

§ 1951.13 Overpayments and refunds.

(a) The Finance Office will mail any overpayment refund check to the County Supervisor, who will verify that the refund is due before delivering the check.

(b) Borrower requests for overpayment refunds must be in writing. Borrowers will be discouraged from requesting refunds when the County Office records show that a refund is not due, however, the County Supervisor will forward any request to the Finance Office. Finance Office computations will control in determining the amount of any refund.

(c) Underpayments or overpayments of less than $10 will not be collected or refunded (except as provided in paragraph (b) of this section) since the expense of processing the action would be more than the amount involved.

§ 1951.14 Recoverable and nonrecoverable cost charges.

(a) The County Supervisor will:

(1) Prepare vouchers for recoverable and nonrecoverable cost charges according to the applicable instruction for the type of advance being made. (''Recoverable costs'' is defined in § 1951.10(a) of this subpart).

(2) If a recoverable cost, show on the voucher the fund code to which the advance is to be charged.

(3) If the cost item relates to security for more than one type of account, show the code for the loan secured by the earliest promissory note (if lien secures more than one note).

(b) The Finance Office will forward Form FmHA or its successor agency under Public Law 103–354 451–26, to the County Office when the recoverable cost charge is processed.

§ 1951.15 Return of paid-in-full or satisfied notes to borrower.

(a) *Notes not held in County Office.* When the original of the note is not held in the County Office the County Supervisor will request the Finance Office to acquire and forward the note to the County Office.

(b) *Return of notes after collection.* When a note (or loan-type account) evidencing an OL, EM, EE, EO, special livestock (SL), SW loan coded ''24'', or other production-type loan has been satisfied by payment in full, the County Supervisor will examine the borrower's records in the County Office and determine that the account has been satisfied before delivering the note to the borrower (See § 1962.27 of subpart A of part 1962 on the satisfaction of chattel security instruments). The note(s) will be returned to the borrower immediately except that:

(1) When the final payment is made in a form other than currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title and trust company, the note or notes will not be surrendered until 30 days after the date of final payment, and

(2) When notes are needed in making marginal releases or satisfactions or security instruments, the notes will be held until the instruments are satisfied.

(c) *Surrender of notes to effect collection.* (1) County Supervisors are authorized to surrender notes to borrowers when final payment of the amount due is made in the form of currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title trust company.

(2) The amount due on the note(s) to be surrendered will be confirmed with the Finance Office. County Supervisors will request the original note(s) from the Finance Office if it is not in the County Office.

(d) *Return of notes reduced to judgment.* Notes which have been reduced to judgment are a part of the court records and ordinarily cannot be withdrawn and returned to the borrower even after satisfaction of the judgment. Therefore, no effort will be made to obtain and return such notes except on the written request of the judgment debtor or debtor's attorney. Such requests will be referred to the Office of the General Counsel (OGC).

(e) *Debt settlement case.* See subparts B or C of part 1956 of this chapter for the handling of notes in debt settlement cases.

(f) *Lost notes.* (1) All promissory notes dated on or after 11–1–73 are held in the County Office. A few notes (with the exception of OL notes) are still held by investors. If a note dated prior to 11–1–73 cannot be located in the County Office and it is needed for servicing the case, the County Supervisor will write a memorandum to the Finance Office explaining why the note is needed. The request should give the name and case number of the borrower, date and original amount of the loan, type of loan and loan code.

(2) If a promissory note is lost in the County Office and it is needed for servicing a case, the State Director may authorize the County Supervisor to execute an appropriate affidavit regarding the lost note. The form of such an affidavit will be provided by OGC.

[50 FR 45764, Nov. 1, 1985, as amended at 51 FR 45432, Dec. 18, 1986; 53 FR 13100, Apr. 21, 1988; 56 FR 10147, Mar. 11, 1991]

§ 1951.16 Other servicing actions on real estate type loan accounts.

(a) *Installment on note and other charges*—(1) *Direct loan accounts.* For a borrower with a direct loan, the term ''installation on note and other charges,'' as used in this Subpart, will be the sum of the following:

(i) Annual installment for the year as provided in the promissory note(s).

(ii) Any recoverable cost charges paid for the borrower during the year. (''Recoverable costs'' is defined in § 1951.10(a) of this Subpart.)

(2) *Insured loan accounts.* ''Loan insurance charge'' means a separate insurance charge applying to FO and SW insured loans evidenced by promissory note forms bearing a form date before January 8, 1959. For all insured loans evidenced by note forms bearing a form date of January 8, 1959, or later, the insurance charge is called ''annual charge'' and is included in the interest position of the annual installment in the note. For a borrower with an insured loan, the term ''Installment on note and other charge'' means the sum of the following:

(i) Annual installment for the year as provided in the promissory note.

(ii) Amounts owed the Agricultural Credit Insurance Fund. These amounts are covered by the general term ''Insurance Account'' and consist of the following:

(A) Unpaid loan insurance charges from prior years.

(B) Loan insurance charge for the current year. The loan insurance charge is computed on the basis of the amount of the unpaid principal obligation as of the installment due date and is due and payable on or before the next installment due date.

(C) Any unpaid balance on advances from the insurance fund, including any recoverable cost charges paid for the borrower during the year.

(D) Any accrued interest on advances from the insurance fund.

(iii) The amounts owned on the insurance account must be paid by regular payments each year whether or not the note account is ahead of schedule.

(b) *Schedule status.* For direct and insured loans, a borrower will be on schedule when the sum of regular payments through the last preceding due date of the note equals the sum of installments on the note and other charges due through the same date. Such a borrower will be ahead of schedule or behind schedule when the sum of such regular payments is larger or smaller, respectively, than the sum of such installments on the note and other charges.

(c) *Real estate payments.* A borrower may make regular payments ahead of schedule at any time and use them later to forego payments or to supplement the amount available during any year for payment on the annual installment on the note and other charges. Refunds and extra payments will not be used in this way.

§§ 1951.17–1951.24 [Reserved]

§ 1951.25 Review of limited resource FO, OL, and SW loans.

(a) *Frequency of reviews.* OL, FO, and SW loans will be reviewed each year at the time the analysis is conducted in accordance with subpart B of part 1924 of this chapter and any time a servicing action such as consolidation, rescheduling, reamortization or deferral is taken. The interest rate may not be changed more often than quarterly.

(b) *Method of review.* (1) Each loan will be considered on its own merit.

(2) The County Supervisor should consider:

(i) The borrower's income and repayment record during the preceding years;

(ii) The projections shown on the most recent Farm and Home Plan or other similar plan or operation acceptable to FmHA or its successor agency under Public Law 103–354, in light of the previous year's projected figures and actual figures; (See subpart B of part 1924 of this chapter)

(iii) Whether improved production practices have been or need to be implemented;

(iv) The borrower's progress as a farmer; and

(v) All other factors which the County Supervisor believes should be considered.

(3) The Farm and Home Plan projections for the coming year must show that the ''balance available to pay debts'' exceeds the amount needed to pay debts by at least 10 percent before an increase in interest rate is put into effect. Borrowers that continually purchase unplanned items without the County Supervisor's approval will have the interest rate on their loans increased to the current rate for that loan type. Borrowers that fail to provide the County Supervisor with the information needed to conduct the analysis required in subpart B of part 1924 of this chapter will have their interest rate on their loan increased to the current rate for the OL, FO, or SW loan as applicable. The rate may increase in increments of whole numbers to the current regular interest rate for borrowers. In the borrower's case file, the County Supervisor must document the unplanned purchases and the failure to provide information in a timely manner. The County Supervisor must write the borrower a letter which sets out the facts documented in the case file and advises the borrower that the interest rate will be increased unless the unplanned purchases cease or unless the borrower provides information in a timely manner. Whenever it appears that the borrower has a substantial increase in income and repayment ability or ceases farming, either the interest rate may be increased to the current rate for FO, OL or SW loans, as applicable, or the borrower will be graduated from the program as provided in subpart F of this part.

(4) The County Office will be responsible for scheduling and completing the reviews.

(5) Borrowers who have received a deferral under Subpart S of this part will not have the interest rate increased on their limited resource loans during the deferral period.

(c) *Processing.* (1) If, after the review, the interest rate is to remain the same, no further action needs to be taken.

(2) When the interest rate is increased to the current rate, the loan will be recorded as a regular loan and will no longer be considered a limited resource loan. The borrower must be notified in writing at least 30 days prior to the date of the change. Exhibit B of this subpart may be used as a guide. The effective date of the change in interest rate will be the effective date on Exhibit B. The borrower must be informed of the following for each loan:

(i) The authorization for the change,

(ii) Reason for change (repayment ability, etc.),

(iii) The effective date and rate of the increase in interest,

(iv) Amount of the new installments and dates due,

(v) Right to appeal.

(3) It is not necessary to obtain a new promissory note for this change in interest rate.

[50 FR 45764, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988; 56 FR 3395, Jan. 30, 1991; 58 FR 15074, Mar. 19, 1993]

§§ 1951.26–1951.49 [Reserved]

§ 1951.50 OMB control number.

The collection of information requirements in Subpart A of part 1951 have been approved by the Office of Management and Budget and assigned OMB control number 0575–0075.

[52 FR 26137, July 13, 1987]

EXHIBITS TO SUBPART A

EXHIBIT A—NOTICE TO FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 BORROWERS

FmHA or its successor agency under Public Law 103–354 borrowers with farmer program and community program loan types made under the Consolidated Farm and Rural Development Act may request a loan summary statement which shows the calendar year account activity for each loan. Interested borrowers may request these statements through their local FmHA or its successor agency under Public Law 103–354 office.

[54 FR 10270, Mar. 13, 1989]

EXHIBIT B—NOTICE OF CHANGE IN INTEREST RATE

(insert date)

Notice of Change in Interest Rate

(insert borrower's address)

Re: ☐☐
Fund code
☐☐
Loan number
☐☐
Kind code

Dear (*insert borrower's name and case number*): Your promissory note dated _____, for the original amount of _____ dollars ($_____) provides for a change in interest rate for a limited resource loan in accordance with the Farmers Home Administration or its successor agency under Public Law 103–354 regulations.

Effective (insert date) the interest rate on this loan will be ____ percent (%) on the unpaid principal balance. Your installment due January 1, 19 , will be _____ dollars ($_____). This change in interest rate is for the reason indicated below.

☐ Increase in repayment ability as per Farm and Home Plan dated _____.

☐ *(insert reason if other than above for increase in interest rate).*

You may appeal this action by writing to (*hearing officer*), (*address*), within 30 calendar days of the date of this letter, giving the reason why you believe this matter should be decided differently. This time may be extended if you cannot notify the hearing officer within 30 days for reasons beyond your control.

[56 FR 3396, Jan. 30, 1991]

Subpart B—Collections

SOURCE: 53 FR 26591, July 14, 1988, unless otherwise noted.

§ 1951.51 General.

This subpart prescribes the policies and procedures of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) for collection of loan payments and depositing payments through the Concentration Banking System (CBS). Under CBA, FmHA or its successor agency under Public Law 103–354 field offices select a local financial institution to maintain a Treasury Limited Account (TLA) for depositing FmHA or

its successor agency under Public Law 103–354 loan collections. Deposits to these accounts are withdrawn daily by the concentrator bank for transfer to the Treasury. Under these procedures, the local FmHA or its successor agency under Public Law 103–354 office will deposit the daily office collections in a participating local financial institution and report the amount deposited to a data service facility that is under contract to the concentrator bank. The data service facility will inform the concentrator bank of the amount available in each local financial institution and the concentrator bank will use this information to transfer the funds to the concentrator bank and then to the Treasury.

§§ 1951.52–1951.53 [Reserved]

§ 1951.54 Authority.

The provisions of this subpart are applicable to FmHA or its successor agency under Public Law 103–354 employees who are authorized to receive collections. Employees listed in Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) are hereby authorized to receive, receipt for, exchange for money orders or bank drafts, and transmit collections or deposit collections in a TLA.

§ 1951.55 Receiving and processing collections.

FmHA or its successor agency under Public Law 103–354 offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA or its successor agency under Public Law 103–354 451–2, Form FmHA or its successor agency under Public Law 103–354 1944–9, Form FmHA or its successor agency under Public Law 103–354 1951–55, or a payment coupon. Forms FmHA or its successor agency under Public Law 103–354 451–2 and FmHA or its successor agency under Public Law 103–354 1944–9 are used to transmit accounting information to the Finance Office. Form FmHA or its successor agency under Public Law 103–354 1951–55 is used to assemble payment information which the District Offices use to transmit MFH account information through field office terminals. In addition, the FmHA or its successor agency under Public Law 103–354 office records payments on a management system card, a servicing card, or a payment tracking form, as appropriate.

[56 FR 28038, June 19, 1991]

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

§ 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utilities Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to collectively as ''United States Department of Agriculture (USDA) Agency'', to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency or other individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to RHS direct single family housing loans. Nothing in this subpart affects the agency's common law right of set off.

[65 FR 50602, Aug. 21, 2000]

§ 1951.102 Administrative offset.

(a) *General.* Collections of delinquent debts through administrative offset

will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106.

(b) *Definitions*. In this subpart:

(1) *Agency* means Farm Service Agency, Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service, or any successor agency.

(2) *Contracting officer* is any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of the representative's authority.

(3) *County Committee* means the local committee elected by farmers in the county, as authorized by the Soil Conservation and Domestic Allotment Act and the Department of Agriculture Reorganization Act of 1994, to administer FSA programs approved for the county as appropriate.

(4) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(5) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(6) *Delinquent* means a payment that has not been paid within 30 calendar days after the due date.

(7) *Entity* means a corporation, joint stock company, association, general partnership, limited partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization participating in the farming operation.

(8) *FP* means Farm Programs.

(9) *FLP* means Farm Loan Programs.

(10) *FSA* means Farm Service Agency.

(11) *National Appeals Division* means the organization within the Department of Agriculture that conducts appeals of adverse decisions for program participants under the purview of 7 CFR part 11.

(12) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and transfers the funds to the creditor agency for application to the debt.

(13) *Propriety* means the offset is feasible. It includes offsetting a debtor's payments due any entity in which the debtor participates either directly or indirectly equal to the debtor's interest in the entity. To be feasible the debt must exist and be 60 days delinquent or past due for 90 days or the borrower must be in default of other obligations to the Agency, which can be cured by the payment of money.

(14) *Reviewing officer* means an agency employee responsible for conducting a hearing or documentary review on the existence of debt and the propriety of administrative offset in accordance with 7 CFR 3.29. FSA District Directors or other State Executive Director designees are designated to conduct the hearings or reviews.

[65 FR 50602, Aug. 21, 2000]

§§ 1951.103–1951.105 [Reserved]

§ 1951.106 Offset of payments to entities related to debtors.

(a) *General*. Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

(b) *Offsetting entities*. Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency which have been transferred to the entity without payment

to the Agency of the value of the security or Agency consent to transfer of the assets;

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, the entity as determined by FSA.

(c) *Other remedies.* Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

[65 FR 50603, Aug. 21, 2000]

§§ 1951.107–1951.110 [Reserved]

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of Federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary offset, will be used to collect money from Federal employee retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for Farm Loan Programs loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

(a) *Authorities.* The following authorities are granted to USDA Agency employees in order that they may initiate and implement salary offset:

(1) Certifying Officials are authorized to certify to the debtor's employing agency that the debt exists, the amount of the delinquency or debt, that the procedures in USDA Agency and United States Department of Agriculture's (USDA's) regulations regarding salary offsets have been followed, that the actions required by the Debt Collection Act have been taken; and to request that salary offset be initiated by the debtor's employing agency. This authority may not be redelegated.

(2) Certifying Officials are authorized to advise the Finance Office to establish employee defalcation accounts and non-cash credits to borrower accounts in cases involving other debts, such as those arising from theft, fraud, embezzlement, loss of funds through negligence, and similar actions involving USDA Agency employees.

(3) The Finance Office is authorized to establish defalcation accounts and non-cash credits to borrower accounts upon receipt of requests from the Certifying Officials.

(b) *Definitions*—(1) *Certifying Officials.*—State Directors; State Executive Directors; the Assistant Administrator; Finance Office; Financial Management Director; Financial Management Division, and the Deputy Administrator for Management, National Office.

(2) *Debt or debts.* A term that refers to one or both of the following:

(i) *Delinquent debts.* A past due amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(ii) *Other debts.* An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to

the employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(A) Theft, misuse, or loss of Government funds;

(B) False claims for services and travel;

(C) Illegal, unauthorized obligations and expenditures of Government appropriations;

(D) Using or authorizing the use of Government owned or leased equipment, facilities supplies, and services for other than official or approved purposes;

(E) Lost, stolen, damaged, or destroyed Government property;

(F) Erroneous entries on accounting record or reports; and,

(G) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(3) *Defalcation account*. An account established in the Finance Office for other debts owed the Federal government in the amount missing due to the action of an employee or former employee.

(4) *Disposable pay*. Pay due an employee that remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits, and such other deductions required by law to be withheld.

(5) *Hearing Officer*. An Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA, designated by the Certifying Official to review the determination of the alleged debt.

(6) *Non-cash credit*. The accounting action taken by the Finance Office to credit and make a borrower's account whole for funds paid by the borrower but missing due to an employee's or former employee's actions.

(7) *Salary Offset*. The collection of a debt due to the U.S. by deducting a portion of the disposable pay of a Federal employee without the employee's consent.

(c) *Feasibility of salary offset*. The first step the Certifying Official must take to use this offset procedure is to decide, on a case by case basis, whether offset is feasible. If an offset is feasible, the directions in the following paragraphs of this section will be used to collect by salary offset. If the official making this determination decides that salary offset is not feasible, the reasons supporting this decision will be documented in the borrower's running case record in the case of delinquent debts, or the ''For Official Use Only'' file in cases of other debts. Ordinarily, and where possible, debts should be collected in one lump-sum; but payments may be made in installments. Installment deductions can be made over a period not greater than the anticipated period of employment. However, the amount deducted for a pay period will not exceed 15 percent of the disposable pay from which the deduction is made. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. Based on the Comptroller General's decisions, other debts by employees cannot be forgiven. If the employee retires or resigns, or if employment ends before collection of the debt is completed, final salary payment, lump-sum leave, etc. may be offset to the extent necessary to liquidate the debt. Salary offset is feasible if:

(1) The cost to the Government of collecting salary offset does not exceed the amount of the debt. County Committee members are exempt from salary offset because the amount collected by salary offset would be so small as to be impractical.

(2) There are not any legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court, or the statute of limitations having expired. The Debt Collection Act of 1982 permits offset of claims that have not been outstanding for more than 10 years.

(d) *Notice to debtor*. (1) After the Certifying Official determines that collection by salary offset is feasible, FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 should be sent within 15 calendar days after that determination. This Guide Letter will notify the debtor of intended salary offset at least 30 days before the salary offset begins. FmHA or

its successor agency under Public Law 103–354 Guide Letter 1951–C–4 will be personally delivered to the debtor or sent certified mail, Return Receipt Requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, the date the debtor received the letter will be established and the time limits set out in FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 will run from that date. If delivery by certified mail is not accomplished, FmHA or its successor agency under Public Law 103–354 will assume that the debtor received the letter by regular mail on the day the certified mail was refused or was unable to be delivered.

(2) The Debt Collection Act of 1982 requires that the hearing officer issue a written decision not later than 60 days after the filing of the petition requesting the hearing; thus, the evidence upon which the decision to notify the debtor is based, to the extent possible, should be sufficient for FmHA or its successor agency under Public Law 103–354 to proceed at a hearing, should the debtor request a hearing under paragraph (f) of this section.

(e) *Notice requirement before salary offset*. Salary offset will not be made unless the employee receives 30 calendar days written notice. This Notice of Intent (FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4) will be addressed to the debtor or the debtor's representative. The Notice of Intent must be modified if it is addressed to the debtor's representative. In either case, the Notice of Intent will state:

(1) It has been determined that the debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The cost to the Government of collecting salary offset does not exceed the amount of the debt;

(3) There are not any legal restrictions that would bar collecting the debt;

(4) The debt will be collected by means of deduction of not more than 15 percent from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(5) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(6) An explanation of the requirements concerning interest, penalties and administrative costs, unless such payments are waived;

(7) The employee's right to inspect and request a copy of records relating to the debt;

(8) The employee's right to voluntarily enter into a written agreement for a repayment schedule with the agency different from that proposed by FmHA or its successor agency under Public Law 103–354, if the terms of the repayment proposed by the employee are agreeable with the agency;

(9) That the employee has a right to a hearing conducted by an Administrative Law Judge of USDA or a hearing official not under the supervision or control of the Secretary of Agriculture, concerning the agency's determination of the existence or amount of the debt and the percentage of disposable pay to be deducted each pay period, if a petition for a hearing is filed by the employee as prescribed by FmHA or its successor agency under Public Law 103–354;

(10) The timely filing of a petition for hearing will stay the collection proceedings;

(11) That a final decision will be issued at the earliest practical date, but not later than 60 calendar days after the filing of petition requesting the hearing;

(12) That any knowingly false or frivolous statements may subject the employee to disciplinary procedures, or penalties, under the applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee unless there are provisions to the contrary;

(15) The method and time period for requesting a hearing; and

(16) The name and address of an official of USDA to whom communications should be directed.

(f) *Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.*

(1) If a debtor responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 by asking to review and copy FmHA or its successor agency under Public Law 103–354's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's FmHA or its successor agency under Public Law 103–354 files and that the files may be reviewed and copied within the next 30 days. Copying costs (see subpart F of part 2018 of this Chapter) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have FmHA or its successor agency under Public Law 103–354 copy the records, a copy will be made within 30 days of the request.

(2) If a debtor responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 by offering to repay the debt, the offer may be accepted by the Certifying Official, if it would be in the best interest of the government. FmHA or its successor agency under Public Law 103–354 Form Letter 1951–8 will be used if a repayment offer for an FmHA or its successor agency under Public Law 103–354 loan or grant is accepted. Upon receipt of an offer to repay, the Certifying Official will delay institution of a hearing until a decision is made on the repayment offer. Within 60 days after the initial offer to repay was made, the Certifying Official must decide whether to accept or reject the offer. This decision will be documented in the running case record or the ''For Official Use Only'' file, as appropriate, and the debtor will be sent a letter which sets out the decision to accept or reject the offer to repay. The decision to accept or reject a repayment offer should be based upon a realistic budget or farm and home plan and according to the servicing regulations for the type of loan(s) involved.

(3) If a debtor responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 by asking for a hearing on FmHA or its successor agency under Public Law 103–354's determination that a debt exists and/or is due, or on the percentage of net pay to be deducted each pay period, the Certifying Official will notify the debtor in accordance with paragraph (g)(3) of this section and request the debtor's case file or the ''For Official Use Only'' file.

(4) If a debtor is willing to have more than 15 percent of the disposable pay sent to FmHA or its successor agency under Public Law 103–354, a letter prepared and signed by the debtor clearly stating this must be placed in the debtor's case file or the ''For Official Use Only'' file.

(5) If a debtor who is an FmHA or its successor agency under Public Law 103–354 borrower requests debt settlement, the account must be in collection-only status or be an inactive account for which there is no security. The Certifying Official must inform the borrower of how to apply for debt settlement. Any application will be considered independently of the salary offset. A salary offset should not be delayed because the borrower applied for debt settlement.

(6) The time limits set in FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 and in paragraphs (f) (1), (2), and (3) of this section run concurrently. In other words, if a debtor asks to review the FmHA or its successor agency under Public Law 103–354 file and offers to repay the debt, the debtor cannot take 30 days to ask to review the file and then take another 30 days to offer to repay. The request to review the file and the offer to repay must both be made within 30 days of the date the debtor receives the notification letter.

(7) If an employee is included in a bargaining unit which has a negotiated grievance procedure that does not specifically exclude salary offset proceedings, the employee must grieve the matter in accordance with the negotiated procedure. Employees who are not covered by a negotiated procedure must utilize the salary offset proceedings as outlined in FmHA or its successor agency under Public Law 103–

354 Guide Letter 1951–C–4. The employee must be informed, in writing, which procedure to follow and, as appropriate, reference should be made to the appropriate sections of the negotiated agreement.

(g) *Hearings.* (1) A hearing officer must be a USDA Administrative Law Judge or a person who is not a USDA employee. In order to ensure that a hearing officer will be available promptly when needed, Certifying Officials need to make appropriate arrangements with officials of nearby federal agencies for the use of each other's employees as hearing officers.

(2) Not later than 30 days from the date the debtor receives the Notice of Intent (FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4), the employee must file with the Certifying Official issuing the notice, a written petition establishing his/her desire for a hearing on the existence and amount of the debt or the proposed offset schedule. The employee's petition must fully identify and explain all the information and evidence that supports his/her position. In addition, the petition must bear the employee's original signature and be dated upon receipt by the Certifying Official.

(3) Certifying Officials are responsible for determining if the employee's petition for a hearing has been submitted in a timely fashion. Petitions received from employees after the 30-day time limitation expires will be accepted only if the employee can show the delay was because of circumstances beyond his/her control or because of failure to receive notice of the time limitation. Certifying Officials are required to provide written notification to the employee of the acceptance or non-acceptance of the employee's petition for hearing.

(4) For those petitions accepted, FmHA or its successor agency under Public Law 103–354 will arrange for a hearing officer and notify the employee of the time and place of the hearing. The hearing location should be convenient to all parties involved. The employee will also be notified that the acceptance of the petition for hearing will stay the commencement of collection proceedings. Any payments collected in error due to untimely or delayed filing beyond the employee's control will be refunded unless there are applicable contractual or statutory provisions to the contrary.

(5) The hearing will be based on written submissions and documentation provided by the debtor and FmHA or its successor agency under Public Law 103–354 unless:

(i) A statute authorizes or requires consideration of waiving the debt, the debtor requests waiver of the debt, and the waiver determination turns on an issue of credibility or truth.

(ii) The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or truth.

(iii) The hearing officer determines that an oral hearing is appropriate.

(6) Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer. The hearing officer's determination that the offset hearing is on the written record is final and is not subject to review.

(7) The hearing officer will issue a written decision not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the Certifying Official grants a delay in the proceedings. The written decision will state the facts supporting the nature and origin of the debt, the hearing officer's analysis, findings and conclusions as to the amount and validity of the debt, and repayment schedule. Both the employee and FmHA or its successor agency under Public Law 103–354 will be provided with a copy of the hearing officer's written decision on the debt.

(h) *Processing delinquent debts.* (1) Form AD–343, ''Payroll Action Request,'' and FmHA or its successor agency under Public Law 103–354 Form Letter 1951–6 will be prepared and submitted by the Certifying Official to the National Office, FMAS, for coordination and forwarding to the debtor's employing agency if:

(i) The borrower does not respond to FmHA or its successor agency under

Public Law 103–354 Guide Letter 1951–C–4 within 30 days.

(ii) The borrower responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 within 30 days and

(A) Has had an opportunity to review the file, if requested,

(B) Has received a hearing, if requested, and

(C) A decision has been made by the hearing officer to uphold the offset.

(2) A copy of Form AD–343 and the Form letter 1951–6 will be sent to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit.

(3) If the debtor is an FmHA or its successor agency under Public Law 103–354 employee, Form AD–343 will be sent to the National Office, FMAS, and a copy to the Finance Office, St. Louis, MO, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official.

(4) If the debtor has agreed to have more or less than 15 percent of the disposable pay sent to FmHA or its successor agency under Public Law 103–354, a copy of the debtor's letter (FmHA or its successor agency under Public Law 103–354 Form Letter 1951–8) authorizing this must be attached to Form AD–343.

(5) Field offices will be notified of payments received from salary offset by receipt of a transaction record from the Finance Office.

(i) *Deduction percentage.* (1) Generally, installment deductions will be made over a period not greater than the anticipated period of employment. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. Certifying Officials are responsible for determining the size and frequency of the deductions. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(2) Deductions will be made only from basic pay, incentive pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount.

(j) *Agency/NFC responsibility for other debts.* (1) FmHA or its successor agency under Public Law 103–354 will inform NFC about other indebtedness by transmitting to NFC an AD–343. NFC will process the documents through the Payroll/Personnel System, calculate the net amount of the adjustment and generate a salary offset notice. This notice will be sent to the employee's employing office along with a duplicate copy for the FmHA or its successor agency under Public Law 103–354's records. FmHA or its successor agency under Public Law 103–354 is responsible for completing the necessary information and forwarding the employee's notice to the employee.

(2) Other indebtedness falls into two categories:

(i) An agency-initiated indebtedness (i.e. personal telephone calls, property damages, etc.).

(ii) An NFC-initiated indebtedness (i.e. duplicate salary payments, etc.). NFC will send the salary offset notice to the employing office.

(k) *Establishing employees or former employees defalcation accounts and non-cash credits to borrower accounts.* In cases where a borrower made a payment on an FmHA or its successor agency under Public Law 103–354 account(s) and, due to theft, embezzlement, fraud, negligence, or some other action on the part of an FmHA or its successor agency under Public Law 103–354 employee or employees, the payment is not transmitted to the Finance Office for application to the borrower's account(s), certain accounting actions must be taken by the Finance Office to establish non-cash credits to the borrower's account and an employee defalcation account.

(1) The Certifying Official will advise the Assistant Administrator, Finance Office by memorandum to establish a defalcation account. The memorandum must state the following information:

(i) Employee's name (or former),

(ii) Social Security Number,

(iii) Present or last known address,

(iv) Date of Payment, and

(v) Amount of the defalcation account.

(2) If a non-cash credit to a borrower's account(s) is required, the letter to the Finance Office will include:

(i) Borrower's name and case number,

(ii) Fund Code and Loan Code,

(iii) Date and amount of missing payment,

(iv) Copy of receipt issued for the missing payment, and

(v) Name of employee who last had custody of the missing funds.

(3) To assist and assure proper accounting for defalcation accounts and non-cash credits, the request should be made at the same time. Should requests be made separately, be sure to identify appropriately.

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (k) (1) and (2) of this section to the Deputy Administrator for Management for distribution to the Financial and Management Analysis Staff (FMAS) and Employee Relations Branch, Personnel Division.

(l) *Application of payments, refunds and overpayments.* (1) If a debtor is delinquent or indebted on more than one FmHA or its successor agency under Public Law 103–354 loan or debt, amounts collected by offset will be applied as specified on Form AD–343, based on the advantage to agency or debtor. The check date will be used as the date of credit in applying payments to the borrower's accounts.

(2) If a court or agency orders FmHA or its successor agency under Public Law 103–354 to refund the amount obtained by salary offset, a refund will be requested promptly by the Certifying Official in accordance with the order by sending FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5 to the Finance Office. Processing FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5 in the Finance Office will cause a refund to be sent to the debtor through the county office or other appropriate FmHA or its successor agency under Public Law 103–354 office. The debtor is not entitled to any payment of interest, on the refunded amount.

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying Official in accordance with paragraphs (l) (1) and (2) of this section.

(4) If FmHA or its successor agency under Public Law 103–354 receives money through an offset but the debtor is not delinquent or indebted at the time or the amount received is in excess of the delinquency or indebtedness, the entire amount or the amount in excess of the delinquency or indebtedness will be refunded promptly to the debtor by the Certifying Official in accordance with paragraphs (l) (1) and (2) of this section.

(m) *Cancellation of offset.* If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will complete Form AD–343 and send it to the National Office, FMAS. FMAS will notify the paying agency with Form AD–343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit.

(n) *Intra-departmental transfer.* When an FmHA or its successor agency under Public Law 103–354 employee who is indebted to one agency in USDA transfers to another agency within USDA, a copy of the repayment schedule should be forwarded by the agency personnel office to the new employing agency. The NFC will continue to make deductions until full recovery is effected.

(o) *Liquidation from final checks.* Upon the determination that an employee owing a debt to FmHA or its successor agency under Public Law 103–354 is to retire, resign, or employment otherwise ends, the Certifying Official

should forward a telegram with the appropriate employee identification and amount of the debt to the NFC. The telegram should request that the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. The telegram information should be confirmed by completion of Form AD–343. Collection from retirement funds will be in accordance with Departmental Administrative Offset procedures (7 CFR Part 3, Subpart B, § 3.32).

(p) *Coordination with other agencies.* (1) If FmHA or its successor agency under Public Law 103–354 is the creditor agency but not the paying agency, the Certifying Official will submit Form AD–343 to the National Office, FMAS, to begin salary offset against an indebted employee. The request will include a certification as to the determination of indebtedness, and that FmHA or its successor agency under Public Law 103–354 has complied with applicable regulations and instruction for submitting the funds to the Finance Office. (See FmHA or its successor agency under Public Law 103–354 Form Letter 1951–6).

(2) When an employee of FmHA or its successor agency under Public Law 103–354 owes a debt to another Federal agency, salary offset may be used only when the Federal agency certifies that the person owes the debt and that the Federal agency has complied with its regulations. The request must include the creditor agency's certification as to the indebtedness, including the amount, and that the employee has been given the due process entitlements guaranteed by the Debt Collection Act of 1982. When a request for offset is received, FmHA or its successor agency under Public Law 103–354 will notify the employee and NFC and arrange for offset. (See FmHA or its successor agency under Public Law 103–354 Form Letter 1951–7).

(q) *Deductions by the National Finance Center (NFC).* The NFC will automatically deduct the full amount of the delinquency or indebtedness if less than 15 percent of disposable pay or 15 percent of disposable pay if the delinquency or indebtedness exceeds 15 percent, unless the creditor agency advises otherwise. Deductions will begin the second pay period after the 30-day notification period has expired unless FmHA or its successor agency under Public Law 103–354 issues the notice. If FmHA or its successor agency under Public Law 103–354 issues the notice, the NFC will begin deductions on the first pay period after receipt of the Form AD–343.

(r) *Interest, penalties and administrative costs.* Interest and administrative costs will normally be assessed on outstanding claims being collected by salary offset. However, penalties should not be charged routinely on debts being collected in installments by salary offsets, since it is not to be construed as a failure to pay within a given time period. Additional interest, penalties, and administrative costs will not be assessed on delinquent loans until FmHA or its successor agency under Public Law 103–354 publishes regulations permitting such charges.

(s) *Adjustment in rate of repayment.* (1) When an employee who is indebted receives a reduction in basic pay that would cause the current deductions to exceed 15 percent of disposable pay, and the employee has not consented in writing to a greater amount, FmHA or its successor agency under Public Law 103–354 must take action to reduce the amount of the deductions to 15 percent of the new amount of disposable pay. Upon an increase in basic pay which results in the current deductions to be less than the specified percentage, FmHA or its successor agency under Public Law 103–354 may increase the amount of the deductions accordingly. In either case, when a change is made the employee will be notified in writing.

(2) When an employee has an existing reduced repayment schedule because of financial hardship, the creditor agency may arrange for a new repayment schedule.

[52 FR 18544, May 18, 1987, as amended at 53 FR 44178, Nov. 2, 1988; 54 FR 26945, June 27, 1989; 62 FR 41799, Aug. 1, 1997; 65 FR 50603, Aug. 21, 2000]

§§ 1951.112–1951.149 [Reserved]

§ 1951.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0119.

[51 FR 42821, Nov. 26, 1986]

Subpart D—Final Payment on Loans

SOURCE: 57 FR 774, Jan. 9, 1992, unless otherwise noted.

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utility Service (RUS) for its water and waste programs, and Rural Business–Cooperative Service (RBS), herein referred to as ''Agency,'' for processing final payment on all loans. This subpart does not apply to direct single family housing customers of the RHS.

[61 FR 59778, Nov. 22, 1996]

§ 1951.152 Definition.

As used in this subpart:

Mortgage. Includes real estate mortgage, deed of trust or any other form of security instrument or lien on real property.

§ 1951.153 Chattel security or note-only cases.

(a) If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released in accordance with subpart A of part 1962 of this chapter.

(b) When a loan is evidenced by only a note and the note is paid in full, FmHA or its successor agency under Public Law 103–354 will deliver the note to the borrower in the manner prescribed in § 1951.155(c) of this subpart.

§ 1951.154 Satisfaction and release of documents.

(a) *Authorization*. FmHA or its successor agency under Public Law 103–354 is authorized to execute the necessary releases and satisfactions and return security instruments and related documents to borrowers. Satisfaction and release of security documents takes place:

(1) Upon receipt of payment in full of all amounts owed to the Government including any amounts owed to the loan insurance account, subsidy recapture amounts, all loan advances and/or other charges to the borrower's account;

(2) Upon verification that the amount of payment received is sufficient to pay the full amount owed by the borrower; or

(3) When a compromise or adjustment offer has been accepted and approved by the appropriate Government official in full settlement of the account and all required funds have been paid.

(b) [Reserved]

(c) *Lost note*. If the original note is lost FmHA or its successor agency under Public Law 103–354 will give the borrower an affidavit of lost note so that the release or satisfaction may be processed.

§ 1951.155 County and/or District Office actions.

(a) *Funds remaining in supervised bank accounts*. When a borrower is ready to pay an insured or direct loan in full, any funds remaining in a supervised bank account will be withdrawn and remitted for application to the borrower's account. If the entire principal of the loan is refunded after the loan is closed, the borrower will be required to pay interest from the date of the note to the date of receipt of the refund.

(b) *Determining amount to be collected*. FmHA or its successor agency under Public Law 103–354 will compute and verify the amount to be collected for payment of an account in full. Requests for payoff balances on all accounts will be furnished in writing in a format specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office).

(c) *Delivery of satisfaction, notes, and other documents*. When the remittance which paid an account in full has been processed by FmHA or its successor agency under Public Law 103–354, the paid note and satisfied mortgage may

be returned to the borrower. If other provisions exist, the mortgage will not be satisfied until the total indebtedness secured by the mortgage is paid. For instance, in a situation where a rural housing loan is paid-in-full and there is a subsidy recapture receivable balance that the borrower elects to delay repaying, the amount of recapture to be repaid will be determined when the principal and interest balance is paid. The mortgage securing the RHS, RBS, RUS, and/or FSA or its successor agency under Public Law 103–354 debt will not be released of record until the total amount owed the Government is repaid. To permit graduation or refinancing by the borrower, the mortgage securing the recapture owed may be subordinated.

(1) If FmHA or its successor agency under Public Law 103–354 receives final payments in a form other than cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA or its successor agency under Public Law 103–354 to be financially responsible, the mortgage and paid note will not be released until after a 30-day waiting period. If other indebtedness to FmHA or its successor agency under Public Law 103–354 is not secured by the mortgage, FmHA or its successor agency under Public Law 103–354 will execute the satisfaction or release. When the stamped note is delivered to the borrower, FmHA or its successor agency under Public Law 103–354 will also deliver the real estate mortgage and related title papers such as title opinions, title insurance binders, certificates of title, and abstracts which are the property of the borrower. Any water stock certificates or other securities that are the property of the borrower will be returned to the borrower. Also, any assignments of income will be terminated as provided in the assignment forms.

(2) Delivery of documents at the time of final payment will be made when payment is in the form of cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA or its successor agency under Public Law 103–354 to be responsible. FmHA or its successor agency under Public Law 103–354 will not accept payment in the form of foreign currency, foreign checks or sight drafts. FmHA or its successor agency under Public Law 103–354 will execute the satisfaction or release (unless other indebtedness to FmHA or its successor agency under Public Law 103–354 is covered by the mortgage) and mark the original note with a paid-in-full legend based upon receipt of the full payment balance of the borrower's account(s), computed as of the date final payment is received. In unusual cases where an insured promissory note is held by a private holder, FmHA or its successor agency under Public Law 103–354 can release the mortgage and deliver the note when it is received.

(d)–(e) [Reserved]

(f) *Cost of recording or filing of satisfaction.* The satisfaction or release will be delivered to the borrower for recording and the recording costs will be paid by the borrower, except when State law requires the mortgagee to record or file satisfactions or release and pay the recording costs.

(g) *Property insurance.* When the borrower's loan has been paid-in-full and the satisfaction or release of the mortgage has been executed, FmHA or its successor agency under Public Law 103–354 may release the mortgage interest in the insurance policy as provided in subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(h) [Reserved]

(i) *Outstanding Loan Balance(s).* FmHA or its successor agency under Public Law 103–354 will attempt to collect any account balance(s) that may result from an error by FmHA or its successor agency under Public Law 103–354 in handling final payments according to paragraph 1951.155(b) of this section. If collection cannot be made, the debt will be settled according to subpart B of part 1956 of this chapter or reclassified to collection-only. A deficiency judgment may be considered if the balance is a significant amount ($1,000 or more) and the borrower has known assets.

57 FR 774, Jan. 9, 1992, as amended at 60 FR 55145, Oct. 27, 1995]

§§ 1951.156–1951.200 [Reserved]

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

SOURCE: 55 FR 4399, Feb. 8, 1990, unless otherwise noted.

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans and grants; Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Direct Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants; and Rural and Cooperative Development Grants in subpart F of part 4284 of this title. Rural Development State Offices act on behalf of the Rural Utilities Service, the Rural Business-Cooperative Service, and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

[62 FR 33510, June 19, 1997, as amended at 62 FR 42387, Aug. 7, 1997]

§ 1951.202 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect FmHA or its successor agency under Public Law 103–354's financial interest. Supervision by FmHA or its successor agency under Public Law 103–354 includes, but is not limited to, review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging for, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews.

§ 1951.203 Definitions.

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *Assumption of debt.* The agreement by one party to legally bind itself to pay the debt incurred by another.

(c) *CONACT.* The Consolidated Farm and Rural Development Act, as amended.

(d) *Eligible applicant.* An entity that would be legally qualified for financial assistance under the loan or grant program involved in the servicing action.

(e) *Ineligible applicant.* An entity or individual that would not be considered eligible for financial assistance under the loan or grant program involved in the servicing action.

(f) *Nonprogram (NP) loan.* An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions or sale of inventory property; any recipient in cases of unauthorized assistance; or a recipient whose legal organization has changed as set forth in § 1951.220(e) of this subpart resulting in the borrower being ineligible for program benefits.

(g) *Servicing office.* The State, District, or County Office responsible for immediate servicing functions for the borrower or grantee.

(h) *Transfer fee.* A one-time nonrefundable application fee, charged to ineligible applicants for FmHA or its successor agency under Public Law 103–354 services rendered in the processing of a transfer and assumption.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, or other servicing action under this subpart will contain the following covenant.

The property described herein was obtained or improved with Federal financial assistance and is subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later.

§ 1951.205 Redelegation of authority.

Servicing functions under this subpart which are specifically assigned to the State Director may be redelegated in writing to an appropriate sufficiently trained designee.

§ 1951.206 Forms.

Forms utilized for actions under this subpart are to be modified appropriately where necessary to adapt the forms for use by corporate recipients rather than individuals.

§ 1951.207 State supplements.

State supplements developed to carry out the provisions of this subpart will be prepared in accordance with subpart B of part 2006 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office) and applicable State laws and regulations. State supplements are to be used only when required by National Instructions or necessary to clarify the impact of State laws or regulations, and not to restate the provisions of National Instructions. Advice and guidance will be obtained as needed from the Office of the General Counsel (OGC).

§§ 1951.208–1951.209 [Reserved]

§ 1951.210 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with subpart G of part 1940 of this chapter. The appropriate environmental review will be completed prior to approval of the servicing action. When National Office approval is required, the completed environmental review will be included with other information submitted.

§ 1951.211 Refinancing requirements.

In accordance with the CONACT, FmHA or its successor agency under Public Law 103–354 requires for most loans covered by this subpart that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan. Applicable requirements are set forth in subpart F of part 1951 of this chapter. A civil rights impact analysis is required.

[55 FR 4399, Feb. 8, 1990, as amended at 63 FR 16089, Apr. 2, 1998]

§ 1951.212 Unauthorized financial assistance.

Subpart O of part 1951 of this chapter prescribes policies for servicing the loans and grants covered under this subpart when it is determined that a borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy, or any other direct financial assistance.

§ 1951.213 Debt settlement.

Subpart C of part 1956 of this chapter prescribes policies and procedures for debt settlement actions for loans covered under this subpart when it is determined that a debt is eligible for settlement except as provided in §§ 1951.216 and 1951.231.

§ 1951.214 Care, management, and disposal of acquired property.

Property acquired by Government or its successor agency under Public Law 103–354 will be handled according to subparts B and C of part 1955 of this chapter.

[55 FR 4399, Feb. 8, 1990, as amended at 63 FR 16089, Apr. 2, 1998]

§ 1951.215 Grants.

No monitoring action by FmHA or its successor agency under Public Law 103–354 is required after grant closeout. Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, and FmHA or its successor agency under Public Law 103–354 accepts final expenditure information. However, grantees remain responsible in accordance with the terms of the grant for property acquired with grant funds.

(a) *Applicability of requirements.* Servicing actions relating to FmHA or its successor agency under Public Law 103–354 grants are governed by the provisions of this subpart, the terms of the Grant Agreement and, if applicable, the provisions of 7 CFR parts 3015, 3016, and 3017.

(1) Servicing actions will be carried out in accordance with the terms of the ''Association Water or Sewer System Grant Agreement,'' and RUS Bulletin 1780–12, ''Water and Waste Grant Agreement'' (available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500). Grant agreements with a revision date on or after January 29, 1979, require that the grantee request disposition instructions from the Agency before disposing of property which is no longer needed for original grant purposes.

(2) When facilities financed in part by FmHA or its successor agency under Public Law 103–354 grants are transferred or sold, repayment of all or a portion of the grant is not required if the facility will be used for the same purposes and the new owner provides a written agreement to abide by the terms of the grant agreement.

(3) 7 CFR 3015 first became effective on November 10, 1981; 7 CFR parts 3016 on October 1, 1988; and 7 CFR 3017 on March 18, 1989. Grants made on or after those dates are subject to the provisions of those regulations except to the extent of the express provisions of the Grant Agreement.

(b) *Authorities.* Subject to the requirements of § 1951.215(a), authority to approve servicing actions is as follows:

(1) For water and waste disposal grants, the State Director is authorized to approve any servicing actions needed, except that prior approval of the Administrator is required when property acquired with grant funds is disposed of in accordance with §§ 1951.226, 1951.230, or 1951.232 of this subpart and the buyer or transferee refuses to assume all terms of the grant agreement.

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.

[55 FR 4399, Feb. 8, 1990, as amended at 63 FR 16089, Apr. 2, 1998]

§ 1951.216 Nonprogram (NP) loans.

Borrowers with NP loans are not eligible for any program benefits, including appeal rights. However, FmHA or its successor agency under Public Law 103–354 may use any servicing tool under this subpart necessary to protect the Government's security interest, including reamortization or rescheduling. The refinancing requirements of subpart F of part 1951 of this chapter do not apply to NP loans. Debt settlement actions relating to NP loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval. Any exception to the servicing requirements of NP loans

under this subpart must have prior concurrence of the National Office.

§ 1951.217 Public bodies.

Servicing actions involving public bodies will be carried out to the extent feasible according to the provisions of this subpart. With prior National Office approval, the State Director is authorized to vary from such provisions if necessary and approved by OGC, provided such variation will not violate other regulatory or statutory provisions. To request approval, the case file, including copies of applicable documents, recommendations, and OGC comments, will be forwarded to the Administrator, Attention: (appropriate program division).

§§ 1951.218–1951.219 [Reserved]

§ 1951.220 General servicing actions.

(a) *Payment in full.* Payment in full of a loan is handled according to subpart D of part 1951 of this chapter. When a loan is paid in full, the servicing official will:

(1) Notify the company providing fidelity bond coverage in writing that the government no longer has an interest in the bond if the government is named co-obligee on the bond.

(2) Release FmHA or its successor agency under Public Law 103–354's interest in insurance policies according to applicable provisions of subpart A of part 1806 (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(3) Release FmHA or its successor agency under Public Law 103–354's interest in any other security as appropriate, consulting with OGC if necessary.

(b) *Loan summary statements.* Upon request of a borrower, FmHA or its successor agency under Public Law 103–354 will issue a loan summary statement showing account activity for each loan made or insured under the CONACT. Field offices will post a notice on the bulletin board informing borrowers of the availability of loan summary statements. See exhibit A of subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards to field offices a copy of Form FmHA or its successor agency under Public Law 103–354 1951–9, ''Annual Statement of Loan Account,'' to be retained in borrower files as a permanent record of account activity for the year.

(2) Quarterly Forms FmHA or its successor agency under Public Law 103–354 1951–9 are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form FmHA or its successor agency under Public Law 103–354 1951–57, ''Request for Loan Summary Statement,'' to the Finance Office.

(3) The servicing office will provide a copy of the applicable loan summary statement to the borrower on request. A copy of Form FmHA or its successor agency under Public Law 103–354 1951–9 and, for loans with unamortized installments, a printout of future installments owed obtained using the borrower status screen option in the Automated Discrepancy Processing System (ADPS), will constitute the loan summary statement to be provided to the borrower.

(c) *Insurance.* FmHA or its successor agency under Public Law 103–354 borrowers shall maintain insurance coverage as follows:

(1) Community and Insured Business Programs borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of subpart A of part 1942 of this chapter. Insurance coverage must be monitored in accordance with the above-referenced section to determine that adequate policies and bonds are in force.

(2) For all other types of loans covered by this subpart, property insurance will be serviced according to subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1) in real estate mortgage cases, and according to the loan agreement in other cases.

(d) *Property taxes.* Real property taxes are serviced according to Subpart A of

part 1925 of this chapter. If State statutes permit a personal property tax lien to have priority over FmHA or its successor agency under Public Law 103–354's lien, such taxes are serviced according to §§ 1925.3 and 1925.4 of subpart A of part 1925 of this chapter.

(e) *Changes in borrower's legal organization.* (1) The State Director may approve, with OGC's concurrence, changes in a recipient's legal organization, including revisions of articles of incorporation or charter and bylaws, when:

(i) The change does not provide for a sole member type of organization;

(ii) The borrower retains control over its assets and the operation, management, and maintenance of the facility, and continues to carry out its responsibilities as set forth in § 1942.17(b)(4) of subpart A of part 1942 of this chapter; and

(iii) The borrower retains significant local ties with the rural community.

(2) The State Director may approve, with prior concurrence of the Administrator, changes in a recipient's legal organization which result in a sole member type of organization, or any other change which results in a recipient's loss of control over its assets and/or the operation, management and maintenance of the facility, provided all of the following have been or will be met:

(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a nonprogram loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(f) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members of the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by FmHA or its successor agency under Public Law 103–354 as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect FmHA or its successor agency under Public Law 103–354's interest. Servicing actions necessary due to such provisions will be noted on Form FmHA or its successor agency under Public Law 103–354 1905–10, ''Management System Card—Association.''

(g) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA or its successor agency under Public Law 103–354, and in compliance with any special servicing actions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted on Form FmHA or its successor agency under Public Law 103–354 1905–10.

(h) *Correcting errors in security instruments.* Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice, that the property was included due to mutual error.

(i) *Present market value determination.* For purposes of this subpart, the value of security is determined by the approval official as follows:

(1) *Security representing a relatively small portion of the total value of the security property*. The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(2) *Security representing a relatively large portion of the total value of the security property*. The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(3) *Appraisal report*. If required, a current appraisal report will be completed in accordance with § 1942.3 of subpart A of part 1942 of this chapter. The appraisal will be completed by a qualified FmHA or its successor agency under Public Law 103–354 employee or an independent appraiser as determined appropriate by the approval official.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 775, Jan. 9, 1992; 57 FR 21199, May 19, 1992; 57 FR 36591, Aug. 14, 1992]

§ 1951.221 Collections, payments and refunds.

Collections are processed in accordance with subpart B of part 1951 of this chapter. Payments and refunds are handled in accordance with the following:

(a) *Community and Insured Business Programs*. (1) Field offices can obtain data on principal installments due for Community and Insured Business Programs loans with unamortized installments using the borrower status screen option in the ADPS.

(2) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA or its successor agency under Public Law 103–354's security.

(i) Distribution of such payments is made as follows:

(A) First, to the FmHA or its successor agency under Public Law 103–354 loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(2)(i) (B) and (C) of this section.

(B) Second, to the FmHA or its successor agency under Public Law 103–354 loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(2)(i)(C) of this section.

(C) Third, as advance payments on FmHA or its successor agency under Public Law 103–354 loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) Unless otherwise established by the debt instrument, regular payments will be applied as follows:

(A) For amortized loans, first to interest accrued (as of the date of receipt of the payment), and then to principal.

(B) For principal-plus-interest loans, first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(3) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in § 1806.5(b) of subpart A of part 1806 (paragraph V B of FmHA or its successor agency under Public Law 103–354 Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA or its successor agency under Public Law 103–354 loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments

will be applied to the final unpaid principal installment.

(b) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* (1) Regular payments for such loans are defined in § 1951.8(a) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in § 1951.8(b) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(b) of that subpart.

§ 1951.222 Subordination of security.

When a borrower requests FmHA or its successor agency under Public Law 103–354 to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA or its successor agency under Public Law 103–354 lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) *General.* The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the FmHA or its successor agency under Public Law 103–354 indebtedness, and the amount must be within the approval official's authority as set forth in exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) It must be determined that the borrower cannot refinance its FmHA or its successor agency under Public Law 103–354 debt in accordance with subpart F of part 1951 of this chapter.

(3) The transaction will further the purposes for which the FmHA or its successor agency under Public Law 103–354 loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA or its successor agency under Public Law 103–354 debt being adequately secured.

(4) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(5) Any proposed development work will be planned and performed according to § 1942.18 of subpart A of part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(6) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(7) In cases involving land purchase, the FmHA or its successor agency under Public Law 103–354 will obtain a mortgage on the purchased land.

(8) When the transaction involves more than $10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(9) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA or its successor agency under Public Law 103–354 loan assistance.

(10) Necessary consent and subordination of all other outstanding security interests must be obtained.

(11) For Indian Tribes and Tribal Corporations, loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in exhibit M of subpart G of part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(b) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under subpart A of part 1901 of this chapter.

(c) *Processing.* The case file is to include:

(1) The borrower's written request on Form FmHA or its successor agency

under Public Law 103–354 465–1, ''Application for Partial Release, Subordination, or Consent,'' if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(2) Current balance sheet;

(3) If development work is involved, an operating budget on Form FmHA or its successor agency under Public Law 103–354 442–7, ''Operating Budget,'' or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form FmHA or its successor agency under Public Law 103–354 442–2, ''Statement of Budget, Income, and Equity,'' schedules 1 and 2, or similar form;

(4) Copy of proposed security instrument;

(5) Appraisal report, when applicable;

(6) OGC opinion on the request;

(7) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(8) Appropriate environmental review; and

(9) Any other necessary supporting information.

(d) *Closing*. All requests for subordination will be closed according to instructions from OGC except those which affect only chattel liens other than pledges of revenue. FmHA or its successor agency under Public Law 103–354's consent on Form FmHA or its successor agency under Public Law 103–354 465–1 will be signed concurrently with Form FmHA or its successor agency under Public Law 103–354 460–2, ''Subordination by the Government,'' when applicable.

§ 1951.223 Reamortization.

(a) *State Director authorization*. The State Director is authorized to approve reamortization of loans under the following conditions:

(1) The account is delinquent and cannot be brought current within one year while maintaining a reasonable reserve;

(2) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule;

(3) The amount being reamortized is within the State Director's loan approval authorization; and

(4) There is no extension of the final maturity date.

(b) *Requests requiring National Office approval*. Reamortizations not meeting the above conditions require prior National Office approval. Requests will be forwarded to the National Office with the case file, including:

(1) Current budget and cash flow prepared on Form FmHA or its successor agency under Public Law 103–354 442–2, schedules 1 and 2, or similar form;

(2) Current balance sheet and income statement;

(3) Exhibit A of this subpart, appropriately completed;

(4) Form FmHA or its successor agency under Public Law 103–354 1951–33, ''Reamortization Request,'' completed in accordance with §1951.223(c)(3) of this subpart, when applicable; and

(5) Any other necessary supporting information.

(c) *Processing*. When legally permissible and administratively acceptable, the total outstanding principal and interest balances will be reamortized rather than only the delinquent amount. Accrued interest will be at the rate currently reflected in Finance Office records.

(1) Reamortizations will be perfected in accordance with OGC closing instructions.

(2) When debt instruments are being modified or new debt instruments executed, bond counsel or local counsel, as appropriate, must provide an opinion indicating any effect on FmHA or its successor agency under Public Law 103–354's security position. The FmHA or its successor agency under Public Law 103–354 approval official must determine that the government's interest

will remain adequately protected if the security position will be affected.

(3) *Notes.* Except as provided in § 1951.223(c)(4), loans evidenced by notes will be reamortized through a new evidence of debt unless OGC recommends that the terms of the existing document be modified. Form FmHA or its successor agency under Public Law 103–354 1951–33 may be used to effect such modifications, if legally adequate, or other forms may be used if acceptable to FmHA or its successor agency under Public Law 103–354. The original of a new note or any endorsement required by OGC is to be attached to the existing note, filed in the servicing office, and retained until the account is paid in full or otherwise satisfied. A copy will be forwarded to the Finance Office.

(4) *Bonds and notes with other than real or chattel security pledged to FmHA or its successor agency under Public Law 103–354.* Loans evidenced by bonds, or by notes with other than real or chattel security pledged to FmHA or its successor agency under Public Law 103–354, may be reamortized using procedures acceptable to the State Director and legally permissible under State statutes in the opinion of the borrower's counsel and the OGC.

(i) The procedure may consist of a new debt instrument or agreement for the total FmHA or its successor agency under Public Law 103–354 indebtedness, including the delinquency, or a new instrument or agreement whereby the borrower agrees to repay the delinquency plus interest. If a new instrument or agreement for only the delinquent amount is used, a new loan number will be assigned to the delinquent amount, and the borrower will be required to pay the amounts due under both the original and the new instruments.

(ii) When a delinquent or problem loan cannot be reamortized by issuing a new debt instrument due to State statutes, or the cost of preparation and closing is prohibitive, the rescheduling agreement provided as Exhibit H of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), may be used.

(iii) Section 1942.19 of subpart A of part 1942 of this chapter applies to any new bonds issued unless precluded by State statutes or an exception is approved by the National Office.

(iv) If State statutes do not require the release of existing bonds, they will be retained with the new bond instrument or agreement in the FmHA or its successor agency under Public Law 103–354 office authorized to store such documents. If State statutes require release of existing bonds, the exchange will be accomplished by the District Director, and the new bond and/or agreement will be retained in the appropriate office.

(5) *New debt instruments or agreements.* (i) A copy will be sent to the Finance Office after execution, except that if serial bonds are used, the original bond(s) will be submitted to the Finance Office.

(ii) Any agreement used will contain:

(A) The amount delinquent, which must equal the total delinquency on the account and net advances (the unpaid principal on any advance and the accrued interest on any advance through the date of reamortization, less interest payments credited on the advance account);

(B) The effective date of the reamortization;

(C) The number of years over which the delinquency will be amortized;

(D) The repayment schedule; and

(E) The interest rate.

(iii) A payment will be due on the next scheduled due date. Deferment of interest and/or principal payments is not authorized.

(iv) A separate new instrument will be required for each loan being reamortized.

(v) If amortized payments are not used, the schedule of principal installments developed will be such that combined payments of principal and interest closely approximate an amortized payment.

(d) *Reamortization with interest rate adjustment—Water and waste borrowers only.* A borrower that is seriously delinquent in loan payments may be eligible for loan reamortization with interest rate adjustment. The purpose of loan reamortization with interest rate adjustment is to provide relief for a borrower that is unable to service the outstanding loan in accordance with

its existing terms and to enhance recovery on the loan. A borrower must meet the conditions of this subpart to be considered eligible for this provision.

(1) *Eligibility determination.* The State Director, Rural Development, may submit to the Administrator for approval an adjustment in the rate of interest charged on outstanding loans only for those borrowers who meet the following requirements:

(i) The borrower has exhausted all other servicing provisions contained in this subpart;

(ii) The borrower is experiencing severe financial problems;

(iii) Any management deficiencies must have been corrected or the borrower must submit a plan acceptable to the State Office to correct any deficiencies before an interest rate adjustment may be considered;

(iv) Borrower user rates must be comparable to similar systems. In addition, the operating expenses reported by the borrower must appear reasonable in relation to similar system expenses;

(v) The borrower has cooperated with Rural Development in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and agency regulations; and

(vi) The borrower's account must be delinquent at least one annual debt payment for 180 days.

(2) *Conditions of approval.* All borrowers approved for an adjustment in the rate of interest by the Administrator shall agree to the following conditions:

(i) The borrower shall agree not to maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements.

(ii) A review of the borrower's management and business operations may be required at the discretion of the State Director. This review shall be performed by an independent expert who has been recommended by the State Director and approved by the National Office. The borrower must agree to implement all recommendations made by the State Director as a result of the review.

(iii) If requested, a copy of the latest audited financial statements or management report must be submitted to the Administrator.

(3) *Reamortization.* At the discretion of the Administrator, the interest rate charged on outstanding loans of eligible borrowers may be adjusted to no less than the poverty interest rate and the term of the loans may be extended up to a new 40 year term or the remaining useful life of the facility, whichever is less.

[55 FR 4399, Feb. 8, 1990, as amended at 56 FR 25351, June 4, 1991; 63 FR 41714, Aug. 5, 1998]

§ 1951.224 Third party agreements.

The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(a) *Leases*—(1) *Lease of all or part of a facility (except when liquidation action is pending).* The State Director may consent to the leasing of all or a portion of security property when:

(i) Leasing is the only feasible way to provide the service and is the customary practice as required under § 1942.17(b)(4) of subpart A of part 1942 of this chapter;

(ii) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for its continued availability and use at reasonable rates and terms as required under § 1942.17(b)(4) of subpart A of part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility;

(iii) The lease agreement contains provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from FmHA or its successor agency under Public Law 103–354;

(iv) The lease document contains nondiscrimination requirements as set forth in § 1951.204 of this subpart;

(v) The lease contains a provision which recognizes that FmHA or its successor agency under Public Law 103–354

is a lienholder on the subject facility and, as such, the lease is subordinate to the rights and claims of FmHA or its successor agency under Public Law 103–354 as lienholder; and

(vi) The lease does not constitute a lease/purchase arrangement, unless permitted under §1951.232 of this subpart.

(2) *Lease of all or part of a facility (pending liquidation action).* The State Director may consent to the leasing of all or a portion of security property when:

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(ii) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;

(iii) Leasing is not an alternative to, or means of delaying, liquidation action;

(iv) The lease and use of any proceeds from the lease will further the objective of the loan;

(v) Rental income is assigned to FmHA or its successor agency under Public Law 103–354 in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured;

(vi) The lease is advantageous to the borrower and is not disadvantageous to the Government;

(vii) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence; and

(viii) The lease does not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(b) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

(1) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to FmHA or its successor agency under Public Law 103–354 or the prior lienholder by the use of Form FmHA or its successor agency under Public Law 103–354 443–16, ''Assignment of Income from Real Estate Security,'' or other appropriate instrument;

(2) Royalty payments are adequate and are assigned to FmHA or its successor agency under Public Law 103–354 on Form FmHA or its successor agency under Public Law 103–354 443–16 in an amount determined by the State Director to be adequate to protect the Government's interest;

(3) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA or its successor agency under Public Law 103–354 443–16 if needed for protection of the Government's interest;

(4) The lease, subordination, or consent form is acceptable to OGC;

(5) The lease will not interfere with the purpose for which the loan or grant was made; and

(6) When FmHA or its successor agency under Public Law 103–354 consent is required, the borrower submits a completed Form FmHA or its successor agency under Public Law 103–354 465–1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(c) *Management agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of part 1942, subpart A of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Affiliation agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out

its responsibilities as set forth in § 1942.17(b)(4) of subpart A of part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(e) *Processing*. The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

(1) A copy of the proposed agreement;

(2) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(3) Any other necessary supporting information.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 21199, May 19, 1992]

§ 1951.225 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA or its successor agency under Public Law 103–354 security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to subpart A of part 1955 of this chapter.

§ 1951.226 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities*. (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale; one or more members of the borrower's organization proposes to purchase the property; it is proposed to sell the property for less than the appraised value; or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA or its successor agency under Public Law 103–354 policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General*. Approval may be given when the approval official determines and documents that:

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA or its successor agency under Public Law 103–354's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

(i) Execute Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.'' The covenants involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to FmHA or its successor agency under Public Law 103–354 a written agreement assuming all rights and obligations of the original grantee if grant funds were provided. See § 1951.215 below for additional guidance on grant agreements.

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on FmHA or its successor agency under Public Law 103–354 debts according to §1951.221 of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to FmHA or its successor agency under Public Law 103–354's advantage.

(ii) To purchase or acquire through exchange property more suited to the borrower's needs, if the FmHA or its successor agency under Public Law 103–354 debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with FmHA or its successor agency under Public Law 103–354 grant funds will be handled in accordance with the grant agreement.

(c) *Processing*. (1) The case file will contain the following:

(i) Except for actions approved by the District Director, Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form FmHA or its successor agency under Public Law 103–354 1965–8, ''Release from Personal Liability,'' including the County Committee memorandum and the State Director's recommendations;

(v) An executed Form FmHA or its successor agency under Public Law 103–354 400–4, if applicable;

(vi) An executed Form FmHA or its successor agency under Public Law 103–354 465–1, if applicable;

(vii) Form FmHA or its successor agency under Public Law 103–354 460–4, ''Satisfaction,'' if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC; and

(viii) Written approval of the Administrator when required under §1951.226(a)(3) of this subpart;

(2) *Releasing security*. (i) The District Director is authorized to satisfy or terminate chattel security instruments when §1951.226(b) of this subpart and §1962.17 and §1962.27 of subpart A of part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA or its successor agency under Public Law 103–354 460–1, ''Partial Release,'' or Form FmHA or its successor agency under Public Law 103–354 462–12, ''Statements of Continuation, Partial Release, Assignment, Etc.''

(ii) Subject to §1951.226(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA or its successor agency under Public Law 103–354 465–1. Partial release of real estate security may be made by use of Form FmHA or its successor agency under Public Law 103–354 460–1 or other form approved by OGC.

(3) FmHA or its successor agency under Public Law 103–354 liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) *Release from liability*. (1) When an FmHA or its successor agency under Public Law 103–354 debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA or its successor agency under Public Law 103–354 1965–8.

(2) When sale proceeds are not sufficient to pay the FmHA or its successor agency under Public Law 103–354 debt in full, any balance remaining will be handled in accordance with procedures

for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103–354 1965–8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liabilty upon the completion of the sale.

§ 1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA or its successor agency under Public Law 103–354 if the debt instrument provides that FmHA or its successor agency under Public Law 103–354 may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36591, Aug. 14, 1992]

§§ 1951.228–1951.229 [Reserved]

§ 1951.230 Transfer of security and assumption of loans.

(a) *General.* It is FmHA or its successor agency under Public Law 103–354 policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA or its successor agency under Public Law 103–354's security position or the FmHA or its successor agency under Public Law 103–354 program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA or its successor agency under Public Law 103–354 is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA or its successor agency under Public Law 103–354 debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) FmHA or its successor agency under Public Law 103–354 concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form FmHA or its successor agency under

Public Law 103–354 400–4 to continue nondiscrimination covenants and provide to FmHA or its successor agency under Public Law 103–354 a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full account of the FmHA or its successor agency under Public Law 103–354 debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA or its successor agency under Public Law 103–354 debt will be paid.

(9) Transferees must have the ability to pay the FmHA or its successor agency under Public Law 103–354 debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balanced sheet using Form FmHA or its successor agency under Public Law 103–354 442–3, ''Balance Sheet,'' and budget and cash flow information using Form FmHA or its successor agency under Public Law 103–354 442–2, or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will not necessarily go out of existence and the transferee will not always take all assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with § 1951.220(i) of this subpart when the full debt is not being assumed.

(12) There must be no lien, judgment, or similar claims of other parties against the FmHA or its successor agency under Public Law 103–354 security being transferred unless the transferee is willing to accept such claims and the FmHA or its successor agency under Public Law 103–354 approval official determines that they will not prevent the transferee from repaying the FmHA or its successor agency under Public Law 103–354 debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(b) *Authorities.* The State Director is authorized to approve transfers and assumptions of FmHA or its successor agency under Public Law 103–354 loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

(1) Proposals which will involve a loss to the Government;

(2) Proposals involving a transfer to one or more members of the present borrower's organization;

(3) Proposals involving rates and terms which are more liberal than those set forth in § 1951.230(c) of this subpart;

(4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;

(5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part with FmHA or its successor agency under Public Law 103–354 grant funds;

(6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years; and

(7) For Indian Tribes and Tribal Corporations, the requirements found in exhibit M of subpart G of part 1940 of this chapter are not met.

(c) *Eligible applicants.* Except as noted in § 1951.230(b) of this subpart, the State Director is authorized to approve transfers of security property to and

assumptions of FmHA or its successor agency under Public Law 103–354 debts by transferees who would be eligible for financial assistance under the loan program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisfied.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form FmHA or its successor agency under Public Law 103–354 1951–15, ''Community Programs Assumption Agreement,'' will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. Interest will accrue at the rate currently reflected in Finance Office records.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Director and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate currently reflected in Finance Office records. Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, §1942.19(h)(11) will govern the preparation of any new debt instruments required.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any development funds remaining in a supervised bank account which are not to be refunded to FmHA or its successor agency under Public Law 103–354 will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) *Ineligible applicants.* Except as noted in §1951.230(b) of this subpart, the State Director is authorized to approve transfer and assumptions to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. However, the State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in §1951.230(b). Such transfers are considered only when an eligible transferee is not available or when the recovery to FmHA or its successor agency under Public Law 103–354 from a transfer to an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providing a source of easy credit for purchasers.

(1) Ineligible applicants must pay a one-time nonrefundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by non-FmHA or its successor agency under Public Law 103–354 personnel will be handled in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office), and will be added to the basic fee.

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees on Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she

will request prior approval by submitting the transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to FmHA or its successor agency under Public Law 103–354 and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified for the note in current Finance Office records or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as an NP loan and serviced in accordance with § 1951.216 of this subpart.

(5) Form FmHA or its successor agency under Public Law 103–354 465–5, ''Transfer of Real Estate Security,'' will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) *Release from liability*. Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability by use of Form FmHA or its successor agency under Public Law 103–354 1965–8.

(2) If less than the full amount of the debt is assumed, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103–354 1965–8 and obtaining from the County Committee a memorandum recommending the release which contains the statement set forth in § 1951.226(d)(2)(ii) of this subpart.

(f) *Processing*. Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will be issued, and the transferee will be required to execute Form FmHA or its successor agency under Public Law 103–354 442–46, ''Letter of Intent to Meet Conditions,'' prior to the closing of the transfer.

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form FmHA or its successor agency under Public Law 103–354 1951–15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by FmHA or its successor agency under Public Law 103–354 and OGC.

(6) Accrued interest to be entered in either Table 1 of Form FmHA or its successor agency under Public Law 103–354 1951–15 or other appropriate assumption agreement is to be obtained using the status screen option in ADPS.

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–15 or other appropriate assumption agreement;

(ii) A conformed copy of Form FmHA or its successor agency under Public Law 103–354 1965–8.

(8) If an FmHA or its successor agency under Public Law 103–354 grant was made in conjunction with the loan being transferred, the transferee must agree in writing to assume all rights and obligations of the original grantee. See § 1951.215 for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire FmHA or its successor agency under Public Law 103–354 debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(10) *Rates and terms.* (i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form FmHA or its successor agency under Public Law 103–354 1951–15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA or its successor agency under Public Law 103–354. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

(15) The District Director must review Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant, and the form must be signed by the applicant and included in the file.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36590, Aug. 14, 1992]

§ 1951.231 Special provisions applicable to Economic Opportunity (EO) Cooperative Loans.

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect collection of the loan. The servicing office will submit to the State Office the borrow case file and the following:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–15 executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA or its successor agency under Public Law 103–354 440–2, ''County Committee Certification or Recommendation;''

(vi) Exhibit B of this subpart, ''Agreement for New Member (With or Without Withdrawing Member),'' (available in any FmHA or its successor agency under Public Law 103–354 office), executed by the remaining members of the association, the proposed new member, and the withdrawing member; and

(vii) Form FmHA or its successor agency under Public Law 103–354 450–12,

''Bill of Sale (Transfer by Withdrawing Member),'' executed by the withdrawing member.

(2) If the State Director determines after review of the above information that the proposed new member is eligible and the transfer is justified, the State Director may approve the transfer and assumption by executing Form FmHA or its successor agency under Public Law 103–354 1951–15.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability using Form FmHA or its successor agency under Public Law 103–354 1965–8.

(4) If Finance Office records must be changed due to changes in borrower name, address and/or case number, necessary documents, including Form FmHA or its successor agency under Public Law 103–354 1951–15 and, if applicable, Form FmHA or its successor agency under Public Law 103–354 1965–8, will be forwarded to the Finance Office immediately with a memorandum indicating that the purpose of the submission is only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives when new member not available.* Withdrawal of a member who no longer utilizes the services of an association may be permitted even though a new member is not available, provided:

(1) The State Director determines that the remaining members have sufficient need for the property, and that the withdrawal of the member will not adversely affect collection of the loan; and

(2) The remaining members obtain from the outgoing member an agreement conveying his or her interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA or its successor agency under Public Law 103–354 as well as any other debts. Exhibit C of this subpart, ''Agreement for Withdrawal of Member (Without New Member),'' (available in any FmHA or its successor agency under Public Law 103–354 office), may be used by the cooperative. FmHA or its successor agency under Public Law 103–354 will not be a party to the agreement.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The servicing office will submit to the State Office the case file and items (i) through (vi) of § 1951.231(a)(1).

(3) If the State Director determines after the review of the above information that the proposed new member is eligible and the transaction is justified, the State Director may approve the transaction by executing Form FmHA or its successor agency under Public Law 103–354 1951–15.

(4) Form FmHA or its successor agency under Public Law 103–354 1951–15 will be forwarded immediatly to the Finance Office with a memorandum indicating that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Form FmHA or its successor agency under Public Law 103–354 442–24, ''Operating Agreement,'' (now obsolete) was executed by recipients of these loans. Paragraph 10 of that form provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association if the sale is necessary to pay debts of the estate.

(1) If the heirs or personal representative do not wish to continue membership in the association, the remaining members may be permitted to continue to operate the property if FmHA or its successor agency under Public Law 103–354's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative

property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA or its successor agency under Public Law 103–354 as well as any other debts of the cooperative.

(2) The requirement of § 1962.46(h) of subpart A of part 1962 will also be followed.

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect its own interest in condemnation, trespass, quiet title, and other cases affecting the security. The servicing office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the case file.

(f) *Debt Settlement.* Debt settlement actions for Economic Opportunity Cooperative loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval.

§ 1951.232 Water and waste disposal systems which have become part of an urban area.

A water and/or waste disposal system serving an area which was formerly a rural area as defined in § 1942.17(b)(2)(iii) and (iv) of subpart A of part 1942 of this chapter, but which has become in its entirety part of an urban area, will be serviced in accordance with this section.

(a) *Curtailment or limitation of service.* Service may not be curtailed or limited by the inclusion of a system within an urban area.

(b) *Sale or transfer and assumption.* (1) The urban community or another entity may purchase the facility involved and immediately pay the FmHA or its successor agency under Public Law 103–354 debt in full; or

(2) The urban community or another entity may accept a transfer of the FmHA or its successor agency under Public Law 103–354 debt on an ineligible applicant basis.

(3) When a grant is involved, the entity will agree in writing to assume all rights and obligations of the original grantee. See § 1951.215 for additional guidance on grant agreements.

(c) *Lease-purchase arrangement.* If § 1951.232(b) (1) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The FmHA or its successor agency under Public Law 103–354 borrower will:

(i) Meet its debt service and reserve account requirements to FmHA or its successor agency under Public Law 103–354;

(ii) Retain its corporate existence until FmHA or its successor agency under Public Law 103–354 has been paid in full; and

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the FmHA or its successor agency under Public Law 103–354 debt has been paid in full.

(d) *Processing.* (1) Sale of a borrower's assets will be handled in accordance with § 1951.226 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with § 1951.230 of this subpart.

(3) Lease-operation-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

[55 FR 4399, Feb. 8, 1992, as amended at 57 FR 21199, May 19, 1992]

§§ 1951.233–1951.239 [Reserved]

§ 1951.240 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or imparing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable FmHA or its successor agency under Public Law 103–354 instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(6) Release properties being sold by the borrower from mortgages securing Rural Renewal loans if the amount of the notes and mortgages given by the purchaser to the borrower equal the present market value and are assigned and pledged to FmHA or its successor agency under Public Law 103–354, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(7) Approve requests for rights-of-way and easements and any subordination necessary in connection with such requests.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) *Defeasance of FmHA or its successor agency under Public Law 103–354 indebtedness.* Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of FmHA or its successor agency under Public Law 103–354 debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by subpart F of part 1951 of this chapter.

§ 1951.241 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA or its successor agency under Public Law 103–354 to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99–88 provides that any FmHA or its successor agency under Public Law 103–354 grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA or its successor agency under Public Law 103–

354 based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart O of this part (available in any FmHA or its successor agency under Public Law 103–354 office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA or its successor agency under Public Law 103–354 funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA or its successor agency under Public Law 103–354 servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA or its successor agency under Public Law 103–354. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify FmHA or its successor agency under Public Law 103–354 within 90 calendar days of the date of FmHA or its successor agency under Public Law 103–354 notification indicating their election to retain the rate in effect at loan approval or to change the rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90-day period, FmHA or its successor agency under Public Law 103–354 will not consider a future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible for assuring that the official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower.

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already applied to the account(s) will be reversed and reapplied by FmHA or its successor agency under Public Law 103–354 utilizing the changed interest rate. The balance remaining after the completion of the reversal and reapplication procedures will be applied first to any delinquency on the account and then to principal.

(2) For paid-in-full accounts which meet the criteria of §1951.241(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the borrower unless the borrower is delinquent on another FmHA or its successor agency under Public Law 103–354 loan of the same type. In those cases the amount will be applied to the delinquent amount owed, with any balance refunded to the borrower.

(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with notification from the servicing official. The installment schedule set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount. The last scheduled principal

installment will be reduced by the amount of the balance previously generated by the reversal and reapplication of payments.

(4) When FmHA or its successor agency under Public Law 103–354 has processed a change of interest rate for an amortized loan and a reduction in installment amounts is needed to provide for a sound operation, the borrower may request reamortization in accordance with § 1951.223 of this subpart.

(5) The borrower will be notified in writing of the new interest rate as changed.

§§ 1951.242–1951.249 [Reserved]

§ 1951.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0066. Public reporting burden for this collection of information is estimated to vary from fifteen minutes to three hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Washington, DC 20503.

EXHIBITS TO SUBPART E

EDITORIAL NOTE: Exhibits A through H are not published in the Code of Federal Regulations.

EXHIBIT A—REPORT ON SERVICING ACTION

EXHIBIT B—AGREEMENT FOR NEW MEMBER (WITH OR WITHOUT WITHDRAWING MEMBER)

EXHIBIT C—AGREEMENT FOR WITHDRAWAL OF MEMBER (WITHOUT NEW MEMBER)

EXHIBIT D—ITEMS TO BE INCLUDED IN TRANSFER AND ASSUMPTION DOCKETS (IF APPLICABLE)

EXHIBIT E—INTEREST RATE REQUIREMENTS AND EFFECTIVE DATES

EXHIBIT F—INSTRUCTION TO FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 PERSONNEL TO IMPLEMENT PUBLIC LAW 100–233

EXHIBIT G—LETTER TO BORROWER NOTIFYING OF CHOICE OF INTEREST RATE

EXHIBIT H—RESCHEDULING AGREEMENT—PUBLIC BODIES

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

SOURCE: 61 FR 35927, July 9, 1996, unless otherwise noted.

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's needs for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term ''Agency'' used in this subpart refers to the Farm Service Agency (FSA) including its

county and state committees and their personnel), Rural Utilities Service (RUS), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein. This subpart does not apply to RHS direct single family housing (SFH) customers.

[61 FR 35927, July 9, 1996, as amended at 61 FR 59778, Nov. 22, 1996]

§ 1951.252 Definitions.

Commercial classified. The Agency's highest quality Farm Credit Programs (FCP) accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Credit Programs (FCP) loans. FSA Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Graduation, FCP. The payment in full of all FCP loans or all FCP loans of one type (i.e., all loans made for chattel purposes or all loans made for real estate purposes) by refinancing with other credit sources either with or without an Agency loan guarantee. A loan made for both chattel and real estate purposes, for example an EM loan, will be classified according to how the majority of the loan's funds were expended. Borrowers must continue with their farming operations to be considered as graduated.

Graduation, other programs. The payment in full of any direct loan for Community and Business Programs, and all direct loans for housing programs, before maturity by refinancing with other credit sources. Graduated housing borrowers must continue to hold title to the property. Graduation, for other than FCP, does not include credit which is guaranteed by the United States.

Prospectus, FCP. Consists of a transmittal letter with a current balance sheet and projected year's budget attached. The applicant's or borrower's name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific Agency direct loan applicants and borrowers. The prospectus will provide information regarding the availability of an Agency loan guarantee and interest assistance.

Reasonable rates and terms. Those commercial rates and terms which borrowers are expected to meet when borrowing for similar purposes and similar periods of time. The ''similar periods of time'' of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan. In the case of Multi-Family Housing (MFH) loans, ''reasonable rates and terms'' would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other multi-family housing.

Servicing official. The district or county office official responsible for the immediate servicing functions of the borrower.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high probability that all loans will be repaid as scheduled and in full.

§ 1951.253 Objectives.

(a) [Reserved]

(b) Borrowers must graduate to other credit at reasonable rates and terms when they are able to do so.

(c) If a borrower refuses to graduate, the account will be liquidated under the following conditions:

(1) The borrower has the legal capacity and financial ability to obtain other credit.

(2) Other credit is available from a commercial lender at reasonable rates and terms. In the case of Labor Housing (LH), Rural Rental Housing (RRH),

and Rural Cooperative Housing (RCH) Programs, reasonable rates and terms must also permit the borrowers to continue providing housing for low and moderate income persons at rental rates tenants can afford considering the loss of any subsidy which will be canceled when the loan is paid in full.

(d) The Agency will enforce borrower graduation.

§ 1951.254 [Reserved]

§ 1951.255 Nondiscrimination.

All loan servicing actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or physical or mental handicap.

§§ 1951.256–1951.261 [Reserved]

§ 1951.262 Farm Credit Programs—graduation of borrowers.

(a)–(d) [Reserved]

(e) *Graduation candidates.* Borrowers who are classified ''commercial'' or ''standard'' are graduation candidates. At least every 2 years, all borrowers who have a current classification of commercial or standard must submit a year-end balance sheet, actual financial performance information for the most recent year, and a projected budget for the current year to enable the Agency to reclassify their status and determine their ability to graduate.

(f) *Sending prospectus information to lenders.* (1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing. The borrower's permission is not required, however, the borrower must be notified of this action.

(2) The borrower is responsible for any application fees. The borrower has 30 days from the date the borrower is notified of lender interest in refinancing to make application, if required by the lender, and refinance the FLP loan. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

[61 FR 35927, July 9, 1996, as amended at 62 FR 10120, Mar. 5, 1997]

§ 1951.263 Graduation of non-Farm Credit programs borrowers.

(a)–(b) [Reserved]

(c) *The thorough review.* Borrowers are required to supply such financial information as the Agency deems necessary to determine whether they are able to graduate to other credit. At a minimum, the financial statements requested from the borrower must include a balance sheet and a statement of income and expenses. Ordinarily, the financial statements will be those normally required at the end of the particular borrower's fiscal year. For borrowers who are not requested to furnish audited financial statements, the balance sheet and statement of income and expenses may be of the borrower's own format if the borrower's financial situation is accurately reflected. The borrower has 60 days for group type loans and 30 days for individual type loans to supply the financial information requested.

(d) [Reserved]

(e) *Requesting the borrower to graduate.* (1) The Agency will send written notice to borrowers found able to graduate requesting them to graduate. The borrower must seek a loan only in the amount necessary to repay the unpaid balance.

(2) Borrowers must provide evidence of their ability or inability to graduate within 30 days for RH borrowers, and 90 days for group type borrowers, after the date of the request. The Agency may allow additional time for good cause, for example when a borrower expects to receive income in the near future for the payment of accounts which would substantially reduce the amount required for refinancing, or when a borrower is a public body and must issue bonds to accomplish graduation.

(3) If a borrower is unable to graduate the full amount of the loan, the borrower must furnish evidence to the Agency, showing:

(i) The names of other lenders contacted;

(ii) The amount of loan requested by the borrower and the amount, if any, offered by the lenders;

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available; and

(iv) The purpose of the loan request.

(4) The difference in interest rates between the Agency and other lenders will not be sufficient reason for failure to graduate if the other credit is available at rates and terms which the borrower can reasonably be expected to pay. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(5) The Agency will notify the borrower in writing if it determines that the borrower can graduate. The borrower must take positive steps to graduate within 15 days for individual loans and 60 days for group loans from such notice to avoid legal action. The servicing official may grant a longer period where warranted.

§ 1951.264 Action when borrower fails to cooperate, respond or graduate.

(a) When borrowers with other than FCP loans fail to:

(1) Provide information following receipt of both FmHA Guide Letters 1951–1 and 1951–2 (available in any Agency office), or letters of similar format, they are in default of the terms of their security instruments. The approval official may, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters 1951–F–5 and 1951–6 (available in any Agency office), or letters of similar format, they are in default under the graduation requirement of their security instruments. If the Agency determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii). If the borrower's account is accelerated, the borrower may appeal the decision.

(b) If an FCP borrower fails to cooperate after a lender expresses a willingness to consider refinancing the Agency loan, the account will be referred for legal action.

§ 1951.265 Application for subsequent loan, subordination, or consent to additional indebtedness from a borrower who has been requested to graduate.

(a) Any borrower who appears to meet the local commercial lending standards, taking into consideration the Agency's loan guarantee program, will not be considered for a subsequent loan, subordination, or consent to additional indebtedness until the borrower's ability or inability to graduate has been confirmed. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health or sanitary standards which require immediate attention.

(b) If the borrower has been requested to graduate and has also been denied a request for a subsequent loan, subordination, or consent to additional indebtedness, the borrower may appeal both issues.

§ 1951.266 Special requirements for MFH borrowers.

All requirements of subpart E of part 1965 must be met prior to graduation and acceptance of the full payment from an MFH borrower.

§§ 1951.267–1951.299 [Reserved]

§ 1951.300 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0093.

EXHIBITS TO SUBPART F

EXHIBIT A [RESERVED]

EXHIBIT B—SUGGESTED OUTLINE FOR SEEKING INFORMATION FROM LENDERS ON CREDIT CRITERIA FOR GRADUATION OF SINGLE FAMILY HOUSING LOANS

Date: _____
Name of Lender: _____
Title: _____
Address: _____
Name of County Supervisor: _____
Service Area: _____

1. Is the lender interested in making loans to refinance rural housing borrowers? Yes:____; No:____.
If later, when? _____

How much credit does the lender expect to have available in the next three to four months for making such loans? $_____
In the next twelve (12) months? $_____

2. What are the loan terms? _____

3. What is the current interest rate? _____ ☐ Variable rate. ☐ Fixed rate.
If variable, how is it determined? _____

4. Is a risk differential used in establishing interest rates charged for new customers? Yes: ____; No: ____.
If yes, explain: _____

5. What can a typical loan applicant be expected to pay for:

	Dollars	Or percent
a. Filing an application		
b. Real estate appraisal		
c. Credit report		
d. Loan orgination fee		
e. Loan closing costs		

6. Is mortgage guarantee insurance required? Yes: ____; No: ____. If yes, how many years? ____. Cost? _____.

7. Is there a minimum or maximum loan size policy? Yes: ____; No: ____.
If yes, explain: — _____

8. Is there a minimum and maximum home value the lender will loan on? Yes: ____; No: ____. If yes, minimum: $_____; maximum: $_____.

9. Does the lender use a loan to market value ratio? _____

10. Is there a minimum net and gross income criteria? Yes: ____; No: ____. If yes, net: $_____; gross: $_____.

11. Does the lender use a minimum loan or home value to income ratio? Yes: ____; No: ____. If yes, loan to income ratio: _____
Value to income ratio: _____

12. Is there a percentage of gross income a typical applicant should have available to pay housing costs? _____

a. To pay for principal, interest, taxes and insurance (PITI)? ____%.

b. To pay for the total housing costs and other credit obligations? ____%.

13. Are there any age of home, housing type, site size, and/or geographic restriction policies? Yes: ____; No: ____.
If yes, List: _____

14. Other Comments: _____

15. For the purpose of reducing the number of inappropriate referrals, would the lender like the opportunity to review specific borrower financial information prior to the borrower being asked to file a formal application? Yes: ____; No: ____. If the answer is yes, *only* those borrowers who are listed on Form FmHA or its successor agency under Public Law 103–354 1951–24 will be referred to the bank. The lenders should be advised, however, the information supplied to them will not include the borrower's name, social security number, exact address, or place of employment that could be used to link a specific borrower to the information being provided by FmHA or its successor agency under Public Law 103–354.

[48 FR 40203, Sept. 6, 1983; 48 FR 41142, Sept. 14, 1983]

Subpart G–I [Reserved]

Subpart J—Management and Collection of Nonprogram (NP) Loans

SOURCE: 58 FR 52646, Oct. 12, 1993, unless otherwise noted.

§ 1951.451 General.

This subpart contains policies and procedures of the Farm Service Agency (FSA) for making, managing, collecting, liquidating, and servicing loans on nonprogram (NP) terms. All references in this subpart to farm real estate, farm property and farm chattels also include nonfarm property that was security for a Farm Credit debt of the FSA.

(a) An NP loan is a loan on terms more stringent than terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(1) Sale of inventory property on NP terms;

(2) Assumption of a program loan on NP terms;

(3) Loans converted to NP status as a result of receipt of unauthorized assistance;

(4) Loans converted to NP status when only a portion of the security property is being transferred and the FmHA or its successor agency under Public Law 103–354 debt is not paid in full;

(5) Sale of the real property that was security for an FP loan to the previous owner under the Leaseback/Buyback program on NP terms;

(6) Sale of the real property of an FP borrower under the Homestead Protection program; or

(7) FP accounts rescheduled under an accelerated repayment agreement.

(b) C&BP/NP and MFH/NP transactions involving transfer of the security property will be submitted to the National Office for review, authorization and processing guidance. The submission must include a justification for the proposed action, a servicing and management plan, the State Director's recommendations, and the case files. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter.

(c) Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan(s). Therefore, NP loans are not eligible for any program servicing except those permitted in this subpart. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling, consolidation, etc., on a FP program loan). When the decision has been made to liquidate the program loan of a borrower who is also indebted for an NP loan and the NP security is also additional security for the program loan the NP loan will be accelerated at the same time as the program loan using the program acceleration notice. Likewise, if an NP loan is to be liquidated and the borrower is also indebted for a program loan which serves as additional security for the NP loan the program loan will be accelerated at the same time as the NP loan using the program acceleration notice. Any appeal of an adverse decision involving both an NP and program loan would affect only the program loan.

[58 FR 52646, Oct. 12, 1993, as amended at 61 FR 59778, Nov. 22, 1996]

§ 1951.452 Policy.

NP credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the particular loan(s). NP borrowers are not eligible for program entitlements or servicing actions such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, buyout, writedown and conservation easements. Neither are NP borrowers subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessments when due or make scheduled escrow installments for taxes and insurance when required by FmHA or its successor agency under Public Law 103–354, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA or its successor agency under Public Law 103–354's consent, except as provided in § 1951.460 (a) and (b) of this subpart.

§ 1951.453 [Reserved]

§ 1951.454 Review of adverse decisions.

NP applicants and borrowers are not entitled to appeal rights under subpart B of part 1900 of this chapter or parts 11 and 780 of this title. However, decisions involving NP applicants, borrowers or property are reviewable by the next level supervisor.

[58 FR 52646, Oct. 12, 1993, as amended at 62 FR 10120, Mar. 5, 1997]

§ 1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by County Office personnel. To apply for NP credit, except Homestead Protection

program, standard forms used to process program applications may be utilized or comparable documentation which contains information to establish financial stability, creditworthiness, and repayment ability for the requested credit. However, the loan approval official will have the discretion to determine what information is required to support approval of the loan. For property purchased under the Homestead Protection program the information required to support approval of the loan will be in accordance with subpart S of part 1951 of this chapter. The creditworthiness standards in § 1944.9 of subpart A of part 1944 of this chapter will be used to evaluate an NP applicant's eligibility for assistance to purchase a single family residence. The application is not complete until all information requested by the Agency is received.

(b) *Fees*. In addition, credit reports will be ordered to determine the eligibility of NP applicants requesting FLP credit. A nonrefundable credit report fee will be charged the applicant. The amounts of these fees change periodically; current fees will be quoted by county office personnel upon request. A borrower whose loan is reclassified as NP because unauthorized assistance was received; or only a portion of the security property is being transferred and the FLP debt is not paid in full; or FLP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee.

(c) *Eligibility restrictions*. If farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator of a proposed entity transferee or purchaser has been convicted after December 23, 1985, under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any agency office), for the definition of ''controlled substance'') prior to the approval of the credit sale or assumption in any crop year, the individual or entity shall be ineligible for FLP credit for the crop year in which the individual was convicted four succeeding crop years following the conviction. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) [Reserved]

(e) *Downpayment*. A downpayment must be collected at closing and remitted in accordance with subpart B of this part 1951 (available in any agency office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel security) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by county office personnel upon request.

(f) *Interest rate*. The FP/NP interest rate for real property or chattel property, as applicable, in effect at the time of loan approval, will be charged on NP assumptions and credit sales involving all other types of sales, except as otherwise stated. The Homestead Protection program interest rate in effect at the time of loan approval will be charged on Homestead Protection properties.

(g) *Terms*. The purchase price for credit sales or the FLP debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *Farm property (real estate security) and CONACT residential property classified as surplus*. The note amount will be amortized over a period not to exceed 15 years. When an NP loan was initially scheduled for repayment in 15 years or less together with a 25-year amortization, the agency may authorize an extension not to exceed a total of 25 years from the date the NP assumption or credit sale was closed provided it is in the Government's best interest and the agency retains the same lien priority.

(2) *Farm property (chattels security)*. The note amount will be amortized over a period not to exceed 5 years.

(3) *Homestead protection*. The note amount will be amortized over a period not to exceed 35 years.

(h) *Modification of security instruments*. Any convenants in the promissory note and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FLP operation requirements, and consent to junior lien encumbrance will be deleted.

(i) *Security*. The security requirements for NP loans on farm real estate will be in accordance with subpart A of part 1943 of this chapter and NP loans on chattel property will be secured in accordance with subpart A of part 1962 of this chapter. Except that, an NP loan will be secured only by the property purchased.

(j) *Closing*. Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for a program loan on the same type property, except the purchaser must pay his/her own closing costs.

[58 FR 52646, Oct. 12, 1993, as amended at 62 FR 10120, Mar. 5, 1997]

§ 1951.456 [Reserved]

§ 1951.457 Payments.

(a) *Receiving payments*. Borrowers will mail or bring their payments to the county office. Borrowers will be responsible for any fees associated with converting cash payments to money orders. If the fee is not paid, it will be deducted from the payment.

(b) Payments not received when due. NP borrowers are expected to make scheduled payments when due. The Agency personnel are not required to provide program supervision, servicing, management or credit counseling in accordance the agency servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, the Agency may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by the agency to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

[58 FR 52646, Oct. 12, 1993, as amended at 60 FR 55146, Oct. 27, 1995; 62 FR 10120, Mar. 5, 1997]

§ 1951.458 Servicing real estate taxes.

Refer to subpart A of part 1925 of this chapter for servicing real estate taxes.

[62 FR 10120, Mar. 5, 1997]

§ 1951.459 Preservation of security.

(a) *Inspections of NP security property*. Inspections will be made on NP security as necessary to protect FmHA or its successor agency under Public Law 103–354's security interest. In the event of abandonment, servicing actions will be taken according to § 1955.55 of subpart B of part 1955 of this chapter.

(b) *Subordination*. Subordination is not authorized where an NP borrower only owes FmHA or its successor agency under Public Law 103–354 an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA or its successor agency under Public Law 103–354 program loan, the request for the subordination meets all the requirements for the subordination of the FmHA or its successor agency under Public Law 103–354 program loan and is in the best interest of the Government.

(c) *Bankruptcy*. NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm real estate in accordance with subpart A of part 1965 of this chapter, and farm chattel in accordance with subpart A of part 1962 of this chapter.

§ 1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release*. Release of a portion of the security property may be made when the borrower requests it and FmHA or its successor agency

under Public Law 103–354 determines the release will not adversely affect the Government's interest. Release may be approved when payment is received by FmHA or its successor agency under Public Law 103–354 in the amount of the market value, as determined by FmHA or its successor agency under Public Law 103–354, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA or its successor agency under Public Law 103–354) will be applied to the FmHA or its successor agency under Public Law 103–354 indebtedness as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA or its successor agency under Public Law 103–354 for the borrower to grant an easement or lease mineral rights when it is determined by FmHA or its successor agency under Public Law 103–354 the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA or its successor agency under Public Law 103–354 in the amount of the market value, as determined by FmHA or its successor agency under Public Law 103–354, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA or its successor agency under Public Law 103–354) will be applied to the FmHA or its successor agency under Public Law 103–354 debt as an extra payment or to prior liens in order of lien priority.

(c)–(d) [Reserved]

§ 1951.461 Release of valueless FmHA or its successor agency under Public Law 103–354 lien without monetary consideration.

Release of an FmHA or its successor agency under Public Law 103–354 lien without monetary consideration may be granted when it is determined by FmHA or its successor agency under Public Law 103–354 to have no present or prospective value or when enforcement would be ineffectual or uneconomical. Judgment liens or statutory redemption rights may be released only with prior consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA or its successor agency under Public Law 103–354 will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart. The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA or its successor agency under Public Law 103–354 will take no action to liquidate the loan.

(b) *Assumption by spouse not liable for the FmHA or its successor agency under Public Law 103–354 debt.* The spouse of a deceased borrower who is not liable for the FmHA or its successor agency under Public Law 103–354 debt and who wishes to assume the debt may do so in accordance with § 1951.463(d)(1) of this subpart.

(c) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA or its successor agency under Public Law 103–354 may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured (if funds for taxes and insurance are being escrowed, the escrow is a part of the scheduled payments). The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under

the provisions of this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interests among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(d) *Assumption by a person, other than the spouse, who is not liable for the FmHA or its successor agency under Public Law 103–354 loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(1) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or NP terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA or its successor agency under Public Law 103–354 debt is not assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section or § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA or its successor agency under Public Law 103–354 determines it is not in the Government's best interest. If FmHA or its successor agency under Public Law 103–354 decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable for the loan under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA or its successor agency under Public Law 103–354, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or children, assumption of the indebtedness is not required and FmHA or its successor agency under Public Law 103–354 may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholder/member/partner/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholders/members/partners/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an inter vivos trust.* When the borrower conveys security property into an inter vivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA or its successor agency under Public Law 103–354 may not

take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met.

(c) *Program assumption*. A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (SFH, Farm Ownership (FO), etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as Rural Housing (RH), FO, etc., as applicable.

(d) *NP assumption*. The rates and terms for an NP assumption will be as provided in § 1951.455 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (d)(1), (d)(2), and (d)(3) of this section. An individual not liable for the loan who acquires title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, and account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms, after assumption compliance with loan conditions is required. If a same terms assumption is consummated and the account is delinquent, it may be reamortized in accordance with applicable program regulations. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's surviving spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse or child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462 (c) or (d) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions*. On program assumptions, the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing*. Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability*. Release from liability of NP borrowers is not authorized.

§§ 1951.464–1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA or its successor agency under Public Law 103–354 will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary*. If an NP borrower in default indicates a willingness to voluntarily liquidate, other liquidation actions by FmHA or its successor agency under Public Law 103–354 may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price.

(b) *Foreclosure*. If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing or able to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next

level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA or its successor agency under Public Law 103–354 will proceed with foreclosure without further notice or extension of time.

(c) *Conveyance to FmHA or its successor agency under Public Law 103–354.* FmHA or its successor agency under Public Law 103–354 does not solicit or encourage conveyance of NP security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's best interest. Release of the borrower from liability is not authorized. Upon receipt of an offer to convey, FmHA or its successor agency under Public Law 103–354 will remind the borrower of provisions for voluntary liquidation under paragraph (a) of this section. The borrower will also be informed of the consequences of a conveyance by deed in lieu of foreclosure as follows:

(1) All costs related to the conveyance which FmHA or its successor agency under Public Law 103–354 pays will be added to the debt;

(2) A credit equal to the market value of the property, as determined by FmHA or its successor agency under Public Law 103–354, less prior liens, will be applied to the debt; and

(3) If the credit does not satisfy the debt, the debtor remains liable for the payment of the account balance and the account will be debt settled.

(d) *Consent to sale of real estate security when the FmHA or its successor agency under Public Law 103–354 debt and authorized selling expenses exceed market value.* If an NP borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA or its successor agency under Public Law 103–354 debt, prior lien(s) if any, and sale expenses authorized by FmHA or its successor agency under Public Law 103–354, an appraisal will be completed and FmHA or its successor agency under Public Law 103–354 may consent to the sale if the proposed sale price is not less than the market value. No commission will be allowed or paid under this paragraph when the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale involves FmHA or its successor agency under Public Law 103–354 credit. If credit is not being extended to the persons mentioned in the preceding sentence (a cash sale), a commission will be allowed or paid. In no case will the borrower (seller) receive any cash proceeds from the sale. Any real estate taxes due from the transferor and other authorized selling expenses for which there is insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. Authorized selling expenses will not be considered or included in the amount assumed. Release from liability is not authorized.

§ 1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Servicing unsatisfied account balances.* A current financial statement will be obtained, if possible, when application of sale proceeds does not satisfy an NP loan; or if a conveyance to FmHA or its successor agency under Public Law 103–354 has been accepted and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA or its successor agency under Public Law 103–354 will pursue collection if there appears to be income or assets from which to collect. Where the borrower owns other real estate, or if the borrower is known to be in the process of purchasing other real estate (such as another dwelling), a judgment for the remaining debt including expenses paid by FmHA or its successor agency under Public Law 103–354 will be sought.

(c) [Reserved]

§§ 1951.470–1951.478 [Reserved]

§ 1951.479 Pilot projects.

From time to time FmHA or its successor agency under Public Law 103–354 conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may

deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA or its successor agency under Public Law 103–354's loan programs. Prior to initiation of a pilot project, FmHA or its successor agency under Public Law 103–354 will publish in the FEDERAL REGISTER a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA or its successor agency under Public Law 103–354 employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA or its successor agency under Public Law 103–354 Instructions.

Detailed FmHA or its successor agency under Public Law 103–354 Instructions for administering this subpart are available in any FmHA or its successor agency under Public Law 103–354 office (FmHA or its successor agency under Public Law 103–354 Instruction 1951–J).

§§ 1951.482–1951.500 [Reserved]

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

SOURCE: 50 FR 8597, Mar. 4, 1985, unless otherwise noted.

§ 1951.501 General.

(a) This subpart prescribes the policies, authorizations, and procedures for implementing and servicing PASS for all of the following Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Multiple Family Housing (MFH) loan recipients which includes Farm Labor Housing (LH) and Rural Rental Housing (RRH) including Rural Cooperative Housing (RCH) and Congregate Housing and includes:

(1) All MFH loans, credit sales, reamortizations, and transfers closed on or after May 1, 1985, and

(2) All MFH loan recipients converting from the Daily Interest Accrual System (DIAS) to PASS according to § 1951.517 of this subpart, except:

(i) Seasonal LH and LH loans to individual farmers may be closed on monthly or annual payment schedules and also may be closed on Daily Interest Accrual under subpart A of part 1951 of this chapter. Instructions for scheduling payments are according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 1944–52, ''Multiple Family Housing Promissory Note.''

(ii) Rural Housing Site (RHS) loans and Site Option (SO) loans will be closed and serviced on Daily Interest Accrual under subpart A of part 1951 of this chapter. Payment billings are subject to § 1951.506 of this subpart.

(b) All MFH loan recipients not described in paragraph (a) of this section will continue to be subject to the servicing and collection requirements of subpart A of part 1951 of this chapter. For the purposes of this subpart, all references to ''County Supervisor'' in subpart A of part 1951 shall be construed to mean ''District Director.''

(c) All FmHA or its successor agency under Public Law 103–354 MFH loans (RRH, RCH, LH, RHS, and SO) whether DIAS or PASS, are subject to the definitions contained in § 1951.504 of this subpart, and payment application as outlined in § 1951.510 of this subpart.

(d) All MFH loan payments will be processed using Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 16244, May 6, 1988; 56 FR 28038, June 19, 1991]

§ 1951.502 [Reserved]

§ 1951.503 Authorities and responsibilities.

District Directors are responsible for administering this subpart under the general guidance and supervision of the State Director. The District Office Management System will be fully used to accomplish this responsibility.

§ 1951.504 Definitions and statements of policy.

Advance regular payment. Regular payments made at election of the borrower to pay the account ahead of schedule. These payments may be either full or partial payments and will be applied to the amortized payment schedule by the Finance Office.

Amortization schedule. An amortization schedule is the projected application of periodic payments to principal and interest at the promissory note rate so the debt will be paid in full over the number of periods specified in the promissory note, assumption agreement (new terms), or reamortization agreement. Computation is based on a 30-day month and a 360-day year.

Amortized recoverable costs. Recoverable cost items may be amortized over a period up to 5 years. This function will allow the servicing official to voucher recoverable cost items such as taxes.

(1) *Payment of real estate taxes.* When a borrower's taxes are paid by voucher, the amortization period of the tax advance will be the number of months for which the taxes are being vouchered with a maximum of 5 years.

(2) *Costs other than real estate taxes.* Advances for costs other than real estate taxes will be amortized for 12 months unless, based on the borrower's repayment ability, a longer period is needed. An amortization period of more than 12 months will be used only when the cost is of a nonrecurring type. In no case, however, will the repayment period exceed 5 years.

(3) *Retroactive amortization of recoverable costs.* Recoverable costs which have been vouchered since May 1, 1985, may, with National Office approval, be retroactively amortized for applicable time periods as shown in paragraphs (c)(1) and (c)(2) of this section, if payments made since the costs were vouchered are sufficient to bring both the loan and cost accounts current. The following information should be forwarded to the National Office for approval of the reclassification to amortized status, and forwarded to the Finance Office for processing: An audit showing all costs vouchered along with payments made since the date of the cost item and to be made prior to the reclassification; the estimated reapplication of the payments due to reclassification showing that the account will be current after the reclassification; and the proposed budget and management case files.

Audit receivables. Loan, grant or subsidy funds which were used by the borrower for unauthorized purposes; have been identified by the Office of Inspector General (OIG) in an audit; and, which FmHA or its successor agency under Public Law 103–354 is requiring the borrower to repay.

Conversion. The act of changing a borrower's account from DIAS to PASS.

Daily Interest Accrual System (DIAS). A system whereby interest is charged daily from the date a payment is received in the District Office to the next date a payment is received. A daily interest accrual factor is computed by multiplying the outstanding principal balance by the effective interest rate and dividing by 365 days. Computation is always based on a 365 day year. Interest on each payment is charged on the actual number of days that a principal balance is outstanding.

District Director. For the purpose of this subpart the term includes the Assistant District Director, and other qualified District staff who may be delegated responsibilities according to § 1930.143 of subpart C of part 1930 of this chapter, and the provisions of subpart F of part 2006 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition further includes the Area Loan Specialists in Alaska, Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Alaska, Hawaii, and Western Pacific Territories, respectively.

Extra payment. Extra payments are applied all to principal on the end of the loan and are funds derived from:

(1) Sale of basic chattel or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of real estate debt.

(3) Mineral royalties.

(4) Cash proceeds of real property insurance as provided in subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(5) Sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(6) Transactions of a similar nature which reduce the value of the security for the loan(s).

Non-recoverable costs. Payments charged to a loan program insurance fund by use of a fund code. These costs are only incurred after Government acquisition of title to the property, and are therefore charged to an inventory account.

Overage. This term refers to both ''overage'' and ''surcharge'' described in exhibit H to subpart C of part 1930 of this chapter.

Payment effective date. The payment effective date is the day of the month on which payments will be effectively applied to the account by the Finance Office for the month payment is due regardless of the payment reception date. On PASS all payments will be applied as of the first day of the month.

Payment reception date. The day of the month the payment is received in the District Office.

Predetermined Amortization Schedule System (PASS). System whereby FmHA or its successor agency under Public Law 103–354 will apply loan payments based on an amortization schedule.

Project late fee. The amount charged a borrower's project account for a delinquent payment according to §1951.510(c)(2) of this subpart, or when an uncollectible regular payment has been processed according to §1951.506(c) of this subpart.

Promissory note installment. The unrounded amortized installment shown on the promissory note, conversion agreement, assumption agreement or reamortization agreement, whichever is currently in effect.

Recoverable costs. Additional project costs such as vouchered insurance or taxes which FmHA or its successor agency under Public Law 103–354 requires a borrower to pay.

Refund payment. Payments from unused loan funds which are applied to principal on the end of the loan account.

Regular payment. All monthly payments scheduled according to PASS. Does not include extra payments, advance regular payments, refund payments or voluntary additional principal payments.

Subsidized installment. The promissory note installment reduced by the terms of Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement.'' The subsidized installment is the unrounded amortized installment computed at the subsidized interest rate.

Subsidy credit. The difference between a borrower's monthly promissory note installment and the monthly subsidized installment.

Voluntary additional principal payment. Payments applied all to principal which are made at the election of the borrower in addition to regularly scheduled payments and with FmHA or its successor agency under Public Law 103–354 approval. Such payments will not affect the schedule payment status or change the amount of the regular monthly payments. Funds for voluntary additional principal payments are derived from sources other than extra payment sources. Payments will be applied to current loans only.

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 2194, Jan. 26, 1988; 53 FR 16244, May 6, 1988; 55 FR 25078, June 20, 1990; 56 FR 66961, Dec. 27, 1991; 62 FR 25070, May 7, 1997]

§1951.505 [Reserved]

§1951.506 Processing payments.

(a) *Regular payments.* Regular payments and advance regular payments will be processed as follows:

(1) All payments will be based on tenants occupying the units as of the first day of the month prior to the payment due date. For example, a payment due on July 1 is based on tenants occupying the units June 1. For the purposes of this subpart, the word ''tenant'' also means RCH ''member.''

(2) The borrower must deliver all Forms FmHA or its successor agency

under Public Law 103–354 1944–8, ''Tenant Certification,'' or for tenants receiving Section 8 assistance, the acceptable Department of Housing and Urban Development (HUD) form to the District Director according to paragraph VII F 1 of exhibit B to subpart C to part 1930 of this chapter. The District Director will date stamp each certification and will verify the information on the tenant certification also as required in paragraph VII F of exhibit B to subpart C of part 1930 of this chapter. The data from the tenant certifications must be entered into the Multi-Family Housing Tenant File System (MTFS) which will calculate the tenant's rent payment.

(i) If the calculations on the tenant certification do not agree with MTFS, the District Office will contact the borrower/management to resolve the discrepancy. MTFS calculations will be used to calculate interest credit and rental assistance due the borrower.

(ii) A copy of MTFS ''Project Worksheet—Interest Credit and Rental Assistance,'' an automated printout, will be generated and compared to the borrower's Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance.'' Only tenants with current tenant certifications shown on MTFS will be certified for interest credit or rental assistance when processing payments.

(iii) A copy of the monthly MTFS project worksheet report will be filed with Form FmHA or its successor agency under Public Law 103–354 1944–29 to document the approved subsidies.

(iv) At the borrower's request, a copy of the MTFS project worksheet report may be used as Parts I and II in lieu of Form FmHA or its successor agency under Public Law 103–354 1944–29. The District Office will provide a copy of the MTFS project worksheet report to the borrower about the 20th of the month. When using the MTFS project worksheet report as Parts I and II of Form FmHA or its successor agency under Public Law 103–354 1944–29, the borrower will verify the data, sign the MTFS project worksheet report, and return it with the monthly payment to the District Office. Borrowers using the MTFS project worksheet report as Part II, only, will complete, sign, and attach Part I of Form FmHA or its successor agency under Public Law 103–354 1944–29 to the MTFS project worksheet report, before returning it with the monthly payment. Borrowers with Section 8 units who are reporting overage payment, and/or excess HUD contract rent to the reserve account are required to complete Part I of either Form FmHA or its successor agency under Public Law 103–354 1944–29 or the MTFS project worksheet report.

(3) On or about the 11th day of each month, the Finance Office will generate and mail to each borrower that is delinquent and/or has late fees, Form FmHA or its successor agency under Public Law 103–354 1944–9A, ''Multiple Family Housing Statement of Payment Due,'' showing the current monthly payment due, unpaid late fees, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office records but will not reflect overage due from the borrower or rental assistance (RA) due the borrower.

(4) Each borrower will submit to the District Office Form FmHA or its successor agency under Public Law 103–354 1944–29 with the required monthly payment indicated or adjusted as indicated in paragraph (a)(5) of this section regardless of whether or not Form FmHA or its successor agency under Public Law 103–354 1944–9A is received.

(5) Form FmHA or its successor agency under Public Law 103–354 1944–29, prepared by the borrower must reflect the following:

(i) Only tenants occupying units the first day of the month prior to the payment due date.

(ii) Interest credit and (RA) may be claimed only for tenants with current tenant certification as specified in paragraph VII F 2 of exhibit B to subpart F of part 1930 of this chapter.

(iii) Overage up to the market rent must be paid to FmHA or its successor agency under Public Law 103–354 by the borrower for tenants without current tenant certifications unless there is a formal eviction in process, then the payment will be calculated based on the expired tenant certificate. The District Director may determine that the

tenant may be required to reimburse the borrower for that overage as allowed in paragraph VII F 6 c of exhibit B to subpart C of part 1930 of this chapter.

(iv) The borrower may subtract any RA due the project (supported by current tenant certifications) from the payment due and remit a ''net'' payment. Calculations supporting the ''net'' payment must be shown on Part I of Form FmHA or its successor agency under Public Law 103–354 1944–29. The Finance Office will net enough RA to bring the account status current and pay any unpaid overage, late fees, interest on delinquent principal, etc., based on the payment reception date. If the account is on or ahead of schedule on the payment reception date, enough RA will be netted to pay one full installment and any unpaid coverage, interest on delinquent principal, etc.

(6) The District Director will certify that data on current tenant certifications held in the District Office supports claims on Form FmHA or its successor agency under Public Law 103–354 1944–29. The District Director will transmit payments as directed in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(7) Payment input by FmHA or its successor agency under Public Law 103–354 will be based on correct amounts regardless of the amount remitted by the borrower.

(b) *Other payments*. Payments made through the District Office will be processed according to subpart B of part 1951 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(c) *Uncollectible payment*. Uncollectible payments will be handled under subpart B of this part 1951 of this chapter. The payment effective date for the replacement payment will be the date the replacement payment is received in the District Office, not the date of the original payment.

[50 FR 8597, Mar. 4, 1985, as amended at 51 FR 27671, Aug. 1, 1986; 55 FR 25078, June 20, 1990; 56 FR 28038, June 19, 1991; 58 FR 40954, July 30, 1993; 59 FR 54789, Nov. 2, 1994; 62 FR 25065, 25070, May 7, 1997]

§ 1951.507 Maintaining borrower accounts.

(a) *Accounts of active borrowers*. The foundation for proper and timely debt payment is sound budgeting and monthly review of income and expenses by the borrower and, as necessary, the District Office staff. Account maintenance, therefore, must begin with initial planning and must be an integral part of ongoing analysis, planning and follow-up management assistance.

(b) *Accounts of collection-only borrowers*. Collection only accounts will be serviced according to § 1951.7(b) of subpart A of this part.

(c) *Notifying borrowers of late fees and past due payments*. The Finance Office will automatically notify each borrower of late fees for payments which were unpaid on the 10th day of the month. A copy of the notice will be mailed to the District Office servicing the account.

(d) *Subsequent servicing*. Delinquent accounts will be serviced according to the respective program requirements. Accounts will also be serviced under subpart B of part 1965 of this chapter.

(e) *District Office monitoring*. District Offices should review each account at least monthly by accessing the Automated Multi-Housing Accounting System (AMAS) through field office terminals. For projects on PASS, the Management System card will be flagged with an orange signal between Position ''5'' and ''RRH.'' Exhibit A–1 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) should be used to track payments.

[50 FR 8597, Mar. 4, 1985, as amended at 58 FR 40955, July 30, 1993]

§§ 1951.508–1951.509 [Reserved]

§ 1951.510 Payment application.

(a) *Regular payment due date*. The regular payment due date is the first day of each month. All months will be counted as 30 days (360 day year).

(b) *First regular payment*. (1) The first regular amortized payment after loan closing for transfers (new terms), reamortizations, voluntary conversions, credit sales, or loans closed after interim financing *must* be at least one (1) month from closing. For example, if a

loan is closed on January 31, the first regular amortized payment will be due March 1. For multiple advance loans the first payment must be at least one (1) month after the final advance.

(2) For transfers (same terms) payments on loans already on PASS will be due on the next scheduled due date.

(3) Transfers (same terms) converting from DIAS to PASS are loans retaining the same interest rate and final due date and regular amortized payments will be due 30 days form either the date of closing or the interest only installment, whichever is later.

(c) *Delinquent payments.* (1) A loan payment is due on the first day of a month. A loan payment is considered past due when it is received on the second day or a subsequent day through the close of business of the tenth day of the month. A loan payment is late when it is received after normal business hours of the tenth day of the month, without regard to weekends, holidays or payment transmission factors. Thereafter, a late fee will be charged as described in paragraphs (c)(2) and (c)(4) of this section.

(2) The project account will be charged a late fee when the regular payment is not received in the District Office by close of business of the tenth (10) day of the month the payment is due or when the payment is applied by the Finance Office and does not fully pay the regular payment and other charges for each project loan. Late fees collected by the Finance Office will be deposited in the Rural Housing Insurance Fund (RHIF).

(i) The project late fee is six percent of the total regular payment(s) due shown on the promissory note(s), conversion agreement(s), assumption agreement(s) or reamortization agreement(s).

(ii) A project late fee will be charged for any unpaid portion of the regular payment(s) exceeding $15.00.

(iii) A project late fee will be charged one time only, for each regular payment.

(iv) Except for cooperative housing, project late fees may not be paid from project income as specified in paragraph XIII B2a(4) of exhibit B to subpart C of part 1930 of this chapter.

(v) Exceptions may be made to late fee charges only as follows:

(A) The State Director may allow an exception for any project for three (3) monthly project late fee charges in any calendar year, based on the State Director's determination that the late fees place an unfair burden on the project. For each exception requested, the borrower must provide a written explanation of the circumstances which caused the late payment and what actions will be taken to bring the account current.

(B) The National Office may authorize exceptions to late fees for borrowers who have late fees exceeding the State Director's exception authority. When the State Director determines that the application of a late fee would place an unfair burden on the borrower, the State Director may submit a request for an exception to the late fee to the National Office. The request will include an explanation of the circumstances, a recommendation for action and all relevant case file material. The National Office will review the request and notify the State Director what action should be taken on the account.

(C) When an exception to late fees is granted, the State Director will notify the borrower on Form FmHA or its successor agency under Public Law 103–354 1951–51, ''Multiple Family Housing Exception to Late Fees,'' completed according to the FMI.

(D) When an application for late fee exception is denied the State Director must give the borrower appeal rights under subpart B of part 1900 of this chapter.

(3) A project is considered delinquent on the 30th day of the month when any due amount is unpaid.

(4) When a regular PASS payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid delinquent principal at the note rate from the date the principal was due until all regular payments, recoverable cost charges, late fees, and occupancy surcharges have been paid current in accordance with

the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The interest on delinquent principal will be added to the regular payment amount due for the month.

(d) *Subsidy credit.* When the Finance Office receives the regular payment, subsidy credit will be applied to the loan account before any payment or other credit is applied to the account. Subsidy credit will be applied first to accrued interest and then to principal after all interest is paid. Subsidy credit will not be applied to late fees, audit receivables, or recoverable cost charges.

(e) *Regular payments.* Regular payments will be applied in the following priority:

(1) Amortized audit receivables.

(2) Unamortized audit receivables.

(3) All project late fees due.

(4) Occupancy surcharges.

(5) Amortized recoverable costs due.

(6) Unamortized recoverable costs due.

(7) Overage.

(8) All other interest due.

(9) Principal.

(10) Any remaining regular payment will be applied as an advance regular payment unless specifically designated otherwise.

(f) *Advance regular payments.* These payments affect the payment status of the loan. The loan account must be current before a payment can be applied as an advance payment. The payment effective date will be the due date of the next regular payment which is not fully paid.

(g) *Extra and refund payments.* Both will be applied as principal to the last installment to become due under the note.

(h) *Voluntary additional principal payments.* These payments will only be credited to the account when all regularly scheduled payments on the account have been paid. Voluntary additional principal payments are credited all to principal, as of the payment effective date, and do not affect the payment status of the loan.

(i) *Projects with initial and subsequent loan(s).* Regular payments on projects with an initial and subsequent loan(s) will be applied according to the priorities listed in § 1951.510(e) of this subpart. Each priority item will be paid for all project loans before moving to the next item.

Payments will be applied for each priority item in accordance with the loan number, beginning with the initial loan and ending with the highest numbered subsequent loan.

(j) *Final payments.* Final payments will be applied on the next payment due date or the final due date shown on the promissory note, assumption agreement or reamortization agreement, whichever is sooner. The District Office must contact the Finance Office for the amount of the final payment. Final payment should be accepted under conditions specified in § 1965.90 of subpart B to part 1965 of this chapter.

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 16245, May 6, 1988; 55 FR 5975, Feb. 21, 1990; 55 FR 25078, June 20, 1990; 56 FR 2257, Jan. 22, 1991; 58 FR 40955, July 30, 1993]

§ 1951.511 [Reserved]

§ 1951.512 Changes in the application of loan payments.

District Office employees with State Director authorization according to § 1930.143 of subpart C to part 1039 of this chapter are authorized to approve reapplication of loan payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied. The District Director will process the changes as prescribed in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) by the AMAS Coordinator.

[56 FR 28038, June 19, 1991, as amended at 58 FR 40955, July 30, 1993]

§ 1951.513 Overpayments and refunds to borrowers.

Overpayments and refunds to borrowers will be processed according to § 1951.13 of Subpart A of this part.

§ 1951.514 Recoverable and non-recoverable cost charges.

The District Director will service recoverable and non-recoverable cost items according to § 1951.14 of subpart A of this part and FmHA or its successor agency under Public Law 103–354 Instruction 2024–A which is available in any FmHA or its successor agency under Public Law 103–354 office. (Recoverable and non-recoverable costs are defined in § 1951.504 of this subpart.)

[53 FR 16245, May 6, 1988, as amended at 57 FR 36591, Aug. 14, 1992]

§ 1951.515 Promissory notes for borrowers who convert to PASS.

Promissory notes in the hands of investors when a loan is converted to PASS will be repurchased by the Finance Office and forwarded to the District Office for storage.

§ 1951.516 [Reserved]

§ 1951.517 Conversion from DIAS to PASS.

(a) *Conversion prior to May 1, 1985.* The account of any existing RRH loan recipient who elected to convert to PASS before October 31, 1983, by following instructions prescribed by FmHA or its successor agency under Public Law 103–354, and who signed their conversion documents before May 1, 1985, or any recipient of a new loan, credit sale, or transfer (new terms) closed between November 1, 1983, and April 30, 1985, who elected to convert to PASS, was converted, as if the loan has been on an amortization schedule from the date of the loan, transfer (new terms), or reamortization (new terms), whichever occurred later.

(b) *Conversion on or after May 1, 1985*—(1) *Required conversion.* After *May 1, 1985,* all MFH loans, transfers or reamortizations must be closed on PASS, except LH loans specified in § 1951.501(a)(2)(i) of this subpart. All borrowers receiving subsequent loans or reamortizations must convert all initial and subsequent loans on the project to PASS. If the subsequent loan and conversion are not closed on the first of the month, the interest from the date of closing to the first of the month will be capitalized. Recoverable costs and unpaid interest may be capitalized on coversions required by subsequent loans or reamortization of one loan on the project account.

(2) *Voluntary conversion.* District Directors shall approve voluntary conversion of any account from DIAS to PASS upon a request by the borrower, when the following conditions are met:

(i) The loan account and reserve account are current less any authorized withdrawals at the time of conversion.

(ii) Conversion does not result in a rent increase.

(iii) The conversion is effective the first day of the month.

(3) *Processing conversions.* The following actions must be taken to convert an account from DIAS to PASS:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–50, ''Multiple Family Housing Conversion Agreement,'' will be completed according to the FMI except loans converted on Form FmHA or its successor agency under Public Law 103–354 1965–9, ''Multiple Family Housing Assumption Agreement,'' or FmHA or its successor agency under Public Law 103–354 1965–16, ''Multiple Family Housing Reamortization Agreement.'' The terms of Forms FmHA or its successor agency under Public Law 103–354 1965–9 and FmHA or its successor agency under Public Law 103–354 1965–16 convert the account to PASS.

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit plan type will be passed through to the PASS loan. However, a new Form FmHA or its successor agency under Public Law 103–354 1944–7 must be prepared to reflect the PASS payment and subsidy amount.

(iii) On the back of the original note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: ''A Form FmHA or its successor agency under Public Law 103–354 1951–50 dated _____ 198__, in the principal sum of $_____, has been given to modify the payment schedule of the note.

(4) *Principal balance to be converted.* For transfers and reamortizations, the applicable transfer or reamortization form will convert the account to PASS. The principal balance converted to

PASS will be established according to the FMI for Forms FmHA or its successor agency under Public Law 103–354 1965–9, FmHA or its successor agency under Public Law 103–354 1965–10, ''Information on Assumption of Multiple Family Housing Loans,'' or FmHA or its successor agency under Public Law 103–354 1965–16, and the following:

(i) For DIAS to PASS transactions (new terms):

(A) First of the month closings: The unpaid interest, overage and late fees accrued through the last day of the previous month will be capitalized.

(B) Other than the first of the month closing: Accrued interest, overage and late fees through the date of closing will be capitalized. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and applied to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(ii) For DIAS to PASS transactions (same terms):

(A) First of the month closings: Accrued interest, overage and late fees through the last day of the previous month will be collected from the transferor at closing and credited to the transferor's account.

(B) Other than the first of the month closings: Accrued interest, overage and late fees through the date of closing will be collected from the transferor at closing and credited to the transferor's account. The date of credit is the day before closing. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and credited to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(iii) Reamortizations will always be effective the first day of the month. Unpaid interest, including any unpaid overage and late fees may be capitalized as follows: DIAS to PASS transactions, through the last day of the previous month; PASS to PASS transactions, through the 30th day of the previous month.

(iv) Audit receivables may not be transferred or reamortized. They will be established as a ''Collection Only'' account for the transferor and must be collected or charged off.

(5) *Terms of conversion.* All conversion on Form FmHA or its successor agency under Public Law 103–354 1951–50 will be at the interest rate and within the remaining terms shown on the converting promissory note, assumption agreement (new terms) or reamortization agreement (new terms).

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 16245, May 6, 1988; 58 FR 40955, July 30, 1993; 62 FR 25065, May 7, 1997]

§ 1951.518 Determining current loan balances for transfer.

Same terms transfers, when the transferor has been converted to PASS, must take place in a current loan status on the date of the transfer. Any delinquent principal and interest must be brought current. Overpayments and advance regular payments made on PASS accounts result in the creation of a ''future paid'' status account under AMAS. These advance payments must be reversed off and applied to the transferor's principal balance prior to determining the loan balance to be transferred. If the future payments have been made through rental assistance, they must be refunded to the transferor and reapplied in the form of cash on the loan balance.

[53 FR 16245, May 6, 1988]

§§ 1951.519–1951.547 [Reserved]

§ 1951.548 Exception authority.

The Administrator of the Farmers Home Administration or its successor agency under Public Law 103–354 may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government. The Administrator will exercise the authority only at the request of the State Director. The District Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§ 1951.549 [Reserved]

§ 1951.550 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0106. Public reporting burden for this collection of information is estimated to be 15 minutes per response, with an average of 15 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0106), Washington, DC 20503.

[56 FR 28039, June 19, 1991]

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistence was Received—Farmer Programs

SOURCE: 50 FR 45777, Nov. 1, 1985, unless otherwised noted.

§ 1951.551 Purpose.

This subpart prescribes the policies and procedures for servicing insured Operating (OL), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST), Economic Opportunity (EO) loans, and Rural Housing loans for farm service buildings (RHF) (referred to as farmer program (FP) loans), when it is determined that the borrower was not eligible for all or part of the financial assistance received in the form of a loan or subsidy granted. It does not apply to guaranteed loans.

[52 FR 26138, July 13, 1987]

§ 1951.552 Definitions.

As used in this subpart, the following definitions apply:

(a) *Active borrower*. A borrower who has an outstanding account in the records of the Finance Office, including collection–only or an unsatisfied account balance where a voluntary conveyance was accepted without borrower being released from liability or where liquidation did not satisfy the indebtedness.

(b) *Assistance*. Financial assistance in the form of a loan or interest subsidy received.

(c) *Debt instrument*. Used as a collective term to include promissory note or assumption agreement.

(d) *False information*. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correction information.

(e) *Inaccurate information*. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower*. A former active borrower whose loan(s) has(have) been paid in full or assumed by another party(ies), and who does not have an outstanding account in the records of the Finance Office.

(g) *Unauthorized Assistance*. Any loan, primary loan servicing action, including Net Recovery Buyout, or interest subsidy received for which there was no authorization, for which the borrower was not eligible, or which was obligated from the wrong appropriation or fund. An unauthorized interest subsidy is a benefit received through a loan that was made at a lower interest rate than that to which the borrower was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

[50 FR 45777, Nov. 1, 1985, as amended at 56 FR 33862, July 24, 1991]

§ 1951.553 Policy.

When it is determined that unauthorized assistance has been received, an effort must be made to collect from the borrower the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

§§ 1951.554–1951.555 [Reserved]

§ 1951.556 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA; through reviews made by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a borrower. If FmHA or its successor agency under Public Law 103–354 has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA or its successor agency under Public Law 103–354 that the assistance was based on false information, investigation by the OIG will be requested, as provided for in FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office). If OIG conducts an investigation, the actions outlined in § 1951.557 of this subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the borrower will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the borrower;

(b) Submission of false information by the borrower;

(c) Submission of inaccurate or false information by another party on the borrower's behalf such as a seller, developer, real estate broker, or attorney, when the borrower did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103–354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.557 Notification to borrower.

(a) Collection efforts will be initiated by the County Supervisor by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and mailed to the borrower by ''Certified Mail, Return Receipt Requested,'' with a copy to the State Director; and, for a case identified in an OIG audit report, copies to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all borrowers who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit D of this Subpart (available in any FmHA or its successor agency under Public Law 103–354 office); and

(3) Establish an appointment for the borrower to discuss with the County Supervisor the basis for FmHA or its successor agency under Public Law 103–354's claim; and give the borrower an opportunity to provide facts, figures, written records or other information which might refute FmHA or its successor agency under Public Law 103–354's determination that the assistance received was unauthorized.

(b) If the borrower meets with the County Supervisor, the County Supervisor will outline to the borrower why the assistance was determined to be unauthorized. The borrower will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103–354's findings. When requested by the borrower, the County Supervisor may grant additional time for the borrower to assemble documentation. When an extension is granted, the County Supervisor will specify a definite number of days to be allowed and establish the

follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.558 Decision on servicing actions.

When the County Supervisor is the same official who approved the unauthorized assistance, the District Director must review the case before further actions are taken by the County Supervisor.

(a) *Payment in full.* If the borrower agrees with FmHA or its successor agency under Public Law 103–354's determination and agrees to repay in a lump sum, the County Supervisor may allow a reasonable period of time (not to exceed 90 days) for the borrower to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). The County Supervisor will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' for application to the borrower's account as an extra payment. After a borrower repays an unauthorized interest subsidy benefit in a lump sum, the loan will be serviced in accordance with § 1951.561(a)(3) of this subpart. In the case of unauthorized assistance which was identified in an OIG audit, the County Supervisor will report the repayment as outlined in § 1951.568(a) of this subpart.

(b) *Continuation with borrower.* If the borrower agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to repay but cannot repay the unauthorized assistance in a lump sum within a reasonable period of time, continuation may be authorized. Servicing actions outlined in § 1951.561 of this subpart will be taken, provided all of the following conditions are met:

(1) The borrower did not provide false information as defined in § 1951.552(d) of this subpart.

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraph (a) or (b) of this section, or if the borrower refuses to execute the documents necessary to make account adjustments or establish an obligation to repay the unauthorized assistance as provided in § 1951.561 of this subpart, or when a borrower fails to respond to the initial letter prescribed in § 1951.557 of this subpart within 30 days, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The County Supervisor will send Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office.)

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of subpart A of part 1955 of this chapter.

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA or its successor agency under Public Law 103–354 debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of subpart A of part 1955 of this chapter.

(iv) Forced liquidation will not be pursued when:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and recoverable costs charged to the account, is less that $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (c)(1)(B) of this section, a request for an exception under § 1951.569 of this subpart will be made.

(v) Account adjustments will be made by FmHA or its successor agency under

Public Law 103–354 without the signature of the borrower according to § 1951.568(a)(5) of this subpart. In these cases, the borrower will be notified by letter of the actions taken with a copy of Forms FmHA or its successor agency under Public Law 103–354 1951–12, ''Correction of Loan Account,'' or 1951–13, ''Change in Interest Rate,'' as applicable, enclosed to reflect the adjustments.

(2) *(Inactive borrower or active borrower with unsecured loan such as collection-only or unsatisfied balance after liquidation).* The County Supervisor will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect.

[50 FR 45777, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988]

§§ 1951.559–1951.560 [Reserved]

§ 1951.561 Servicing options in lieu of liquidation or legal action.

When all of the conditions outlined in § 1951.558(b) of this subpart are met, servicing options outlined in this section will be considered; and accounts will be serviced according to this section and § 1951.568 of this subpart.

(a) *Active borrower*—(1) *Entire loan, or loan servicing unauthorized.* When the entire loan, or all or a portion of primary loan servicing, is determined to be unauthorized because the borrower was not eligible, or because the loan or primary loan servicing was approved for unauthorized purposes, the following alternatives will be considered in the order listed:

(i) Execution of Form FmHA or its successor agency under Public Law 103–354 1965–11, ''Accelerated Repayment Agreement,'' according to § 1965.26(e) of subpart A of part 1965 of this chapter, for loans secured by real estate, or rescheduling according to Subpart A of this part, for loans not secured by real estate, based on the borrower's repayment ability.

(ii) Refinancing with another type of FmHA or its successor agency under Public Law 103–354 loan to repay the unauthorized loan, if the borrower is eligible for the type loan being considered.

(iii) When the case cannot be handled according to paragraph (a)(1)(i) or (a)(1)(ii) of this section, continuance with the loan on the existing terms may be approved, and the loan will, thereafter, be serviced as an authorized loan.

(2) *Portion of loan unauthorized.* When a portion of a loan is determined to be unauthorized, the Finance Office will be instructed to separate the authorized and unauthorized portions of the loan, setting up each as a separate loan at the correct interest rate. The correct interest rate will be taken from Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) as of the date of loan approval. All payments made on the loan being corrected will be reversed and reapplied to the unauthorized portion. If after reapplication of payments the unauthorized portion is not paid in full, the options outlined in paragraph (a) of this section may be considered for repayment of the balance of the unauthorized portion; and the authorized portion will be serviced as an outlined loan. See § 1951.568 of this subpart for instructions on setting up separate accounts.

(3) *Unauthorized interest subsidy benefits received.* When the borrower was eligible for the loan, but should properly have been charged a higher interest rate than that shown in the debt instrument on all or a portion of the loan, resulting in the receipt of unauthorized interest subsidy benefits, the case will be handled as outlined below. The unauthorized interest rate will be corrected to the interest rate in effect on the date the original loan was approved as outlined in paragraph (a)(3)(iii) of this section.

(i) When a subsidized interest rate was incorrectly charged on the entire loan, all payments made will be reversed and reapplied at the correct interest rate; and future installments will be scheduled at the correct interest rate. After reapplication of payments, the loan will be treated as an authorized loan.

(ii) When a subsidized interest rate was incorrectly charged on only a portion of the loan, the Finance Office will

be instructed by the County Supervisor to separate the loan into two portions, with the correct interest rate established for the portion having the incorrect subsidized interest rate. All payments made on the loan being adjusted will be reversed and reapplied, first to the portion with the corrected interest rate. After reapplication of payments at the correct interest rate, both portions will be serviced as authorized loans.

(iii) Incorrect interest rates will be corrected as follows referring to Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) for interest rates in effect on specific dates:

(A) For disaster Emergency (EM) loans, to the rate for EM annual production loans.

(B) For Operating Loans—Limited Resource (OL–LR), to the rate for regular Operating Loans (OL).

(C) For Farm Ownership—Limited Resource (FO–LR), to the rate for regular Farm Ownership (FO).

(D) For all other types of FP loans, to the correct rate for the type loan involved which was in effect when the loan was approved.

(b) *Inactive borrower*. When the individual or entity does not have an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the inactive borrower execute a promissory note in the amount of the assistance determined to be unauthorized according to §1951.557 of this subpart. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years or the term of the original loan, whichever is the shorter term.

(2) Take the best lien obtainable on any collateral having equity value to secure the note.

[50 FR 45777, Nov. 1, 1985, as amended at 51 FR 4138, Feb. 3, 1986; 56 FR 33862, July 24, 1991]

§§ 1951.562–1951.567 [Reserved]

§ 1951.568 Account adjustments and reporting requirements.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case of unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases*. Only cases of unauthorized assistance identified by OIG will be reported to the Finance Office by submission on Form FmHA or its successor agency under Public Law 103–354 1951–12 completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. ''Loan'' refers to an account with an active borrower unless specified as ''inactive.'' If the borrower has arranged to repay in a lump sum, the payment will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2, according to the FMI. Form FmHA or its successor agency under Public Law 103–354 1951–12 will reflect the amount and the Schedule Number.

(1) *Entire loan unauthorized*. When the entire loan is unauthorized because the borrower was not eligible or because the loan was approved for unauthorized purposes, and continuation is authorized, the Finance Office will be advised as follows:

(i) *Accelerated repayment agreement or loan rescheduled*. If the borrower has executed Form FmHA or its successor agency under Public Law 103–354 1965–11 for loans secured by real estate; or has executed Form FmHA or its successor agency under Public Law 103–354 1951–4 for loans not secured by real estate, the form(s) will be prepared and distributed according to the FMIs, attaching the original form(s) to Form FmHA or its successor agency under Public Law 103–354 1951–12.

(ii) *Continuation with loan on existing terms.* When it is determined that all the conditions outlined in §1951.558(b) of this subpart are met and continuation with the loan on the existing terms is approved, the servicing official will submit Form FmHA or its successor agency under Public Law 103–354 1951–12 to the Finance Office to reflect this.

(2) *Portion of loan unauthorized.* When a loan is to be separated into authorized and unauthorized portions, the authorized portion will retain the original loan number, and the original principal amount will be reduced by the unauthorized amount. A new loan in the unauthorized amount will be established as the unauthorized loan with the next available number assigned by the Finance Office. Payments made on the loan being adjusted will be reversed and reapplied first to the unauthorized loan. If the reapplication of payments does not pay the unauthorized loan in full, upon receipt of Forms FmHA or its successor agency under Public Law 103–354 451–26, ''Transaction Record,'' showing the balances of the authorized and unauthorized loans, the servicing official will proceed under the provisions of §1951.561(a)(2) and will submit a revised Form FmHA or its successor agency under Public Law 103–354 1951–12 (along with a copy of the original Form FmHA or its successor agency under Public Law 103–354 1951–12).

(3) *Unauthorized subsidy benefits received.* (i) *Entire loan.* When the interest rate on an entire loan is changed, Form FmHA or its successor agency under Public Law 103–354 1951–12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the original loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan.

(ii) *Portion of loan.* When the interest rate on only a portion of a loan must be changed, the portion which has the incorrect interest rate will be established as a new loan at the correct interest rate shown on Form FmHA or its successor agency under Public Law 103–354 1951–12. Payments made on the loan being adjusted will be reversed and reapplied first to the loan with the corrected interest rate. Both loans will then be treated as authorized loans.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, Form FmHA or its successor agency under Public Law 103–354 1951–12 will be submitted to advise the Finance Office to establish the unauthorized assistance account. This account will be flagged ''FAP'' (Foreclosure Action Pending) or ''CAP'' (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of §1951.558 (c)(1)(iv)(A) or (c)(1)(iv)(B) of this subpart, will be adjusted according to §1951.561 (a)(2) or (a)(3) of this subpart and this section, and the adjustments will be reflected on Form FmHA or its successor agency under Public Law 103–354 1951–12. In this instance *only*, account adjustments will be made even though the borrower does not sign Form FmHA or its successor agency under Public Law 103–354 1951–12 and any related documents.

(6) *Establishment of account of inactive borrower.* (i) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Form FmHA or its successor agency under Public Law 103–354 1951–12 will reflect this, and the Finance Office will establish or the account according to the terms indicated on Form FmHA or its successor agency under Public Law 103–354 1951–12.

(ii) When a judgment is obtained against such a borrower, Form FmHA or its successor agency under Public Law 103–354 1962–20, ''Notice of Judgment,'' will be prepared and distributed in accordance with the FMI to establish a judgment account. The FmHA or its successor agency under Public Law 103–354 field office will process the judgment or the third party judgment via the FmHA or its successor agency under Public Law 103–354 field office terminal system.

(7) *Payments on authorized and unauthorized loans concurrently*. When a borrower has both authorized and unauthorized loans outstanding, installments may be scheduled to be paid concurrently on all loans. Payments may be adjusted by means of rescheduling or reamortizing to coincide with the borrower's repayment ability according to servicing regulations for the type loan involved. The County Supervisor will complete Form FmHA or its successor agency under Public Law 103–354 451–2 so that payments received will be applied first to the unauthorized loan account to maintain it current, with the remainder of the payment applied to the other loan(s).

(8) *Reporting*. At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. For reporting purposes, the following applies:

(i) For an unauthorized loan account established as provided in paragraph (a) (1), (2), or (6) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, it will be reported on the next scheduled report *only*, giving the amount collected.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the unpaid balance will be reported initially and the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing terms is approved, or after a loan is rescheduled or reamortized, it will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(3) of this section, when the unauthorized amount has been repaid, or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, it will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(b) *Nonaudit cases*. Basically, servicing options which may be used are the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Each payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Forms FmHA or its successor agency under Public Law 103–354 451–26 from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate is necessary, retroactive to the date of loan closing on all or a portion of a loan, Form FmHA or its successor agency under Public Law 103–354 1951–13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) For accounts to be rescheduled or reamortized, Forms FmHA or its successor agency under Public Law 103–354 1951–4, or 1965–11, as applicable, will be prepared and submitted in accordance with the respective FMI.

(iii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the County Supervisor will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iv) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to the applicable servicing regulations for the type loan involved.

[50 FR 45777, Nov. 1, 1985, as amended at 55 FR 35295, Aug. 29, 1990]

§ 1951.569 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely effect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.570–1951.599 [Reserved]

§ 1951.600 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0102.

Subpart M [Reserved]

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

SOURCE: 50 FR 12996, Apr. 2, 1985, unless otherwise noted.

§ 1951.651 Purpose.

This subpart prescribes the policies and procedures for servicing multiple family housing (MFH) loans and/or grants made by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy granted, any other direct financial assistance, or was not made subject to restrictive-use provisions required by law and/or regulation. As used in this subpart, MFH loans and grants are section 515 rural rental housing (RRH) and rural cooperative housing (RCH) loans and sections 514 and 516 labor housing (LH) loans and grants.

[58 FR 38926, July 21, 1993]

§ 1951.652 Definitions.

As used in this subpart, the following definitions apply:

(a) *Active borrower*. A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance*. Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument*. Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(d) *False information*. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information*. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower*. A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient*. ''Recipient'' refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, or a grant which was unauthorized or was not made subject to restrictive-use provisions required by law and/or regulation.

(h) *Unauthorized assistance.* Any loan, interest subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible.

Interest subsidy includes interest credits, rental assistance, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.653 Policy.

When unauthorized assistance has been received, an effort must be made to collect the sum which is determined to be unauthorized from the recipient, regardless of amount, unless any applicable statute of limitations has expired.

[58 FR 38926, July 21, 1993]

§ 1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

(a) The recipient was not eligible for the assistance.

(b) The property, as approved, does not qualify for the program. For example: An RRH or LH project which clearly is above modest in size, design and/or cost or was not located in an area designated as rural when the initial loan was made.

(c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.

(d) The recipient was granted unauthorized subsidy in the form of:

(1) Interest credits (IC) on an RRH loan;

(2) Rental Assistance (RA) in connection with an RRH or LH loan; or

(3) A subsidy benefit received through use of an incorrect interest rate.

(e) The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.655 [Reserved]

§ 1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA or its successor agency under Public Law 103–354 personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA or its successor agency under Public Law 103–354 assistance. If FmHA or its successor agency under Public Law 103–354 has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA or its successor agency under Public Law 103–354 that the assistance was based on false information, investigation by the Office of the Inspector General (OIG) will be requested as provided for in FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office). If OIG conducts an investigation, the actions outlined in § 1951.657 of this subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or

professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103–354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved or which was caused by omission from the instrument of language required by applicable regulation.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.657 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and mailed by the servicing official to the recipient by ''Certified Mail, Return Receipt Requested,'' with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office); and

(3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA or its successor agency under Public Law 103–354's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA or its successor agency under Public Law 103–354's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103–354's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

§ 1951.658 Decision on servicing actions.

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

(a) *Payment in full.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). The requirements of subpart E of part 1965 will be followed with appropriate modifications for prepayments under this subpart. If the loan was subject to restrictive-use provisions prior to the request for payment in full, the project will remain subject to restrictive-use provisions. Wherever feasible, appropriate, or necessary to protect tenants and the low- and moderate-income population of the community, all attempts to encourage the borrower to sell the project to an acceptable transferee will be made before the prepayment is accepted. All tenant notifications and restrictive-use provisions, when applicable, must be followed when prepayment of all debt on an MFH project is demanded. The District Director will remit collections as follows:

(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a ''Miscellaneous Collection for Application to the General Fund.''

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in §1951.668 (a)(1)((i), (a)(3), or (a)(6) as applicable.

(4) In the case of RA, the repayment will be handled as outlined in §1951.661 (a)(3) and exhibit E to FmHA or its successor agency under Public Law 103–354 Instruction 1930–C.

(b) *Continuation with recipient.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in §1951.668 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.652 (d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA or its successor agency under Public Law 103–354's determination, or if the recipient fails to respond to the initial letter prescribed in §1951.657 within 30 days, the District Director will notify the recipient by letter substantially similar to exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA or its successor agency under Public Law 103–354 to be unauthorized;

(2) A statement of further actions to be taken by FmHA or its successor agency under Public Law 103–354 as outlined in paragraph (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to subpart B of part 1900 of this chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA or its successor agency under Public Law 103–354's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraph (a) or (b) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) *Active borrower with a secured loan.* (i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in

accordance with subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 1951.669 will be made.

(ii) When all of the conditions of paragraph (a) or (b) or this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according to the provisions of § 1951.661, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by FmHA or its successor agency under Public Law 103–354 without the signature of the recipient according to § 1951.668(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Form FmHA or its successor agency under Public Law 103–354 1951–12, ''Correction of Loan Account,'' if applicable.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The District Director will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§§ 1951.659–1951.660 [Reserved]

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in § 1951.658(b) are met, an unauthorized loan or grant will be serviced according to this section and § 1951.668, provided the recipient has the legal and financial capabilities.

(a) *Active borrower/grantee*—(1) *Unauthorized loan.* (i) *Correction of problem.* If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a loan was in excess of the authorized amount, the recipient will be required to refund the difference; or where the loan included funds for purchase of excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment; or where a restrictive-use provision was omitted from a loan document, the provision will be inserted.

(ii) *Continuation on existing terms.* When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to subpart B of part 1965 of this chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to § 1951.668. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.

(3) *Unauthorized interest credits or rental assistance*. In cases involving RA and/or IC, the subsidy benefits should be terminated as provided in the Interest Credit and Rental Assistance Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph X B of exhibit E of subpart C of part 1930 of this chapter.

(i) *Tenant's failure to properly report changes in income or size of the household to the borrower*. In cases where a tenant has received RA and/or IC benefits to which he/she was not entitled because of the tenant's failure to properly report income or changes in household size, the borrower-landlord will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Director of the unauthorized benefits and of the agreement made by the tenant to repay. Money collected will be remitted according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–9. If the borrower has rental assistance, that portion attributable to RA will be credited to the borrower's RA account. In the event that the tenant does not repay through active collection efforts including legal remedy, the borrower will report the facts to the District Director. The District Director will report to the State Director who will obtain the advice of OGC on further actions.

(ii) *Tenant knowingly misrepresented income or number of occupants to the borrower*. If it appears the tenant has knowingly misrepresented income to the borrower, the District Director will look into the case to determine the facts. If the District Director determines that income or number of occupants was misrepresented, he/she will direct the borrower-landlord to demand and to attempt to recoup improperly received rental subsidy from the tenant. Money collected will be remitted to the Finance Office according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–9. If the tenant fails to make restitution, the District Director will refer the case to the State Director who will request the advice of OGC on further actions.

(iii) *Unauthorized RA and/or IC paid due to borrower's error*. Whether unauthorized RA or IC was received by the borrower due to miscalculation or oversight by the borrower or the borrower's management agent, the borrower is required to make restitution to FmHA or its successor agency under Public Law 103–354. This restitution will not be charged to any tenant or to the project as any part of the budget or operating expense. The restitution will be handled as a refund according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–49. In the case of a nonprofit or public body borrower, when funds from nonproject sources are not available, the State Director may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution.

(iv) *Rental assistance assigned to wrong household*. When the tenant has correctly reported income and household size, but RA was assigned by the borrower to the household in error, the tenant's RA benefit will be cancelled and reassigned.

(A) *Notification and cancellation*. Before the borrower notifies the tenant, the borrower or management agent will review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice by the borrower or management agent that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(*1*) The tenant has the right to cancel the lease based on the loss of subsidy benefit to the tenant.

(*2*) The RA granted in error will not be recaptured.

(*3*) The tenant may meet with management to discuss the cancellation and the facts on which the decision was

based. The borrower must give the tenant appeal rights under subpart L or part 1944 of this chapter.

(B) *Reassignment of RA.* Rental assistance will be reassigned in accordance with paragraph XII of exhibit E to subpart C of part 1930 of this chapter.

(v) *Rental assistance in excess of contract.* When rental assistance is advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) *Unauthorized grant assistance.* (i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' as a ''Miscellaneous Collection for Application to the General Fund.'' For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to § 1951.668 (a)(6).

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

(5) *Cases where recipient has both authorized and unauthorized loans outstanding.* When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regulations in effect for an authorized loan of its type.

(b) *Inactive borrower.* When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the exhibit A (available in any FmHA or its successor agency under Public Law 103–354 office) letter according to § 1951.657. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years.

(2) Take the best mortgage obtainable to secure the note.

[50 FR 12996, Apr. 2, 1985, as amended at 51 FR 11563, Apr. 4, 1986; 58 FR 38926, July 21, 1993]

§§ 1951.662–1951.667 [Reserved]

§ 1951.668 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notifed of necessary account adjustments as outlined in this section, depending upon whether the case or unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Ony the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form FmHA or its successor agency under Public Law 103–354 1951–12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form FmHA or its successor agency under Public Law 103–354 1951–52, ''MFH Record Adjustment—Audit Claim,'' according to the FMI to advise the Finance Office. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. ''Loan'' as used in this section refers to an account with an active borrower unless specified as ''inactive.''

(1) *Unauthorized loan*. When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full*. If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA or its successor agency under Public Law 103–354 1944–9, in accordance with the FMI. Forms FmHA or its successor agency under Public Law 103–354 1951–12 and 1951–52 will reflect the amount and the Schedule Number from Form FmHA or its successor agency under Public Law 103–354 1944–9.

(ii) *Continuation with loan on existing terms*. When continuation with the loan on the existing terms is approved according to §1951.661 (a)(1)(ii), the District Director will submit Form FmHA or its successor agency under Public Law 103–354 1951–52 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate*. When the interest rate on an entire loan is changed, Form FmHA or its successor agency under Public Law 103–354 1951–52 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will thereafter be treated as an authorized loan.

(3) *Unauthorized interest credits and/or rental assistance*. Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of §1951.661. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and December of each year for inclusion in the OIG report.

(4) *Liquidation pending*. When liquidation is initiated under the provisions of this subpart, Form FmHA or its successor agency under Public Law 103–354 1951–52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged ''FAP'' (Foreclosure Action Pending) or ''CAP'' (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to subpart G of part 2033 (available in any FmHA or its successor agency under Public Law 103–354 State or District Office).

(5) *Liquidation not initiated*. Cases in which Liquidation has not been initiated because of the provisions of §1951.658 (e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to §1951.661 and this section of this subpart, and the adjustments will be reflected on Form FmHA or its successor agency under Public Law 103–354 1951–52. In this instance only, account adjustments will be made even though the recipient does not sign Form FmHA or its successor agency under Public Law 103–354 1951–52 and any related documents.

(6) *Unauthorized grant assistance*. When grant funds are to be repaid as provided in §1951.661(a)(4) the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) *Establishment of account for inactive borrower*. When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Forms FmHA or its successor agency under Public Law 103–354 1951–12 and 1951–52 will be completed according to the FMIs. The Finance Office will establish

the account according to the terms indicated on Form FmHA or its successor agency under Public Law 103–354 1951–52.

(8) *Reporting*. At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraph (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) *Nonaudit cases*. Basically, servicing is the same for audit and nonaudit case; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form FmHA or its successor agency under Public Law 103–354 451–26, ''Transaction Record,'' from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form FmHA or its successor agency under Public Law 103–354 1951–13, ''Change in Interest Rate,'' will be completed according to the FMI and executed by the borrower. Form FmHA or its successor agency under Public Law 103–354 1951–521 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iii) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1)(i) of this section will be serviced according to subpart B of part 1965 of this chapter.

(c) *Collection of unauthorized assistance*. Collection of unauthorized assistance will be made in accordance with the appropriate sections of subpart K of part 1951 of this chapter. If full prepayment of an MFH loan is required, the prepayment will be accepted in accordance with the requirements of subpart E of part 1965 of this chapter, and appropriate restrictive-use provisions, if applicable, will remain in the deeds of release.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.669 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.670–1951.699 [Reserved]

§ 1951.700 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0104.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

SOURCE: 50 FR 13000, Apr. 2, 1985, unless otherwise noted.

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by the FmHA or its successor agency under Public Law 103–354 to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

[52 FR 38908, Oct. 20, 1987]

§ 1951.702 Definitions.

As used in this subpart, the following definitions apply:

(a) *Active borrower*. A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability of foreclosure did not satisfy the indebtedness.

(b) *Assistance*. Finance assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument*. Used as a collective term to include promissory note, assumption agreement, grant agreement agreement/resolution, or bond.

(d) *False information*. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information*. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower*. A former borrower whose loan(s) has (have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient*. ''Recipient'' refers to an individual or entity that received a loan, or portion of a loan, an interest

subsidy, a grant, or a portion of a grant which was unauthorized.

(h) *Servicing official.* For Community Programs, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated. For Business Programs, the servicing official is the State Director or Designee.

(i) *Unauthorized assistance.* Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official or the documents were prepared in error.

§ 1951.703 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitation has expired.

§§ 1951.704–1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA or its successor agency under Public Law 103–354 personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been receive by a recipient of FmHA or its successor agency under Public Law 103–354 assistance. If the servicing official has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case file including the advice of the Regional Office of the General Counsel (OGC) will be referred to the National Office for review and comment. In every case where it is known or believed by FmHA or its successor agency under Public Law 103–354 that the assistance was based on false information, investigation by the OIG will be requested as provided for in FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office). If OIG conducts an investigation, the actions outlined in § 1951.707 will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient.

(c) Submission of inaccurate or false information by another authorized party acting on the recipient's behalf including professional consultant such as engineers, architects, and attorneys, when the recipient did not know the other part had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103–354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.707 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and mailed to the recipient by ''Certified Mail, Return Receipt Requested,'' with a copy to the State Director and, for a case identifed in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance, including any accrued interest to be repaid; and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA or its successor agency under Public Law 103–354's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA or its successor agency under Public Law 103–354's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103–354's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.708 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or will pay the amount in question, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be determined according to § 1951.711(a). the servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a ''Miscellaneous Collection for Application to the General Fund.''

(3) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.711(b)(2) or 1951.715 as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.711 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.702(d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA or its successor agency under Public Law 103–354's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.707 within 30 days, the servicing official will notify the recipient by letter substantially similar to exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA or its successor agency under Public Law 103–354 to be unauthorized including any accrued interest.

(2) A statement of further actions to be taken by FmHA or its successor agency under Public Law 103–354 as outlined in paragraph (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Appeals*. Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to subpart B of part 1900 of this chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an apeal is not made during the time allowed, the servicing official will document the facts in the case file and submit to State Director, if the servicing official is other than State Director, who will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA or its successor agency under Public Law 103–354's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraph (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection*. When a case cannot be handled according to the provisions of paragraph (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in §1951.711, one of the following actions will be taken:

(1) *Active borrower with a secured loan*. (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented in the case file. Where real property is involved, a letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. A resolution of the governing body may be required. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with applicable provisions of subpart A of part 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 951.716 will be made.

(ii) When all of the conditions of paragraph (a) or (b) of this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according of the provisions of § 1951.711, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section, continuation with the loan on existing terms will be provided. In these cases, the recipient will be notified by letter of the actions taken.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation)*. The servicing official will document the facts in the case file and submit it to the State Director, if the servicing official is other than the State Director, who will request the advice of the OGC on pursuing legal action to effect collection. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions. The State Director will tell OGC what assets, if any, are available from which to collect.

§§ 1951.709–1951.710 [Reserved]

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.708(b) are met, the servicing options outlined in this section will be

considered. Accounts will be serviced according to this section and § 1951.715.

(a) *Determination of unauthorized loan and/or grant assistance amount*—(1) *Unauthorized loan amount.* The principal loan amount that was unauthorized will be determined. The unauthorized amount will be the unauthorized principal plus any accrued interest on the unauthorized principal at the note interest rate until the date paid in accordance with § 1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraph (b)(1) or (c) of this section.

(2) *Unauthorized grant amount.* The unauthorized grant actually expended will be determined. The unauthorized amount will be the unauthorized grant with accrued interest at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid in accordance with § 1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraph (b)(2) or (c) of this section.

(b) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate. In each instance, the servicing official will advise the Finance Office by memorandum of the actions necessary to effect the account adjustment.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to paragraph (a)(1) of this section will be established at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective Community and Business program area. The loan will be amortized for a period not to exceed fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to paragraph (a)(2) of this section will be converted to a loan at the market interest rate for the respective Community and Business Programs area in effect on the date the financial assistance was provided, and will be amortized for a period not to exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this obligaton, and the best security position practicable in a manner which will adequately protect the FmHA or its successor agency under Public Law 103–354's interests during the repayment period will be taken as security. When the recipient is to repay grant assistance, the servicing official must maintain records on the ''account'' as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due and all collections will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2 to the Finance Office as ''Miscellaneous Collections for Application to the General Fund.'' For cases identified in OIG audits only, the servicing official will report by the 1st of March, June, September, and December of each year the following information on cases of this type to the State Director: Recipient's name, fund code, audit report number, audit finding number, date of claim, amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph. The recipient will be given the option to submit a written request that the interest rate be adjusted to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing. (See exhibit C of this subpart for interest rates (available in any FmHA or its successor agency under Public Law 103–354 office).) FmHA or its successor agency under Public Law 103–354 servicing officials will make a concerted effort to collect all unauthorized subsidy benefits from the recipient and will contact the Office of General Counsel in each case for advice in accomplishing corrective actions.

(c) *Continuation on existing terms.* When the recipient does not have the

legal and/or financial capabilities for the options outlined in paragraph (b)(1), (b)(2), or (b)(3) of this section, as appropriate, to be exercised, the recipient may be allowed to continue to meet the loan/grant obligations outlined in the existing loan/grant instruments. Unless the unauthorized assistance was identified in an OIG audit, no Finance Office notification or action is necessary. If identified by OIG, the servicing official will advise the Finance Office by memorandum of the determination to continue with the recipient on the existing terms of the loan/grant.

(d) *Reporting requirements to National Office.* An annual report will be submitted by the State Office to the Assistant Administrator, Community and Business Programs, within 30 days following the end of the Government's fiscal year for each case of unauthorized assistance or subsidy benefits. The report will include for each case the account name, case number, fund code, OIG audit number (if applicable), amount collected during period, and the balance owed on the unauthorized assistance. Each State Office is responsible for coordinating with the servicing official's office so that this information can be accumulated and consolidated by the State Office within the allotted time. A negative report is required from States which have no unauthorized assistance cases.

[50 FR 13000, Apr. 2, 1985, as amended at 51 FR 11563, Apr. 4, 1986; 54 FR 28020, July 5, 1989]

§§ 1951.712–1951.714 [Reserved]

§ 1951.715 Account adjustments and reporting requirement.

Cases of unauthorized assistance which require Finance Office notification and action, regardless of whether they were identified in an OIG audit or by other means, will be submitted to the Finance Office by memorandum from the servicing official, as provided in applicable paragraphs of § 1951.711 of this subpart. Each memorandum should include account (borrower) name, case number, audit report number (if applicable), finding number (if applicable), fund code, loan number, and an explanation of the actions to be taken. If the unauthorized assistance was identified in an OIG audit report, the memorandum should be clearly annotated ''Audit Claim for OIG Report'' as a part of the subject. The explanation should provide sufficient details to allow the Finance Office to properly adjust the account. The State Office will forward a consolidated report on unauthorized grant assistance identified in an OIG audit to the Finance Office by the 15th of March, June, September, and December of each year reflecting the information reported by servicing officials in accordance with § 1951.711(b)(2) for inclusion in the report to OIG.

(a) *Entire loan unauthorized.* When the entire loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, which of the following servicing actions will be taken.

(1) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan in full through refinancing or other available resources, the payment will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2 and the schedule number will be included in the memorandum.

(2) *Continuation with loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination including an explanation of the terms, if modified.

(b) *Portion of loan unauthorized.* When only a portion of the loan has been determined to be for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, of the servicing actions as follows:

(1) *Repayment in full of unauthorized portion.* If the recipient has arranged to repay the unauthorized portion of the loan through refinancing or other available resources, the remittance will be submitted with Form FmHA or its successor agency under Public Law 103–354 451–2, and the schedule number will be included in the memorandum.

(2) *Continuation with unauthorized portion of loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the unauthorized portion of the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination, including an explanation of the terms if modified. The authorized portion will retain the original loan number with installments adjusted accordingly. Payments previously made will not be reversed and reapplied. The amortized unauthorized amount will be assigned the next available loan number. Installments for the authorized and unauthorized loans will be scheduled and paid concurrently.

(c) *Unauthorized subsidy benefits received.* The unauthorized subsidy benefits received will be serviced according to § 1951.711 (b)(3) or (c).

(d) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, the servicing official will advise the Finance Office, by memorandum, that an unauthorized assistance account is to be established. This account will be flagged ''FAP'' (Foreclosure Action Pending) or ''CAP'' (Court Action Pending), as applicable.

(e) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.708(e)(1), will be serviced in accordance with § 1951.708(e)(1)(iii). If the unauthorized assistance was identified through means other than an OIG audit report, the Finance Office will not be notified and no action is necessary.

(f) *Unauthorized grant assistance.* A grant that is to be repaid will be serviced according to § 1951.711(b)(2). If the unauthorized assistance was identified through means other than an OIG audit report and a determination has been made not to recover, the Finance Office will not be notified and no action is necessary.

(g) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(1) For an unauthorized loan account established as provided in paragraph (a) or (b) of this section, reporting will be as follows:

(i) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(ii) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(2) For unauthorized subsidy cases as provided in paragraph (c) of this section, once the interest rate has been appropriately adjusted, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(3) When an account is established with liquidation action pending as provided in paragraph (d) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(4) When liquidation is not initiated as provided in paragraph (e) of this section, this will be reported on the next scheduled report. No further reporting is required.

(5) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (f) of this section, collections and status will be included in the report to OIG until the amount is paid in full.

§ 1951.716 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests will be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of

action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.717–1951.749 [Reserved]

§ 1951.750 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0103.

Subparts P–Q [Reserved]

Subpart R—Rural Development Loan Servicing

SOURCE: 53 FR 30656, Aug. 15, 1988, unless otherwise noted.

§ 1951.851 Introduction.

(a) This subpart contains regulations for servicing or liquidating loans made by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. The provisions of this subpart supersede conflicting provisions of any other subpart.

(b) This subpart also contains regulations for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR part 1076. This action is needed to implement the provisions of Section 1323 of the Food Security Act of 1985, Pub. L. 99–198, which provides for the transfer of the loan servicing authority for those loans from the HHS to the U.S. Department of Agriculture (USDA).

(c) The portion of this regulation pertaining to loanmaking applies to RDLF intermediaries cited in § 1951.851(b) which have RDLF funds from HHS and have not fully utilized relending of those funds to ultimate recipients at the date of these regulations. The loanmaking of all other IRP loans serviced by this regulation is in accordance with part 1948, subpart C of this chapter.

(d) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations.

(e) The loan program is administered by the FmHA or its successor agency under Public Law 103–354 National Office. The Director, Business and Industry Division, is the point of contact for servicing activities unless otherwise delegated by the Administrator.

§ 1951.852 Definitions and abbreviations.

(a) *General definitions*. The following definitions are applicable to the terms used in this subpart.

(1) *Intermediary* (Borrower). The entity receiving FmHA or its successor agency under Public Law 103–354 loan funds for relending to ultimate recipients. FmHA or its successor agency under Public Law 103–354 becomes an intermediary in the event it takes over loan servicing and/or liquidation.

(2) *Loan Agreement*. The signed agreement between FmHA or its successor agency under Public Law 103–354 and the intermediary setting forth the terms and conditions of the loan.

(3) *Low-income*. The level of income of a person or family which is at or below the Poverty Guidelines as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(4) *Market value*. The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(5) *Principals of intermediary*. Includes members, officers, directors, and other entities directly involved in the operation and management of an intermediary organization.

(6) *Ultimate recipient*. The entity receiving financial assistance from the intermediary. This may be interchangeable with the term ''subrecipient'' in some documents previously issued by HHS.

(7) *Rural area*. Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(8) *State*. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *Technical assistance or service*. Technical assistance or service is any function unreimbursed by FmHA or its successor agency under Public Law 103–354 performed by the intermediary for the benefit of the ultimate recipient.

(10) *Working capital*. The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) *Abbreviations*. The following abbreviations are applicable:

B&I—Business and Industry

CSA—Community Services Administration

EIS—Environmental Impact Statement

HHS—U.S. Department of Health and Human Services

IRP—Intermediary Relending Program

OCS—Office of Community Services

OIG—Office of Inspector General

OGC—Office of the General Counsel

RDLF—Rural Development Loan Fund

USDA—United States Department of Agriculture

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6052, Feb. 6, 1998]

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

(a) *RDLF Intermediaries*. Rural Development Loan funds will be used by the RDLF intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Interest income, service fees, and other authorized financing charges received by RDLF intermediaries operating relending programs may be used to pay for: The costs of administering the RDLF relending program, the provision of technical assistance to borrowers, the absorption of bad debts associated with RDLF loans, and repayment of debt. All proceeds in excess of those needed to cover authorized expenses, as described above, must be returned to the Agency.

(b) *Ultimate recipients*.

(1) Financial assistance from the intermediary to the ultimate recipient must be for business facilities and community development projects in rural areas.

(2) Financial assistance involving Rural Development Loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of

granting or augmenting publicly-owned or regulated stock of fish.

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6053, Feb. 6, 1998]

§ 1951.854 Ineligible assistance purposes.

(a) *RDLF Intermediaries.* RDLF loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA or its successor agency under Public Law 103–354 provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of RDLF loan funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(10) For any investments in securities or certificates of deposit of over 30-day duration without the concurrence of FmHA or its successor agency under Public Law 103–354. If the RDLF funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to FmHA or its successor agency under Public Law 103–354 unless FmHA or its successor agency under Public Law 103–354 provides an exception to the RDLF intermediary. Any exception would be based on evidence satisfactory to FmHA or its successor agency under Public Law 103–354 that every effort is being made by the intermediary to utilize the RDLF funding in conformance with program objectives.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from RDLF intermediaries involving RDLF funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§§ 1951.855–1951.858 [Reserved]

§ 1951.859 Term of loans.

(a) No loans shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred not more than 3 years.

(b) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

§ 1951.860 Interest on loans.

(a) RDLF intermediaries: When the RDLF loan portfolio was transferred from HHS to USDA as required under Pub. L. 99–198, section 1323 of the Food Security Act of 1985, there were provisions that affected the interest rates on those loans.

(1) Those loans made in 1980 and 1981 carried an original note rate of 1 percent interest when they were first issued. The legislation provides for those loans made in 1980 and 1981 to have a permanent interest rate reduction to 1 percent effective December 23, 1985, to maturity. However, the interest rates on the loans made in 1983 and 1984 may remain the same as the original note rate.

(2) Loans made in 1983 and 1984 do not automatically qualify for a lower rate than the level of interest rates when the notes were first issued. Section 407 of Pub. L. 99–425 provides for a weighted average requirement that would affect those loans made in 1983 and 1984 to intermediary borrowers.

(3) In those cases where loans were made in RDLF intermediaries and the weighted average of all loans made by the RDLF intermediary after December 31, 1982, does not exceed the sum of 6 percent plus the interest rate to the intermediary (7 percent), the interest rate to be charged the RDLF intermediary will be the rate charged on such loans made in 1980, or 1 percent. Should the weighted average exceed 7 percent, the note rate will control.

(i) In order for FmHA or its successor agency under Public Law 103–354 to determine the weighted average of the loan portfolio, the RDLF intermediary will be required to complete a weighted loan average rate on its outstanding portfolio. The schedule prepared for FmHA or its successor agency under Public Law 103–354's review should include:

(A) Calculations of the interest amount scheduled to accrue on each loan outstanding over a 1-year period based on the current interest rate of each ultimate recipient's loan.

(B) The sum total of interest on each individual loan will be added together to determine the total interest amount scheduled to accrue over a 1-year period.

(C) Divide the total of paragraph (a)(2) of this section by the total principal outstanding to determine the average interest percent yield in the intermediary's loan portfolio.

(D) The loans to be included in determining the weighted interest average will be those made from January 1, 1983, forward.

(E) FmHA or its successor agency under Public Law 103–354 will use the anniversary date of October 1 of each year to request the intermediary to complete a weighted interest average to determine the interest rate on its RDLF loan for the coming calendar year, January 1 through December 31. All loans made in 1980 and 1981 have had the interest rate permanently reduced by legislation to 1 percent, effective December 25, 1985.

(F) The weighted loan average interest rate on the outstanding loan portfolio as referenced in this section will be forwarded to FmHA or its successor agency under Public Law 103–354 along with sufficient documentation which

should include calculations, list of outstanding loans, current interest rate being charged on the loan, etc.

(b) Interest rates charged by intermediaries to the ultimate recipients shall be at rates negotiated by those parties. Intermediaries are encouraged to make loans to ultimate recipients at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

§§ 1951.861–1951.865 [Reserved]

§ 1951.866 Security.

(a) *Loans from RDLF intermediaries to ultimate recipients*. Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA or its successor agency under Public Law 103–354 concurrence in the intermediary's security proposal is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA or its successor agency under Public Law 103–354 loan.

(b) *Additional security*. The FmHA or its successor agency under Public Law 103–354 may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(c) *Appraisals*. Real property serving as security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1951.867 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA or its successor agency under Public Law 103–354 in writing and furnish such additional evidence as FmHA or its successor agency under Public Law 103–354 requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA or its successor agency under Public Law 103–354 shall determine whether such ownership, influence or financial interest is sufficient to create potential conflict of interest. In the event FmHA or its successor agency under Public Law 103–354 determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§ 1951.868–1951.870 [Reserved]

§ 1951.871 Post award requirements.

(a) RDLF intermediaries with undisbursed RDLF loan funds shall be governed by these regulations, the loan agreement, the approved work program, security interests, and other conditions which FmHA or its successor agency under Public Law 103–354 may require in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the FmHA or its successor agency under Public Law 103–354, any loan funds held by an intermediary and any funds obtained from loaning FmHA or its successor agency under Public Law 103–354-derived funds and recollecting them that are not immediately needed by the intermediary for an ultimate recipient should be deposited in an interest-bearing account in a bank or other financial institution which will be covered by a form of Federal deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA or its successor agency under Public Law 103–354.

(c) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(d) Reporting requirements shall be those delineated in the loan agreement between the United States and the intermediary and such subsequent requirements as FmHA or its successor

agency under Public Law 103–354 deems appropriate. The intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to rural residents for each loan made by such intermediary.

(e) No intermediary may make a loan to an ultimate recipient who has applied for or received a loan from another intermediary unless FmHA or its successor agency under Public Law 103–354 provides prior written approval for such loan.

(f) All loan payments that are due on RDLF loans will be made payable to the Farmers Home Administration or its successor agency under Public Law 103–354, using the number assigned, and mailed directly to: Farmers Home Administration or its successor agency under Public Law 103–354, Finance Office, FC 35, 1520 Market Street, St. Louis, Missouri 63103.

§ 1951.872 Other regulatory requirements.

(a) *Intergovenmental consultation*. The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to FmHA or its successor agency under Public Law 103–354's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration or its successor agency under Public Law 103–354 Programs and Activities,'' available in any FmHA or its successor agency under Public Law 103–354 office.

(b) *Environmental requirements*. (1) Unless specifically modified by this section, the requirements of subpart G of part 1940 of this chapter apply to this subpart. FmHA or its successor agency under Public Law 103–354 will give particular emphasis to ensuring compliance with the environmental policies contained in §§1940.303 and 1940.304 in subpart G of part 1940 of this chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's request to FmHA or its successor agency under Public Law 103–354 for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' if it is classified as a Class I or Class II action. FmHA or its successor agency under Public Law 103–354 will complete the environmental review required by subpart G of part 1940 of this chapter. The results of this review will be used by FmHA or its successor agency under Public Law 103–354 in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements*.

(1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA or its successor agency under Public Law 103–354 will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime Federal funds are involved.

(2) The regulations contained in part 1901, subpart E of this chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil

Rights Act of 1964, ''Nondiscrimination in Federally Assisted Programs,'' 42 U.S.C. 2000d–2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§ 1951.873–1951.876 [Reserved]

§ 1951.877 Loan agreements.

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges.

(5) Provisions regarding default.

(6) Disbursement procedure.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required on every ultimate recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The RDLF intermediary's interest in the insurance ordinarily will be assigned to the FmHA or its successor agency under Public Law 103–354.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to FmHA or its successor agency under Public Law 103–354. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(1) Not to make any changes in the RDLF intermediary's articles of incorporation, charter or bylaws without the concurrence of FmHA or its successor agency under Public Law 103–354.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA or its successor agency under Public Law 103–354's written concurrence in the proposed use of loan funds.

§§ 1951.878–1951.880 [Reserved]

§ 1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by FmHA or its successor agency under Public Law 103–354 based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contract with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the FmHA or its successor agency under Public Law 103–354 Finance Office approximately 15 days

in advance of the due date of the payments. A copy of the notice will be sent to the FmHA or its successor agency under Public Law 103–354 Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after the due date of the payment, the Finance Office will send a past due notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by FmHA or its successor agency under Public Law 103–354 designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

(4) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:

(1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization schedule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Administrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.

(2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.

(3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:

(i) Number and amount of all loans.

(ii) Total advanced on all loans.

(iii) Total interest and principal received on the loans.

(iv) Total outstanding balance on all loans.

(4) Prepare reamortization schedules needed as a result of restructuring any loans and send to the Administrator or designee.

(5) Furnish in writing to the Administrator or designee a per diem amount on the actual interest amount due when requested by the Administrator.

(g) It is the responsibility of the Administrator or designee to:

(1) Review and analyze the semiannual report of the intermediaries and reconcile same to the annual audits.

(2) Review the annual audits of intermediaries.

(3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.

(4) Follow up on delinquent intermediaries to bring the account current.

(5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.

(6) Furnish to the Finance Office the necessary information to produce reamortization schedules.

(7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.

(8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.

(9) Confirm account balances. Payment history of loans and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper.

If there are discrepancies in any loan balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.

(10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.

(11) Answer Congressional and other correspondence.

(12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

§ 1951.882 Field visits.

(a) During or in preparation for field visits to RDLF/IRP intermediaries by FmHA or its successor agency under Public Law 103–354 personnel, the following loan servicing activities are to be performed:

(1) Review what is being done to inform eligible applicants of the program's existence.

(2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.

(3) Include in the writeups of the field visit any issues or problems not resolved from the last visitation in the agenda.

(4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.

(5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.

(6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.

(7) Review materials to determine if the purpose of the program is being fulfilled; i.e., loan funds are being used in accordance with FmHA or its successor agency under Public Law 103–354 policies, procedures, the approved work plan and the Loan Agreement.

(8) A report of the visit will be made on ''RDLF/IRP Review Summary Sheet,'' or otherwise documented and included in the loan file in the format of the ''RDLF/IRP Review Summary Sheet.'' The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.

(9) Determine if the ultimate recipients' files are complete, organized, and current.

(10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of FmHA or its successor agency under Public Law 103–354 approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to FmHA or its successor agency under Public Law 103–354 for those ultimate recipients having Federal funds.

§ 1951.883 Reporting requirements.

(a) Intermediaries are to provide FmHA or its successor agency under Public Law 103–354 with reports as required in their respective loan agreements, applicable statutes and as required by FmHA or its successor agency under Public Law 103–354. The report shall include the following:

(1) An annual audit; dates of audit report period need not necessarily coincide with other reports on the RDLF/IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA or its successor agency under Public Law 103–354 does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(2) Quarterly or semiannual reports (due 30 days after the end of the period).

(i) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(ii) These reports shall contain only information on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(iii) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(3) An annual report on the extent to which increased employment income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(4) Proposed budget for the following year.

(5) Other reports as FmHA or its successor agency under Public Law 103–354 may require from time to time.

(b) Intermediaries shall report to FmHA or its successor agency under Public Law 103–354 whenever an ultimate recipient is more than 90 days in arrears in the repayment of principal or interest.

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6053, Feb. 6, 1998]

§ 1951.884 Non-Federal funds.

Once all the FmHA or its successor agency under Public Law 103–354-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and the loan agreement, assistance to new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA or its successor agency under Public Law 103–354-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§ 1951.885 Loan classifications.

All loans to intermediaries in the FmHA or its successor agency under Public Law 103–354 portfolio will be classified by FmHA or its successor agency under Public Law 103–354 at loan closing and again whenever there is a change in the loan which would impact on the original classification. No one classification should be viewed as more important than others. The uncollectibility aspect of Doubtful and Loss classifications is of obvious importance. However, the function of the

Substandard classification is to indicate those loans that are unduly risky which may result in future losses. Substandard, Doubtful and Loss are adverse classifications. The special mention classification is for loans which are not adversely classified but which require the attention and followup of FmHA or its successor agency under Public Law 103–354. The loans will be classified as follows:

(a) *Seasoned loan classification.* To be classified as a seasoned loan, a loan must:

(1) Have a remaining principal loan balance of two-thirds or less of the original aggregate of all existing loans made to that intermediary.

(2) Be in compliance with all loan conditions and FmHA or its successor agency under Public Law 103–354 regulations.

(3) Have been current on the loan(s) payments for 24 consecutive months.

(4) Be secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

(b) *Current non-problem classification.* This classification includes those loans which have been current for less than 24 consecutive months and are in compliance with the loan conditions and FmHA or its successor agency under Public Law 103–354 regulations, and are not considered to pose a credit risk to FmHA or its successor agency under Public Law 103–354. These loans would be classified as seasoned but for the ''24 months'' and ''two-thirds'' requirements for seasoned loans.

(c) *Special mention classification.* This classification includes loans which do not presently expose FmHA or its successor agency under Public Law 103–354 to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving FmHA or its successor agency under Public Law 103–354's close attention because the failure to correct these deficiencies could result in greater risk in the future. This classification would include loans that may be high quality, but which FmHA or its successor agency under Public Law 103–354 is unable to supervise properly because of an inadequate loan agreement, the condition or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the intermediary's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this classification. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(d) *Substandard classification.* This classification includes loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this classification must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that FmHA or its successor agency under Public Law 103–354 will sustain some loss.

(e) *Doubtful classification.* This classification includes those loans which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(f) *Loss classification.* This classification includes those loans which are considered uncollectible and of such little value that their continuance as loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

§§ 1951.886–1951.888 [Reserved]

§ 1951.889 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by FmHA or its successor agency under Public Law 103–354. Such transfers and assumptions must be to an eligible intermediary.

(b) Available transfer and assumption options to eligible intermediaries include the following:

(1) The total indebtedness may be transferred to another eligible intermediary on the same terms.

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed those terms for which an initial loan can be made to an organization that would have been eligible originally.

(3) Less than total indebtedness may be transferred to another eligible intermediary on the same terms.

(4) Less than total indebtedness may be transferred to another eligible intermediary on different terms.

(c) The transferor will prepare the transfer document for FmHA or its successor agency under Public Law 103–354's review prior to the transfer and assumption.

(d) The transferee will provide FmHA or its successor agency under Public Law 103–354 with a copy of its latest financial statement and a copy of its annual financial statement for the past 3 years if available; its Federal Tax Identification number; organizational charter; minutes from the Board of Directors authorizing the transaction; certification of good standing from the Secretary of State or whatever regulatory agency oversees nonprofit corporations for that State or Commonwealth where the entity is headquartered; and any other information that FmHA or its successor agency under Public Law 103–354 deems necessary for its review.

(e) The assumption agreement will contain the FmHA or its successor agency under Public Law 103–354 case nunber of the transferor and transferee.

(f) When the transferee makes a cash downpayment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in inverse order of maturity.

(g) The Administrator or designee will approve or decline all transfers and assumptions.

§ 1951.890 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA or its successor agency under Public Law 103–354 will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG and FmHA or its successor agency under Public Law 103–354 and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to the OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA or its successor agency under Public Law 103–354 staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§ 1951.891 Liquidation; default.

(a) In the event that FmHA or its successor agency under Public Law 103–354 takes over the servicing of the ultimate recipient of an intermediary, those loans will be serviced by this regulation and in accordance with the contractual arrangement between the intermediary and the ultimate recipient. Should the FmHA or its successor agency under Public Law 103–354 determine that it is necessary or desirable to take action to protect or further the interests of FmHA or its successor agency under Public Law 103–354 in connection with any default or breach of conditions under any loan made hereunder, the FmHA or its successor agency under Public Law 103–354 may:

(1) Declare that the loan is immediately due and payable.

(2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit at its discretion and upon such terms and conditions as FmHA or its successor agency under Public Law 103–354 shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the FmHA or its successor agency under Public Law 103–354 in connection with financial assistance extended hereunder.

(3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by FmHA or its successor agency under Public Law 103–354 and take such actions in respect to such loans as are necessary or appropriate, consistent with the purpose of the program and this subpart. The Administrator will notify the FmHA or its successor agency under Public Law 103–354 Finance Office of any change in payment terms, such as reamortizations or interest rate adjustments, and effective dates of any changes resulting from servicing actions.

(b) Failure by an ultimate recipient to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of its loan.

(c) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(d) In the event of default, the intermediary will promptly be informed in writing of the consequences of failing to comply with loan covenant(s).

(e) Protective advances to the intermediary will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by FmHA or its successor agency under Public Law 103–354 for the purpose of preserving and protecting the collateral where the intermediary has failed to and will not or cannot meet its obligations. The Administrator or designee must approve in writing all protective advances.

(f) In the event of bankruptcy by the intermediary and/or ultimate recipient, FmHA or its successor agency under Public Law 103–354 is responsible for protecting the interests of the Government. All bankruptcy cases should be reported immediately to the Regional Attorney. The Administrator must approve in advance and in writing the estimated liquidation expenses on loans in liquidation backruptcy. These expenses must be considered by FmHA or its successor agency under Public Law 103–354 to be reasonable and customary.

(g) Liquidation, management, and disposal of inventory property will be handled in accordance with subparts A, B, and C of part 1955 of this chapter.

§§ 1951.892–1951.893 [Reserved]

§ 1951.894 Debt settlement.

Debt settlement of all claims will be handled in accordance with the Federal Claims Collection Standards (4 CFR parts 101–105).

§ 1951.895 [Reserved]

§ 1951.896 Appeals.

Any appealable adverse decision made by FmHA or its successor agency under Public Law 103–354 which affects the borrower may be appealed upon written request of the aggrieved party in accordance with subpart B of part 1900 of this chapter.

§ 1951.897 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§§ 1951.898–1951.899 [Reserved]

§ 1951.900 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575.0131. In accordance with 5 CFR part 1320, summarized below is the annualized public reporting burden for this regulation.

Sect. of regulations (A)	Title (B)	Form No. (if any) (C)	Estimated No. of respondents (D)	Report filed annually (E)	Total annual responses (d) × (e) (F)	Est. No. of man-hrs. per response (G)	Est. total manhours (f) × (g) (H)
Reporting Requirements—No Forms							
1951.860(a)(3)(i)	Weighted average interest calculation	Written	12	1	12	3.0	36
1951.877(a)(7)(i)	Insurance	Assignment	36	On occasion	100	1.0	100
1951.882(a)	Intermediary visitations	Meeting	36	1	36	4.5	162
1951.882(b)	Audited financial statement	Written	36	1	36	.5	18
1951.883(a)(2)(ii)	Program narrative	Written					
	IRP borrower		10	4	40	4.0	160
	RDLF borrower		26	2	52	4.0	208
1951.833(a)(2)(iii)	Employment/income narrative	Written	36	1	36	1.5	54
1951.883(a)(2)(iv)	Proposed budget	Written	36	1	36	2.5	90
1951.883(c)	Intermediary's report of loans 90 days in arrears	Written	36	On occasion	50	1.0	50
1951.889(c)	Assumption Agreement	Written	2	1	2	3.5	7
1951.889(d)	Transferee financial statement	Written	2	1	2	.5	1
Form Approved with this Docket							
1951.883(a)(2)	IRP Lending Activity Report	1951–4					
	IRP borrower		10	4	40	20	800
	RDLF borrower		26	2	52	20	1040
Reporting Requirements Under Other Numbers							
1951.872(b)	Request for Environmental Information	1940–20 (0575–0094).			[1]494		[2]2,726

[1] Docket totals. [2] Total hours.

Subpart S—Farmer Program Account Servicing Policies

SOURCE: 57 FR 18626, Apr. 30, 1992, unless otherwise noted.

§ 1951.901 Purpose.

This subpart describes the policies and procedures that the agency will use in servicing most Farm Loan Program (FLP) loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Production Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for farm service buildings (RHF) accounts. Shared Appreciation Loans (SA) may be reamortized under this subpart if the borrower also has outstanding Farm Loan Programs loans. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. When it has been determined that all the conditions outlined in § 1951.558(b) of subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in subpart F of this part. This subpart does not apply to FLP Non-Program (NP) loans. Examples of Primary Loan Servicing actions are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reclassifying to ST loans, reducing interest rate on the loan, writedown of debt and conservation contract, or a combination of these actions. Preservation loan servicing is the Homestead Protection program. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an agency employee.

[62 FR 10120, Mar. 5, 1997, as amended at 63 FR 6628, Feb. 10, 1998]

§ 1951.902 General.

Supervision and Servicing. It is a primary objective of the Agency to provide supervised credit to borrowers in financial, production or other difficulty in a manner that will assure the maximum opportunity for their recovery and, at the same time, get the best recovery for the Government. Supervision and servicing are continuing processes that begin the day a farmer comes into the office. Providing supervised credit has two objectives:

(a) To help farmers set goals, work on problem areas and work toward graduation to commercial credit;

(b) To recover the maximum possible amount for the Government.

[62 FR 10120, Mar. 5, 1997]

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities*. Servicing officials will make full use of the National automated tracked system to track and manage the FLP primary and preservation loan servicing and debt settlement programs.

(b) *Authorities*. All loan servicing decisions except as set forth in this section will be made by the servicing official except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FLP loans must be recommended by the County Committee (except where the debt has been discharged through bankruptcy), approved by the State Executive Director or the Administrator (depending upon the amount of debt to be settled), and processed in accordance with the provisions of subpart B of part 1956 of this chapter. Servicing officials are authorized to accept a buyout payment when the borrower(s) pays the current market value of the security set forth in § 1951.909 of this Instruction. Only State Executive Directors are authorized to approve writedown and buyout in accordance 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.

[62 FR 10121, Mar. 5, 1997]

§ 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 rescheduling 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 complying 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 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.

[62 FR 10121, Mar. 5, 1997]

§ 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 service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FLP borrower, whether delinquent or not, prior to the sending of a packet under paragraph (c) of this section, and

(3) If a borrower has not previously received exhibit A and attachments 1 and 2 of this subpart, such exhibit and attachments will be provided before the earliest of:

(i) Initiating any liquidation action,

(ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(d) *Notification of borrowers in nonmonetary default; delinquent borrowers also in non monetary default, or when a junior or senior lienholder is foreclosing.* FLP borrowers who are in non-monetary default will be sent attachments 1, 3, and 4 of exhibit A of this subpart by certified mail, return receipt requested. If a case is in the hands of the Department of Justice or in litigation, no loan servicing action will be taken without Department of Justice or OGC concurrence (see 1962.49 of this chapter). Any servicing request will be processed as indicated in § 1951.909. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final appeal decision that does not result in a resolution of the loan defaults, the account will be accelerated.

(e) *Request for primary and preservation loan service programs.* (1) To request consideration for Primary and Preservation Loan Service programs, borrowers who are sent exhibit A, with attachments 1 and 2 or attachments 1, 3, and 4 must complete and return attachment 2 or attachment 4, as appropriate, to the local county office within 60 days after receiving those documents, with the forms required by this paragraph for a completed application.

(2) If borrowers are sent attachments 3 and 4 and do not request servicing within 60 days, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(3) If borrowers are sent exhibit A and attachments 1 and 2 of this subpart and do not submit a completed application within the 60-day time period, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. These attachments will not be sent to borrowers who are being serviced in accordance with § 1951.908. For borrowers receiving attachments 9 and 10 or 9–A and 10–A, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(4) If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the county office. The servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The borrower's response date for a completed application will begin on the date of receipt of the certified mail or 3 days following the date of first class mailing, whichever is earlier.

(5) An application for loan service programs must include the following forms (available in any agency office), and data, unless the information is already in the borrower's case file and still current, as determined by the approval official:

(i) Attachment 2 or 4 of exhibit A to this subpart, response form to apply for loan servicing.

(ii) Form 410–1, ''Application for FmHA Services,'' including a current (within 90 days) financial statement of all individuals and entities personally liable for the FLP debt.

(iii) Form 431–2, ''Farm and Home Plan,'' or any other form or submission acceptable to the agency that sets forth a plan of operation and the necessary information. Commodity prices supplied by the agency will be used to complete the forms.

(iv) Form 440–32, ''Request for Statement of Debts and Collateral.''

(v) Form RD 1910–5, ''Request for Verification of Employment.''

(vi) Form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification,'' if the one on file with the agency does not reflect all the land owned and leased by the borrower.

(vii) Form SCS CPA–26, ''Highly Erodible Land and Wetland Determination,'' if not previously on file with the agency for the farm operation. This

form is included as part of the application after being completed by NRCS. (This form is available at NRCS local offices.)

(viii) If the applicant wants to be considered for a conservation contract, a map or copy of an aerial photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the conservation contract program.

(ix) The most recent five years' income tax returns and supporting documents, unless the borrower has been farming for less than five years. In such case, income tax returns and supporting documents for the tax years that the borrower farmed.

(x) If the borrower is applying for debt settlement, Form RD1956–1, ''Application for Settlement of Indebtedness.''

(6) The borrower will be provided with copies of these forms when Exhibit A is sent, and may request copies of regulations and the forms manual inserts (FMI) in writing within 30 days of receipt of the loan servicing notice. If these latter items are not provided within 10 days of such a request, the borrower's time for submission of a complete application will be increased by the period of delay in excess of 10 days caused by the Agency.

(7) Not more than one 60-day period will be provided to a borrower to respond to the notice of loan service programs except in accordance with § 1951.908. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

[57 FR 18626, Apr. 30, 1992, as amended at 62 FR 10123, Mar. 5, 1997]

§ 1951.908 Servicing financially distressed current borrowers.

A borrower who is financially distressed, but is not yet delinquent on FLP payments, may request servicing at any time.

(a) *Notification*. If a current plan of operation demonstrates that the borrower is or will be financially distressed, as defined in § 1951.906, or if the borrower otherwise requests servicing, the servicing official will provide attachments 1 and 2 of exhibit A of this subpart.

(b) *Eligibility*. To be considered for servicing in accordance with this section, the borrower must submit to the county office within 60 days Attachment 2 of exhibit A of this subpart and a complete application in accordance with the requirements of § 1951.907(e).

(1) The eligibility requirements of § 1951.909(c) (1) and (2) apply to servicing under this section.

(2) Eligible financially distressed borrowers who are current on their FLP loan payments may be considered for the Primary Loan Service programs described in §§ 1951.909(e) (1), (2) and (3).

(3) Financially distressed borrowers who are not delinquent are not eligible for writedown of debt or buyout as described in 1951.909.

(c) *Processing the application*. The servicing official must process a completed application and notify the borrower of the decision.

(1) Current borrowers will be considered only for the Primary Loan Servicing programs described in §§ 1951.909 (e) (1), (2), and (3). The servicing official must use the Debt and Loan Restructuring System (DALR$) program, in accordance with exhibit J–1 of this subpart, to determine if a feasible plan can be developed as defined in § 1951.906.

(2) If a feasible plan can be developed, the borrower will be sent exhibit B of this subpart with attachment 1 and the printout of the DALR$ calculations as notification of the favorable decision. The borrower must accept the offer within 45 days of its receipt by returning attachment 1 to exhibit B of this subpart or the offer will expire. If the borrower accepts, loan restructuring will be processed in accordance with §§ 1951.909 (e) (1), (2), or (3), as applicable.

(3) If a feasible plan cannot be developed, the borrower will be informed of the reasons for the adverse decision. The DALR$ printout will be attached.

(4) Current borrowers who have received notices under this section and who do not apply for primary loan servicing, or who refuse an offer to restructure their debt, and later become 90 days past due on the FLP loan payment, will be sent notices as described in § 1951.907.

(5) Borrowers whose accounts are not delinquent may receive rescheduling, reamortization, consolidation, or deferral under this subpart only after they have paid at least a portion of the interest due on their FLP debt. The portion due will be based on the applicant's ability to pay, as determined by thoroughly analyzing the farm operation, including any off-farm income. The payment must be made on or before the date that restructuring is closed. Borrowers in non-monetary default, but not delinquent on their FLP debt, must cure the non-monetary default before they may be considered for servicing under this paragraph.

[62 FR 10124, Mar. 5, 1997]

§ 1951.909 Processing primary loan service programs requests.

(a) *Servicing official responsibilities.* (1) After receipt of attachment 2 or 4 and a completed application in accordance with § 1951.907(e), the servicing official will consider all primary service programs options in this subpart. That official must use the Debt and Loan Restructuring System (DALR$) computer program, in accordance with exhibit J–1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan. Borrowers who request loan servicing and who have disposed of all the FLP loan security, including Collection-Only borrowers, will be processed in accordance with part 1956, subpart B, of this chapter. If the application includes a request for the Conservation Contract program, as indicated by the submission of the information required in § 1951.907(e)(5)(viii), the servicing official will determine whether the borrower is eligible, based on criteria as set forth in exhibit H of this subpart. If the borrower is eligible, the servicing official will make an estimate of the information needed to permit the DALR$ program to make the calculations of feasibility of the Conservation Contract. The assumptions used to establish the estimates will be based on the servicing official's knowledge of the farmland values, the borrower's repayment ability, and the proposed contract acreage. When the DALR$ calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (h) of this section.

(2) When jointly liable individual borrowers have been divorced and one has withdrawn from the operation, the State Executive Director will consider, upon the recommendation of the servicing official, the release of liability for the individual who has withdrawn if the following conditions are met.

(i) A divorce decree or property settlement document held the withdrawing party not responsible for the loan payments;

(ii) The withdrawing party's interest in the security is conveyed to the borrower with whom the loan will be continued;

(iii) The person withdrawing does not have any repayment ability for the loan, and does not own any nonessential assets, as defined in § 1951.906;

(iv) The individual withdrawing has never received debt forgiveness on another direct loan; and.

(v) The withdrawing party provides a copy of the divorce decree and property settlement, evidence of conveyance, a current financial statement, verification of income and debts, and Form 431–2 or Form RD–1944–3 as applicable.

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the County Committee will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

(b) *Adverse determination.* (1) If the approval official determines that the borrower is not eligible for any of the Primary Loan Service programs or restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in paragraph (h)(3) of this section. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable.

(2) Borrowers who do not buy out their debt at its current market value,

or who indicate in writing that they do not wish to buy out, will automatically be considered for debt settlement if they submitted an ''Application For Debt Settlement.'' Any appeal of a primary loan servicing denial will be completed before the servicing official begins any further processing of a Debt Settlement or Homestead Protection request. If the adverse decision on restructuring is upheld on appeal, the borrower will be considered for these options. The servicing official will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of this chapter. Homestead Protection will be processed in accordance with § 1951.911. No acceleration or foreclosure will occur until the appeal process has been completed for servicing or debt settlement requests timely submitted under this subpart.

(3) Applicants may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the agency's appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors.

(c) *Eligibility*. Applicants will be eligible for Primary Loan Service programs if the servicing official has determined that they meet all of the following requirements:

(1) The delinquency or financial distress does exist and is due to circumstances beyond the control of the borrower, due to a reduction in income which reduces cash flow to a point where outflows exceed inflows, only as follows:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse is caused by circumstances beyond their control;

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm;

(iii) Natural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage which caused severe loss of agricultural production that reduced repayment ability so that scheduled payments cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce repayment ability so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith.

(3) Borrowers who do not meet the eligibility requirements of this section will be notified of the adverse decision by sending attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as appropriate.

(4) Borrowers with sufficient nonessential assets to bring the FLP loan account current are not eligible for assistance under this subpart and will be processed in accordance with § 1951.910 of this subpart.

(5) The borrower must agree to meet the training requirements of § 1924.74 of this chapter unless a waiver is granted in accordance with that section. The training requirement applies to all primary loan servicing programs.

(d) *Feasibility determinations*. The servicing official must determine:

(1) That the borrower will be able to develop a feasible plan.

(2) If restructured, the loan will result in a net recovery to the Government that will be equal to or greater than the net recovery value from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison with net recovery to the Government, however, will not be made when establishing conservation contracts under exhibit H of this subpart.

(e) *Primary loan service programs*. Any FLP borrower may request Primary Loan Servicing Programs described in this subpart at any time prior to becoming 90 days past due. However, borrowers must show that they are not able to pay their debt as scheduled before the agency will approve Primary Loan Servicing Programs. The agency will consider the borrower's other assets in accordance with § 1951.910 of this subpart. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Existing deferrals will be cancelled at the same time additional primary loan servicing is received. The loan will be entered into DALR$ as if the deferral

were already cancelled. If DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, that borrower will be provided the opportunity to choose between restructuring with or without a writedown.

(1) *Consolidation and rescheduling of OL and EO loans, EE operating-type loans and EM loans made for subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule *existing* loans, providing the borrower agrees to such actions. When the servicing official determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the servicing official should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in paragraph (c) of this section;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation;

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the servicing official reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the servicing official will ask the OGC for an opinion as to what lien position the Government will have if a new note is taken unless a State supplement authorizing this action has been issued on this subject;

(vii) Only loans of the same type will be consolidated;

(viii) EM actual loss loans will not be consolidated;

(ix) Loans serviced under subpart L of this part will not be consolidated with another loan;

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period;

(xi) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the new note is signed).

(C) Repayment of EE loans may not exceed 15 years from the date of rescheduling.

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) At the time of the consolidation and/or rescheduling action, OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate, and

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiii) The original (old) note(s) will be marked ''Rescheduled'' and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower's(s') case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If part of a note is written down, the written down note will be marked ''Rescheduled with Debt Write Down,'' and will be filed in the operation file.

(xiv) For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as defined in §1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue; and

(xv) For new applications, the amount of outstanding accrued interest and any outstanding protective advances, as defined in §1965.11(b) subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart. Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* When the servicing official determines that a reamortization action will assist in the orderly collection of the loan, the servicing official should take such action, provided:

(i) The borrower meets the eligibility requirements of §1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes, including all delinquent notes, will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans that have been deferred in this supbart will not be reamortized during the deferral period unless the deferral is cancelled;

(vii) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment is extended, the new repayment period plus the period the loan has been in effect may not exceed the maximum number of years for that type of loan as set forth below, or the useful life of the security, whichever is less:

(A) FO, SW, RL, EE, and EM loans may not exceed 40 years from the date of the original note or assumption agreement.

(B) EE loans for real estate purposes, which are secured by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement.

(C) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(D) SA loans may not exceed 25 years from the date of the original amortized note.

(viii) The interest rate will be as follows:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the original Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less. SA loans

will be reamortized at the current Homestead Protection program interest rate in effect on the date of approval or the rate on the original amortized note, whichever is less.

(B) At the time of the reamortization, an FO or SW loan that was not assigned a limited resource rate when the loan was received, may be changed to a limited resource interest rate if:

(*1*) The borrower meets the requirements for a limited resource interest rate,

(*2*) A feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and

(*3*) For SW loans, the loans funds were used for soil and water conservation and protection purposes as set forth in §1943.66 (a)(1) through (a)(5) of subpart B of part 1943 of this chapter.

(C) For applications received before November 28, 1990, the amount of accrued interest more than 90 days overdue and any protective advances, as defined in §1965.11(b) of subpart A of part 1965 of this chapter, charged to the borrower's account, will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). *Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens*. If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form 1940–17 is processed and the next installment due date. See section II E of exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart.

(ix) The original (old) note(s) will be marked ''Reamortized'' and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked ''Reamortized with Debt Writedown'' and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, RHF, and EE loans*—(i) *Loan deferrals*. Deferrals will be considered only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions*. In order to be considered for a deferral, the borrower must meet both of the following conditions:

(A) The need for the deferral must be temporary. To be *temporary* means that the borrowers will be able to show to the satisfaction of the servicing official that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period; and

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) *Approval offical determinations*. The approval official must:

(A) Determine that the borrower meets the eligibility requirements of §1951.909(c) of this subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a borrower owns 50 acres or more of marginal land as defined in exhibit G of this subpart and a feasible plan cannot be developed after consideration of a deferral, the servicing official will inform the borrower about the Softwood Timber (ST) loan program authorized by exhibit G of this subpart by sending Attachment 1 of exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the servicing official to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of attachment 1, the servicing official will determine if the borrower is eligible, based on criteria as set forth in exhibit G of this subpart. If the borrower is eligible the servicing official will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *Loan deferral considerations.* The servicing official will assist the borrower in completing a typical-year plan. If there is no typical year, the servicing official will assist the borrower with completing a plan of operation for each year of the deferral. The plans must be considered in DALR$.

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represents the borrower's average operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral. The plans must be considered in DALR$ to determine if each plan is feasible.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must have feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan service actions. When considering primary servicing actions, existing deferred notes must be entered into DALR$ as if they had not been deferred. If it is necessary to defer additional loans to develop a feasible plan, such action will be taken if the deferral will result in a greater net recovery to the Government than debt writedown. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in paragraphs (e)(1)(xii) and (e)(2)(viii) of this section.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show ''zero'' as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of paragraph (e)(3)(v) of this section are met. The

servicing official will determine the amount of interest that will accrue during the deferred period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with subpart A of this part. For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as described in §1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate taxes. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of deferral (the date the new note is signed by the borrower).

(B) The field office will process the deferral via the Automated Discrepancy Processing System (ADPS).

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with subpart A of part 1905 of this chapter. The Finance Office will provide the county office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the servicing official will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the debt.

(E) A deferral will be cancelled if the loan is later restructured in accordance with this subpart. The cancellation will be processed via ADPS.

(vii) *Increase in repayment ability*. At the time the servicing official makes the analysis required by §1924.60 of subpart B of part 1924 of this chapter, the servicing official will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with subpart F of this part. If an increase would enable the borrower to make some payments during the deferral period, the servicing official will, in writing, ask the borrower to sign a Form 440–9, ''Supplementary Payment Agreement,'' within 30 days of the date of the written request. The borrower will be provided appeal rights. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the servicing official will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. Refusal to sign Form 440–9 will be considered a non-monetary default and will be handled as set forth in §1951.907(e) of this subpart. If the borrower signs Form 440–9 and later does not honor the terms and conditions of the repayment agreement, the borrower's account will be handled as set forth in §1951.907 of this subpart.

(4) *Writedown*. The following conditions shall be met in order for a borrower to receive writedown of FLP debts:

(i) No other Primary Loan Service programs, including deferral, nor any combination thereof, will produce a feasible plan that will permit the borrower to continue the operation. However, if DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, then the borrower will be provided the opportunity to choose between restructuring with or without a writedown;

(ii) The borrower must never have received debt forgiveness on another direct loan at any time;

(iii) The amount written off may not exceed $300,000.

(iv) A feasible plan must be developed that will result in a present value of loans to be repaid to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(v) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of exibibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) The borrower must agree to a Shared Appreciation Agreement if the loan is secured by real estate;

(vii) Loans written down with the Primary Loan Servicing programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section; and

(viii) Borrower must agree to a lien on certain assets as provided in 1951.910 of this subpart, including nonessential assets, where the net recovery value of these assets was not paid to the Agency. (The Agency's lien will be taken only at the time of closing the restructured loans); and

(ix) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (e)(4) (ii) and (iii) of this section.

(f) *Determining value of net recovery from involuntary liquidation*. After receipt of a complete application for Primary and Preservation Loan Service programs, the servicing official will make the calculations required in this section and notify the borrower of the result. For New Applications, nonessential assets will be considered in accordance with §1951.910(a) of this subpart.

(1) The servicing official will use the computer program, DALR$, to determine the net recovery to the Government equivalent to involuntary liquidation of the collateral securing the FLP debt in accordance with Exhibit J or J–1 of this subpart, ''Debt and Loan Restructuring System,'' as applicable, and will follow the guidance provided by State supplements and Exhibit I of this subpart, ''Guidelines for Determining Adjustments for Net Recovery Value of Collateral.'' The servicing official will determine the current market value of the collateral in the borrower's possession including tangible property in existence and of record in accordance with §761.7 of this title for real estate property, and on Form 440–21, ''Appraisal of Chattel Property.'' The servicing official also will determine the current market value of any bank accounts, stocks and bonds, certificates of deposit and the like pledged to and/or in the possession of the Agency. Collateral may include real estate, chattels, tangible property and property such as bank accounts, stocks and bonds, certificates of deposit, and the like. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible property may include accounts receivable (including Government payments), inventories, supplies, feed, etc. From the current market value of the collateral in the borrower's possession, or pledged to and/or in the possession of the Agency (in the case of bank accounts, stock and bonds, certificates of deposit, and the like), the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in a National Office issuance). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property will be established by each State as of July 1 each year using Report Code 597. The months that the suitable property is under lease will not be included in determining the average holding period for purposes of this subpart;

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(1)(ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses;

(vi) Add income which will be received after acquisition; and

(vii) For a borrower who submits a ''new application'' as defined in § 1951.906 of this subpart, add the value of any collateral that is not in the borrower's possession and that has not been approved on the Form 1962–1 or released in writing by the Agency, minus the value of any prior lienholder's interest. Collateral not in possession of the borrower is defined as any property specified in any agency security instruments for such borrower's FLP debt that the borrower has disposed of and that the Agency has not approved or released in writing. The value of normal income security not in possession of the borrower will not be added to the NRV if it could be post-approved for release in accordance with § 1962.17 of subpart A of part 1962. The value of any collateral that is not in the possession of the borrower will be determined by the servicing official based upon the best information available about the value of the collateral on or about the time of its disposition. In determining the value of such property, the Agency will use such sources as the publications Hotline (Farm Equipment Guide) and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. Agency appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) The State Executive Director will determine costs of involuntary liquidation of collateral for farm loans by analyzing the costs of involuntary liquidation within the geographic areas of their jurisdiction. The State Executive Director also will issue a State supplement of estimated costs and average holding time to be used as guidelines by servicing officials in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. The State Executive Director will consult with State Executive Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing*. The value of the restructured debt will be based on the present value of payments the borrower would make to the Agency using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. Servicing officials will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in a National Office issuance.

(h) *Notification requirements*. In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the servicing official 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 mailing.

(1) *Offer*. If the calculations show that the value of the restructured debt is greater than or equal to the NRV as determined in paragraph (f) of this section, the servicing official will forward to the State Executive Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The servicing official will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Executive Director's authorization to the servicing official to proceed with the writedown will be evidenced by the State Executive Director's signature affixed to the original copy of the DALR$ printout returned to the servicing official. Within 60 days after receiving a complete application, the servicing official will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested, and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F of this subpart.

(i) Exhibit F of this subpart will inform the borrower(s) of the Agency's offer to restructure the debt, the right

to request a copy of the agency's appraisal, and other options which may include payment of nonessential assets and negotiation of the appraisal. If the borrower accepts the offer within 45 days following any appeal, the servicing official will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance.

(ii) If the borrower does not respond to exhibit F within 45 days, or declines the Agency's offer to restructure the debt without requesting an appeal or negotiation, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. If the borrower requests an appeal and the Agency is upheld, attachments 9–A and 10–A will not be sent until the borrower is given the opportunity to accept the original offer within 45 days following the final appeal decision. These borrowers will not have an additional opportunity to appeal the offer in attachments 9–A and 10–A. If attachment 10 or 10–A is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(iii) If the borrower submitted a new application and requests a negotiated appraisal within 30 days of receiving exhibit F, the negotiation of the appraisal will be completed in accordance with paragraph (i) of this section.

(A) After completing a negotiation of the appraisal, if the debt can be restructured, the servicing official will send exhibit F to the borrower making the new offer in accordance with paragraph (h)(1)(i) of this section.

(B) If the negotiated appraisal changes the DALR$ calculations so that the debt cannot be restructured, the borrower will be sent exhibit E, ''Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options,'' in accordance with paragraph (h)(3) of this section. The appraisal cannot be negotiated again and is not subject to appeal.

(2) *Conservation contracts.* If the borrower returned attachment 2 or 4 to Exhibit A of this subpart within 60 days, requesting a conservation contract by submitting a map or aerial photo showing the portion of the farm and approximate acres to be considered in the request, the servicing official will proceed with processing the request for debt relief as set forth in Exhibit H of this subpart. Borrowers who did not previously ask for this option can make a request for the contract at this time by submitting a map or copy of an aerial photo indicating that portion of the farm and appropriate acres to be considered. Borrowers must submit the photo within 30 days of receiving Exhibit E of this subpart.

(3) *Mediation/voluntary meeting of creditors.* If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Contracts, the servicing official will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested:

(i) Exhibit E, ''Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options,'' of this subpart will be sent to the borrower in all cases by certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to exhibit E of this subpart.

(A) When the borrower is in a State *with* a USDA Certified Mediation Program, paragraph I in exhibit E will be used. Paragraph I tells the borrower that the Agency is requesting mediation with the borrower's creditors in an effort to obtain debt adjustment which would permit the development of a feasible plan of operation. If the borrower submitted a new application, the borrower must respond to exhibit E of this subpart if the borrower wants to negotiate the Agency's appraisal in accordance with paragraph (i) of this section. The borrower may request a copy of the Agency's appraisal. The Agency must participate in USDA Certified Mediation Programs whether or not the borrower responds to exhibit E of this subpart. Any negotiation of the appraisal must be completed prior to any mediation.

(B) In States *without* a certified mediation program, exhibit E of this subpart will be sent by certified mail, return receipt requested, to inform the borrower about the applicable options which may include a request for a copy of the Agency's appraisal, a meeting of creditors, payment of nonessential assets, negotiation of the appraisal and a request for an independent appraisal. Paragraph I of exhibit E of this subpart will be deleted. The purpose of the voluntary meeting of creditors is to develop a feasible plan. Paragraph II of exhibit E of this subpart, therefore, will be used to offer a voluntary meeting of creditors when the borrower has undersecured creditors who hold a substantial part of the borrower's total debt. A ''substantial part of the borrower's total debt'' means that the debt of the undersecured creditors is large enough so that if it were written down to zero, a feasible plan could be developed considering all primary servicing options. The servicing official will document such determination in the case file, and the servicing official will not offer to carry out a voluntary meeting of creditors when the undersecured debt is not a substantial part of the borrower's total debt. Such borrower will be informed later of additional rights, including appeal rights, when the Agency sends attachments 5 and 6, or attachments 5–A and 6–A, of exhibit A of this subpart. Any appeal may challenge the Agency's determination not to offer a voluntary meeting of creditors because the undersecured debt is not a substantial part of the borrower's total debt.

(C) Any negotiation of the Agency's appraisal must be completed prior to the meeting of creditors or mediation. If the borrower does not request any of the options offered in exhibit E of this subpart within 45 days, the servicing official will send attachments 5 and 6, or 5–A and 6–A of exhibit A of this subpart, as applicable, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is held but is not successful, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to attachment 5 or 5–A of exhibit A of this subpart.

(4) *Buyout of loans.* The following notification and processing provisions also apply to buyout as offered in Attachments 5 and 5–A of Exhibit A of this subpart. After July 3, 1996, buyout will be at the Current Market Value (CMV) of the security.

(i) Eligible borrowers will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service programs to buy out their loans at Current Market Value, or the balance of their unpaid FLP debt, whichever is lower.

(ii) The present value of the restructured loan must be less than the net recovery value to receive buyout.

(iii) The Agency will not provide direct or guaranteed credit for a buyout.

(iv) The borrower must never have received debt forgiveness on another direct loan. (Applies if any debt will be written off.)

(v) The amount written off may not exceed $300,000.

(vi) The borrower must have acted in good faith.

(vii) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (h)(4) (iv) and (v) of this section.

(viii) Upon payment by the borrower of current market value buyout, the security instruments will be released for the Farm Loan Programs loans bought out.

(ix) The State Executive Director must approve the buyout prior to offering buyout to the borrower if the Agency will be writing off any debt.

(i) *Administrative appeals and negotiation of appraisals*—(1) *Appeals.* The time limit to pay the current market value of the security, as set out in paragraph (h)(4) of this section, will start on the day the borrower receives the final appeal or review decision upholding the initial decision. The borrower will have conclusively presumed to have received that decision within 3 days of mailing.

(2) *Appeal process.* (i) If the administrative appeal process results in a determination that the borrower is *eligible* for Primary Loan Servicing, the

servicing official will process the request pursuant to § 1951.909 of this subpart. The information used will be that which the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructure resulting from appeals, the interest rate will be the lesser of the current rate or the original note rate on the date of the closing of the transaction. If implementation of the appeal decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

(ii) If the administrative appeal process results in a determination that the borrower is *ineligible* for Primary Loan Servicing, the servicing official will send Exhibit K and Attachment 1 of this subpart and continue processing any application for debt settlement that may have been submitted in accordance with subpart B of part 1956 of this chapter. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that it is sent, the servicing official will continue to process the application for Preservation Loan Servicing and any debt settlement. The account will not be accelerated or foreclosure will not continue until the borrower has the opportunity to appeal any denial of the Preservation Loan Servicing and any Debt Settlement request. If the borrower returns Attachment 1 of Exhibit K within 15 days of its mailing, the account will be accelerated.

(3) *Appraisal appeals.* (i) Borrowers appealing the current market appraisal completed by the Agency may obtain an appraisal by an independent appraiser selected from a list of at least three names provided by the servicing official. A borrower who submitted a new application may appeal the Agency's appraisal, if it has not previously been negotiated under paragraph (i)(4) of this section, and the denial of other issues of Primary Loan Service programs in which the appraisal, as part of the NRV calculation, is relevant. The cost of the independent appraisal must be paid by the borrower. The borrower will, upon request, have access to the case file and receive a copy of the Agency's appraisal. The independent appraiser must be a State certified general appraiser.

(ii) The appraisal report must conform to § 761.7 of this title for real estate and chattels.

(iii) If either the servicing official or the borrower discovers any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison, necessary corrections may be made if both parties agree. The party discovering the error must contact the other for a meeting to approve the corrections.

(iv) If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart.

(4) *Negotiation of appraisals.* A borrower who submits a new application may request to negotiate the appraisal one time only. Negotiation of appraisals is offered in Exhibits E and F of this subpart, as discussed in paragraph (h) of this section. All appraisals used in the negotiations must reflect the value of the property as of the same time frame as the Agency's initial appraisal. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(i) The borrower can request the list of independent appraisers from the servicing official on Attachment 2 of Exhibits E and F of this subpart. The borrower must provide the servicing official with a copy of his or her independent appraisal within 30 days of requesting negotiation. The borrower must pay for this independent appraisal. The borrower's independent appraiser and appraisal report must meet the qualifications described in paragraph (i)(3)(ii) of this section, but the independent appraiser need not be on the Agency's list of qualified appraisers. If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart. No further negotiation will occur.

(ii) If the two appraisals differ by more than five percent, the servicing official will give the borrower a list of qualified, independent appraisers. The

borrower will select one appraiser from the Agency's list to conduct a third appraisal. The appraiser cannot have conducted either the Agency's or the borrower's independent appraisal, and must meet the qualifications set out in paragraph (i)(3) of this section. The borrower, the appraiser and the servicing official will complete and sign the Appraisal Agreement (Attachment 3 of Exhibit F of this subpart). The appraiser will be sent a copy of the appraisal standards, subpart E of part 1922 of this chapter, for real estate and Form 440–21 for chattels. The borrower will submit to the servicing official the original or a copy of the third appraisal and its attachments and the appraiser's bill. The Agency will pay 50 percent of the cost. The borrower is responsible for paying the appraiser directly the remaining 50 percent of the cost.

(iii) Following the completion of the third appraisal, the three appraisals will be compared by the servicing official, who will average the two that are the closest in value. The average of the two closest in value will become the final appraised value. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(j) *Processing of writedown*. The DALR$ computer program will be used to determine the notes and amount to be written down. The borrower's account will be credited for the amount written down and the loans remaining after writedown will be rescheduled or reamortized.

(1) A separate note will be signed for each loan being reamortized.

(2) If any loan written down was secured by real estate, the borrower must enter into a ''Shared Appreciation Agreement.'' This agreement provides for FSA to collect back all or part of the amount written down by taking a share in any positive appreciation in the value of the real property securing the SAA and the remaining debt after the writedown. The maximum amount of shared appreciation collected will not exceed the amount written down. If a borrower's FLP loan was not secured by real estate, the borrower will not be required to enter into a shared appreciation agreement.

(3) A lien will be taken on assets in accordance with § 1951.910. The Agency's real estate liens will be maintained even if the writedown of the borrower's debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be surbordinated to increase the amount of the prior liens during the shared appreciation period.

[62 FR 10124, Mar. 5, 1997, as amended at 63 FR 6628, Feb. 10, 1998; 63 FR 56290, Oct. 21, 1998; 64 FR 62568, Nov. 17, 1999; 65 FR 50404, Aug. 18, 2000]

§ 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 § 761.7 of this title 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, as amended at 64 FR 62568, Nov. 17, 1999]

§ 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 application 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 homstead 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 a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The servicing official will review the proposed homestead protection property. If the servicing official does not agree with the proposed shape or size of the property, an alternate configuration will be negotiated with the borrower.

(C) If the borrower and the servicing official cannot agree on the proposed shape and size of the property, the servicing official will make the determination.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible, the servicing official will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(6) and (b)(7)(ii)(B) of this section.

(ii) *Processing homestead protection before the Agency acquires title.* (A) A borrower will be considered for homestead protection when it is determined that the Primary Loan Service programs cannot resolve the delinquency. To process an application, the borrower must indicate the buildings and land to be included in the request for homestead protection. If determined eligible for homestead protection, the borrower and the servicing official will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the property if and when the Agency acquires title. A copy of Form 1955–20, ''Lease of Real Property,'' will be attached to the agreement as an exhibit.

(B) Concurrently with the execution of the preacquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form RD 1955–1 to the Agency. The Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If the Agency acquires title during the processing of a preacquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given homestead protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) The Agency's obligation to lease the dwelling to the borrower will be contingent on the Agency's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. If the Agency cannot satisfy the conditions within 2 years from the date of the agreement, the agreement (and the Agency's obligation to lease with option to purchase) will terminate. If an agreement has been entered into, but title to the property has not been conveyed to the

Agency (or acquisition has been determined not to be in its financial interest), the Agency will continue with acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit the Agency's ability to foreclose on the property, provided that all the terms have been met except that title has not been conveyed.

(iii) *Application for homestead protection when the Agency acquires title.* When the Agency acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, no later than the date of acquisition. The borrower must request homestead protection by notifying the servicing official in writing not later than 30 days after the date of acquisition and must provide the information set forth in § 1951.907(e) of this subpart and indicate the buildings and land to be included in the request.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form 1955–20 after the Agency acquires title to the property. Form 1955–20 will be completed in accordance with § 1951.911 (b)(8) of this subpart.

(3) *Eligibility.* The servicing official will make the determination on eligibility. To qualify for homestead protection, the borrower must meet the following requirements:

(i) An applicant must be an individual who is or was personally liable for the Farm Loan Programs (FLP) loan that was secured in part by the Homestead Protection property, or, if a non-borrower pledged the property to secure the FLP loan, the owner of the property. In either case, the applicant must be or have been the owner of the Homestead Protection property. A member of an entity who is or was personally liable for a loan that is or was secured by the Homestead protection property is considered an owner for homestead protection purposes, so long as either the member of the entity or the entity itself held fee title to the property.

(ii) When more than one member of an entity was personally liable for an FLP loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for the loan may apply separately for homestead protection of their individual dwellings;

(iii) The applicant and any spouse must have received, from the farming or ranching operations, gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Farms used for comparison purposes must be of similar size, type of operation and locality. For the purposes of §§ 1951.911(b)(3) (iii) and (iv) of this subpart, income from farming or ranching operations will include rent paid by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. The borrower's records will be used in determining whether the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions. When applying for homestead protection, the borrower will give the servicing official at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant and servicing official from information relating to yields, expenses and prices found in the borrower's county office case file, agency records, or other reliable sources;

(iv) The applicant and any spouse must have received, from the farming or ranching operations, at least 60 percent of their gross annual income in at least 2 of the 6 calendar years preceding the calendar year in which the application is made;

(v) The applicant must have continuously occupied the homestead protection property during the 6-year period preceding the calendar year in which the application is made, unless it was necessary to leave for a period of time

not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment, or conditions that made the dwelling uninhabitable; and

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition, and must agree to all the terms and conditions set forth in paragraph (b)(7) of this section and in Form 1955–20.

(4) *Transfer of homestead protection.* An applicant's right to request homestead protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that, in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse upon agreement to comply with the terms and conditions of the lease.

(5) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division into a separate legal lot as required by State and local laws. All environmental considerations required under subpart G of part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by the Agency. No repairs or improvements will be paid for by the Agency except as provided for in § 1955.64 (a) of subpart A of part 1955 of this chapter.

(iii) If necessary, the Agency will grant or retain for the benefit of adjoining property reasonable easements for ingress, egress, utilities, water rights, etc.

(6) *Appraisal.* The current market value of the homestead protection property shall be determined by an independent appraisal made within 6 months from the date of the borrower's application for homestead protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official. The cost of such an appraisal will be handled in accordance with paragraph (b)(5)(ii) of this section.

(7) *Terms of the lease and exercising the option.* (i) All leases will have an option to purchase. Any reference to a lease for homestead protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form 1955–20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(B) Lease payments will be retained by the Government.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is

more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

[62 FR 10132, Mar. 5, 1997]

§ 1951.912 Mediation.

(a) *States with a USDA certified mediation program.* The FmHA or its successor agency under Public Law 103–354 is required to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties. Any negotiation of an FmHA or its successor agency under Public Law 103–354 appraisal pursuant to § 1951.909(i) of this subpart will be completed prior to mediation.

(1) FmHA or its successor agency under Public Law 103–354 shall participate in a USDA Certified Mediation Program under the same terms and conditions as other creditors. Decisions will not be binding on FmHA or its successor agency under Public Law 103–354 unless approved by the representative assigned by FmHA or its successor agency under Public Law 103–354 in accordance with paragraph (a)(4) of this section.

(2) FmHA or its successor agency under Public Law 103–354 will pay the same mediation fees to the USDA Certified State Mediation Board that are charged to all creditors that participate in mediation. The Contracting Officer (CO) will complete Form AD–838, ''Purchase Order,'' to establish a mediation contract and submit Form FmHA or its successor agency under Public Law 103–354 838–B, ''Invoice-Receipt Certification,'' for payment upon receipt of an invoice from the Mediator or the Contracting Officer's Representative (COR) recommending payment.

(3) Failure of creditors and/or borrowers to participate in mediation will not preclude FmHA or its successor agency under Public Law 103–354 from granting Primary Loan Service Programs to assist borrowers.

(4) The FmHA or its successor agency under Public Law 103–354 State Director will designate a representative to represent FmHA or its successor agency under Public Law 103–354 in the mediation process. Authorities of the representatives can vary from complete authority to act for FmHA or its successor agency under Public Law 103–354, to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to the designated representative.

(5) The FmHA or its successor agency under Public Law 103–354 State Director will arrange for adequate training for representatives designated to represent FmHA or its successor agency under Public Law 103–354 in mediation.

(6) When mediation is not successful in resolving the borrower's financial difficulty, the County Supervisor will send the borrower attachments 5 and 6,

or 5–A and 6–A, of exhibit A of this subpart, as applicable.

(7) The FmHA or its successor agency under Public Law 103–354 State Director will develop a State supplement that describes how FmHA or its successor agency under Public Law 103–354 will participate in the State Mediation Program. In developing the State supplement the State Director should confer with the State Attorney General's Office, farm organizations that are interested in the development of the State's Certified Agricultural Loan Meditation Program, and Departments of State Governments to ensure that all interested parties have input on the content of the State supplement. The State Director will consult with the Regional OGC as necessary to develop the State supplement. State supplements will be submitted to the National Office for post approval in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2006–B (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *States without a Certified Mediation Program.* To service those borrowers in States where there is no USDA Certified Mediation Program established, the State Director will provide the means of conducting a voluntary meeting of creditors, either with a mediator or a designated FmHA or its successor agency under Public Law 103–354 representative. ''Creditors,'' for purposes of this paragraph, means all the borrower's undersecured creditors holding a substantial part of the borrower's debt in accordance with §1951.909(h)(3)(i) of this subpart. State Directors are encouraged to contract for qualified mediators within their jurisdictional areas to conduct the voluntary meeting of creditors in an effort to help farmers resolve their financial difficulty. The National Office will provide the State a list of qualified mediators for contracting purposes. Any negotiation of an FmHA or its successor agency under Public Law 103–354 appraisal pursuant to §1951.909(i) of this subpart will be completed prior to meeting with other creditors.

(1) When a mediator is available, the County Supervisor will assist the meditator in scheduling a meeting with the borrower and all of the borrower's creditors and will encourage them to participate in such a meeting. The mediator will be responsible for conducting the meeting in accordance with accepted mediation practices and to develop an Agreement to assist the farmer in resolving their financial difficulties.

(2) When a mediator is not available, the State Director will designate an FmHA or its successor agency under Public Law 103–354 representative to conduct a meeting of creditors and attempt to develop a plan with borrowers and their creditors that will assist the borrowers to resolve their financial difficulty. The State Director will designate a representative not previously involved in servicing the borrower's account. State Directors will designate a representative, or FmHA or its successor agency under Public Law 103–354 employees who have demonstrated good human relations skills and ability to resolve problems and settle disputes.

(3) The designated FmHA or its successor agency under Public Law 103–354 representative for conducting a meeting of creditors will do the following:

(i) Schedule a meeting between the borrower and the borrower's creditors and encourage them to participate in such a meeting;

(ii) State that the parties understand that the representative is neutral and does not represent any of the parties;

(iii) Inform the borrower and creditors concerning FmHA or its successor agency under Public Law 103–354 programs available to assist the borrowers;

(iv) Encourage the parties to utilize all available means to assist the borrower to overcome the financial difficulty;

(v) Advise, counsel, and facilitate the development of a debt restructure agreement between the borrower and creditors which will permit the borrower to remain in farming;

(vi) Review with the parties any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution;

(vii) Review the obligations of the participants, including but not limited to the maintenance of confidentiality

and the promotion of good faith discussions in an effort to reach agreement; and

(viii) Develop a written document that specifies the agreements reached in the meeting. The agreement will be signed by all parties with authority to approve the agreement for the participating creditors. When signed, copies will be distributed to the borrower and participating creditors. A copy will be filed in the borrower's County Office case file.

(4) If agreements are reached which will permit the development of a feasible plan of operation, the County Supervisor will proceed with processing and approval of the borrower's request for primary loan servicing.

(5) When the FmHA or its successor agency under Public Law 103–354 representative has exhausted all efforts to develop an agreement between the borrower and creditors and an agreement cannot be reached, the FmHA or its successor agency under Public Law 103–354 representative will report the results of this meeting to the State Director by memorandum. Copies of the memorandum will be sent to the borrower and all creditors participating in the meeting. When the County Supervisor receives a copy of this memorandum indicating that an agreement cannot be reached, attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable, will be sent to the borrower.

(6) State Directors will provide the necessary training to ensure that the FmHA or its successor agency under Public Law 103–354 representative has the necessary skills to effectively conduct a voluntary meeting between a borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude FmHA or its successor agency under Public Law 103–354 from using debt writedown if it would result in a greater net recovery to FmHA or its successor agency under Public Law 103–354 than liquidation. Whenever the net recovery to FmHA or its successor agency under Public Law 103–354 will be greater using the writedown than to go through foreclosure, FmHA or its successor agency under Public Law 103–354 will use the writedown, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause and a feasible plan of operation cannot be developed, the County Supervisor will send the borrower attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable.

§ 1951.913 Servicing Net Recovery Buyout Recapture Agreements.

(a) *Death or retirement.* If upon the death or retirement of a borrower who submitted a ''new application,'' as defined in § 1951.906 of this subpart, the borrower executed exhibit C–1 of this subpart and transferred title of the borrower's real estate security to a spouse or child who is actively engaged in farming on the property, then the transaction will not be treated as a ''sale'' or ''conveyance'' under the recapture agreement. The borrower's spouse or child, however, must assume the full liability of the borrower under the provisions of the borrower's Net Recovery Buyout Recapture Agreement and real estate lien instrument in accordance with instructions from OGC.

(b) *Record of net recovery buyout.* The Finance Office will credit the borrower's account with the net recovery value (NRV) amount paid by the borrower. An equity record will be established in accordance with the provisions of the ADPS manual.

(1) For borrowers who applied for Loan Servicing and Preservation Service Programs before November 28, 1990, and executed exhibit C of this subpart, a recapture equity record will be established in an amount equal to the difference between the NRV and the market value of the real estate security as of the date the net recovery buyout agreement was signed by the borrower.

(2) For borrowers who submit ''new applications,'' as defined in § 1951.906 of this subpart, and execute exhibit C–1 of this subpart, an equity record will be established in an amount equal to the amount of debt secured by real estate

that was written off as of the date the net recovery buyout agreement was signed by the borrower. This is the maximum amount that can be recaptured.

(c) *Review by County Supervisor*. The County Supervisor will establish a follow-up to review the County real estate records every 24 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold or conveyed the real estate property covered by the agreement. Scheduled reviews to be conducted must be posted on the borrower's Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' for follow-up purposes. The results of the review will be recorded in the borrower's County Office case file. These reviews will end at the expiration of the agreement. If there is no recapture due, then the County Supervisor will proceed in accordance with paragraph (g) of this section.

(d) *Notification of recapture due*. If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due in accordance with exhibits C or C–1 of this subpart, as applicable. The County Supervisor will establish an equity receivable account in accordance with the provisions of the ADPS manual;

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower);

(3) Appeal rights as set forth in subpart B of part 1900 of this chapter; and

(4) If the borrower fails to pay any amount due to FmHA or its successor agency under Public Law 103–354 as the result of a sale of the property, the account will be accelerated as set forth in § 1955.15 of subpart A of part 1955 of this chapter after all appeal rights have been exhausted.

(e) *Processing payments*. The County Supervisor will issue Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittance,'' for all the payments received under the Recapture Agreement. The following should be recorded in the body of the form: ''Equity Receivable Payment.''

(f) *Release of liability*. When the total amount due under the agreement has been paid and credited to the borrower's account, the borrower will be released from personal liability. The recapture agreement will be marked ''Recapture Agreement Satisfied'' and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in accordance with subpart A of part 1965 of this chapter.

(g) *No recapture due*. If the County Supervisor determines there is no recapture due, the County Supervisor will close the borrower's equity record in accordance with the provisions of the ADPS manual. Exhibit C or C–1 of this subpart, as applicable, will be terminated and security instruments will be processed as set forth in paragraph (f) of this section.

§ 1951.914 Servicing shared appreciation agreements.

(a) [Reserved]

(b) *When shared appreciation is due*. For agreements entered into on or after August 18, 2000, the term of the agreement is five years. Shared appreciation is due at the end of either a five or ten year term, as specified in the Shared Appreciation Agreement, or sooner, if one of the following events occur:

(1) The sale or conveyance of any or all the real estate security, including gift, contract for sale, purchase agreement, or foreclosure. Transfer to the spouse of the borrower in case of the death of the borrower will not be treated as a conveyance; until the spouse further conveys the property;

(2) Repayment of the loans; or the loans are otherwise satisfied;

(3) The borrower or surviving spouse ceases farming operations or no longer receives farm income, including lease income; or

(4) The notes are accelerated.

(c) *Determining the amount of shared appreciation due*. (1) The value of the real estate security at the time of maturity of the Shared Appreciation agreement (current market value) shall be the appraised value of the security at the highest and best use less

the increase in the value of the security resulting from capital improvements added during the term of the Shared Appreciation Agreement (contributory value) as set out herein. The current market value of the real estate security property will be determined based on a current appraisal in accordance with 7 CFR §761.7 and subject to the following:

(i) Upon request, the borrower will identify any capital improvements that have been added to the property since the execution of the Shared Appreciation Agreement.

(ii) The appraisal must specifically identify the contributory value of capital improvements made to the Agency real estate security during the term of the Shared Appreciation Agreement in order to make deductions for that value under this subsection.

(iii) For calculation of Shared Appreciation recapture, the remaining contributory value of capital improvements added during the term of the Shared Appreciation Agreement will be deducted from the current market value of the property. Such capital improvements must also meet at least one of the following criteria:

(A) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a home which existed on the security property when the Shared Appreciation Agreement was originally executed, or the living area square footage of the original dwelling was expanded, only the value added to the real property by the new or expanded portion of the original dwelling (if it added value) will be deducted from the current market value. Living area square footage will not include square footage of patios, porches, garages, and similar additions.

(B) The item is an improvement to the real estate with a useful life of over 1 year and is affixed to the property. The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax records. The borrower must provide copies of appropriate tax documentation to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized on borrower income taxes.

(2) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the Shared Appreciation Agreement was signed if such value cannot be obtained through another method.

(3) Shared appreciation will be due if there is a positive difference between the market value of the security property at the time of calculation and the market value of the security property as of the date of the SAA. The maximum appreciation requested will not be more than the total amount written down. The amount of shared appreciation will be:

(i) 75% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occur within 4 years or less from the date of the SAA; or

(ii) 50% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occurs more than 4 years from the date of the SAA, or if the term of the SAA expires.

(4) [Reserved]

(5) When the full amount of the appreciation due under this section and any remaining FSA debt is paid in full and credited to the account, the borrower will be released from liability.

(6) Shared appreciation that will become due will be included in the amount owed to FSA, such as with any debt settlement. Nonamortized shared appreciation may be assumed and amortized on program or nonprogram terms based on the transferee's eligibility as contained in subpart A of part 1965 of this chapter.

(d) [Reserved]

(e) *Shared appreciation amortization.* Shared appreciation may be amortized to a nonprogram loan for borrowers who will continue with FSA on program loans. Shared appreciation will not be amortized if the amount is due because of acceleration, payment in full or satisfaction of the debt, or the borrower ceases farming. The amount due may be amortized as an SA loan under the following conditions:

(1) The borrower must have a feasible plan as defined in §1951.906 including the SA loan payment.

(2) The borrower must be unable to pay the shared appreciation, or obtain the funds elsewhere to pay the shared appreciation.

(3)–(4) [Reserved]

(5) The loan term will be based on the borrower's repayment ability and the life of the security, not to exceed 25 years.

(6) The interest rate will be the Farm Loan Program Homestead Protection rate contained in RD Instruction 440.1 (available in any FSA office).

(7) A lien will be obtained on any remaining FSA security, or if there is no security remaining, the best lien obtainable on any other real estate or chattel property sufficient to secure the SA note, if available.

(8) The borrower will sign a promissory note for each SA loan established.

(9)–(10) [Reserved]

(11) If the borrower has no outstanding Farm Loan Program loans and becomes delinquent on the Shared Appreciation loan, the Shared Appreciation loan will be serviced in accordance with subpart J of this part. If the borrower has outstanding Farm Loan Programs loans, and becomes delinquent or financially distressed in accordance with § 1951.906, the Shared Appreciation loan will be considered for reamortization in accordance with § 1951.909(e).

(f) *Priority of collection application.* Proceeds from the sale of security property will first be applied to any prior lienholder's debt, then to any shared appreciation due, and to the balance of outstanding FLP loans in accordance with subpart A of this part.

(g) *Subordination.* Subordination of FSA's lien on property securing the Shared Appreciation Agreement may be approved and processed in accordance with subpart A of part 1965 of this chapter provided the prior lien debt is not increased.

(h) *Suspension of Recapture Payment Obligation under a Shared Appreciation Agreement.* (1) A borrower may request from a Farm Loan Program (FLP) servicing official, a suspension of the obligation to pay the recapture amount under a shared appreciation agreement, if:

(i) The shared appreciation agreement recapture payment is now due but there has been no agreement to pay the recapture payment;

(ii) The 10 year term of the agreement ends on or before December 31, 2000;

(iii) The secured real estate has not yet been conveyed so that the entire amount of the shared appreciation agreement recapture payment is due;

(iv) The borrower has complied with the other terms of the agreement;

(v) The borrower certifies in writing that the borrower is not able to pay the recapture amount;

(vi) The agreement or the obligations thereunder have not been accelerated and there are pending servicing rights under this subpart still available to the borrower; and

(vii) The Agency's mortgage which secures the agreement remains in effect for a period not less than the suspension period under this paragraph plus 3 additional years or the Agency determines that the mortgage can be extended for an additional 3 years beyond the suspension period.

(2) A request for suspension of the obligation to pay the recapture amount must be submitted in writing to the FLP servicing official after the borrower has received notification of the recapture amount due by the later of:

(i) 30 days after the borrower has received notification of the recapture amount due; or

(ii) May 24, 1999.

(3) The term of the suspension of the obligation to pay the recapture amount is 1 year.

(4) A suspension may be renewed by the Agency at the request of a borrower in writing not more than twice. Prior to renewal of a suspension, the Agency will determine, based on a Farm and Home Plan, the portion of the recapture amount the borrower is still unable to pay, or obtain credit to pay, from any other source (including nonprogram loans from the Agency, in accordance with this part), the suspension will be limited to such an amount. The Agency must also determine that the conditions prescribed in paragraphs (h)(1)(i) through (h)(1)(vi) are still met.

(5) The amount of the recapture payment suspended will accrue interest at a rate equal to the applicable rate of

interest of Federal borrowing, as determined by the Agency.

(6) Thirty days before the end of the suspension period, the FLP Servicing Official shall inform the borrower by letter of the suspended amount, including accrued interest that is owed and the date such payment is due.

(7) At the end of the suspension period, the borrower will be obligated to pay the amount suspended, plus any accrued interest and the borrower will be so notified.

(8) If the real estate that is the subject of the Shared Appreciation Agreement during the suspension period is conveyed, the suspended amount, plus any accrued interest shall be come immediately due and payable by the borrower in accordance with paragraph (c) of this section.

(9)–(10) [Reserved]

(11) Capital improvement deductions are available to a borrower on any unpaid recapture amount under an existing Suspension Agreement in accordance with 1951.914(c).

[63 FR 6629, Feb. 10, 1998, as amended at 64 FR 19865, Apr. 23, 1999; 65 FR 50404, Aug. 18, 2000; 65 FR 81326, Dec. 26, 2000]

§ 1951.915 [Reserved]

§ 1951.916 Exception authority.

(a) *Administrator*. The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate Program Assistant Administrator, or upon request initiated by the appropriate Program Assistant Administrator. In certain situations such as a natural disaster, the Administrator may delegate this authority to specific State Director positions in certain states. In such cases, the State Director will exercise the delegation of authority upon the request of the County Supervisor with the recommendation of the District Director, rather than the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) *State Director*. The State Director may, in individual cases of extraordinary circumstances, make an exception to the requirement that attachments 2 or 4 of exhibit A of this subpart, as appropriate, must be completed and returned to the FmHA or its successor agency under Public Law 103–354 County Office with the appropriate forms and documents for a complete application within 60 days after receiving attachments 1 and 2 or 3 and 4 of exhibit A of this subpart. If the borrower requests additional time to submit a complete application or submits a complete application after the deadline, the County Supervisor must ask the borrower why the additional time is or was needed. The County Supervisor must ask the borrower whether there are extraordinary circumstances like serious medical illness, severe adverse weather, or a family emergency, and explain that only the State Director can authorize an extension of time for extraordinary circumstances. In such cases, the County Supervisor must document the situation in the case file and immediately submit the request with his or her recommendation on whether the State Director should grant an exception for an extension of time. The request should describe the circumstances in accordance with the examples of extraordinary circumstances mentioned above and recommend an estimate of the additional time needed. Normally, such an extension of time should not exceed 30 days.

[58 FR 4066, Jan. 13, 1993, as amended at 58 FR 15418, Mar. 23, 1993]

§§ 1951.917–1951.949 [Reserved]

§ 1951.950 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0560–0161. Public reporting burden for

this collection of information is estimated to average five minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0560–0161), Washington, DC 20503.

[57 FR 18626, Apr. 30, 1992, as amended at 63 FR 6629, Feb. 10, 1998]

EXHIBITS TO SUBPART S

EXHIBIT A—NOTICE OF THE AVAILABILITY OF LOAN SERVICING AND DEBT SETTLEMENT PROGRAMS FOR DELINQUENT FARM BORROWERS

Dear (Borrower's Name):

This notice is to inform you that you are behind with your loan payments and to inform you of your options.

I. Loan Servicing Programs Available

Primary loan servicing programs are intended to adjust the debt so that you can continue farming and the Agency will receive a better recovery on the money it loaned you.

The Preservation loan servicing program (Homestead Protection) is intended to help farmers who may lose their land to the Agency get their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must notify the county office within 60 days of getting this notice if you want to be considered for these programs.

How to Apply

To apply, you must complete and return the required forms enclosed with this notice, including your signed Acknowledgment Of Notice Of Program Availability within the 60-day time limit. The county office will process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan servicing programs options;

(2) A summary of the preservation loan servicing program;

(3) A summary of debt settlement programs;

(4) The forms you need to apply for services;

(5) Information on how to get copies of the Agency's regulations;

(6) A description of the National Appeals Division appeal process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 60 Days?

The Agency will accelerate your loan if you continue to be delinquent or in nonmonetary default. Acceleration of your loan is very severe. This means the Agency will take legal action to collect all the money you owe them.

After acceleration, the Agency will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. The Agency will also take by administrative offset money which other federal agencies owe you.

Sincerely,

ATTACHMENT 1—PRIMARY AND PRESERVATION LOAN SERVICING AND DEBT SETTLEMENT PROGRAMS PURPOSE

Purpose

These programs are to help you repay the loan and keep your farm property and settle your Farm Loan Programs loan debt. This notice tells you:

(1) How To get more information
(2) How to apply
(3) Your appeal rights if you apply and are turned down

How To Get More Information

Ask at any county office for copies of the rules describing these programs. These rules must be given to you within 10 days of when we receive your request.

Who Can Apply?

All ''farm loan programs borrowers'' who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation (RL)
Rural Housing Loans made for farm service buildings (RHF)
Economic Opportunity (EO)

Borrowers that are current on their scheduled payments but are financially distressed through no fault of their own may be eligible for some assistance to restructure their debt.

You May Need Help in Applying

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension Service what services are available to your state.

NOTE: Agency employees cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

(1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans.

(2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years from the date the loan is rescheduled. When a loan is rescheduled, the interest rate may be reduced.

(3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

(4) Interest Rate Reduction

Regular Interest Rate

FSA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the Government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an Operating Loan (OL), Soil and Water (SW) loan or a Farm Ownership (FO) loan, it may be possible for you to get a ''limited resource interest rate.'' The limited resource interest rate can be as low as 5 percent. It changes quite often and depends on what it cost the Government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for that type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL, SW, or FO loans.

For information about current interest rates, contact the FSA county office.

(5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the deferral period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the deferral period will be added to the principal of the loan. You must pay this interest in yearly payments for the rest of the loan term.

NOTE: You can only get a loan deferral if the FSA determines options 1–4 will not work for you.

(6) Softwood Timber Program

Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

(7) Conservation Contract Program

You may enter into a contract with the Secretary of Agriculture to protect highly erodible land, wetlands, or wildlife habitat located on your property that serves as security for your farm loan debt. In exchange for the contract, FSA will reduce your FSA debt. The amount of land left after the contract must be enough to continue your farming operation.

(8) Debt Writedown

This is not available to borrowers who are current in their loan payments or to borrowers who have had previous debt forgiveness on another direct loan.

Debt writedown means the FSA debt you owe is reduced. FSA can reduce both the principal and interest of your debt. Your debt can be reduced to the recovery value.

Recovery value. The recovery value is the fair market value of the collateral pledged as

security for FSA loans minus all of the expenses such as sale costs, attorneys fees, management costs, taxes and payment of prior liens on the collateral that FSA would have to pay if it foreclosed on and sold the collateral. The fair market value of any collateral that is not in your possession and has not been released for sale by FSA in writing will also be used in determining recovery value.

Also considered, will be the fair market value of any other assets that you may own that are not essential for family living or for farm operation, and are not exempt from your judgment creditors or in a bankruptcy action, minus the value of any creditors' prior security interests and your selling costs. The value of the collateral and any other assets must be decided by a qualified appraiser.

In order to get debt writedown, you must show that after the writedown, you will have up to 110 percent, but not less than 100 percent, of income available to pay all of your family living and farming operating expenses and scheduled debt payments. This means you must have a feasible plan of operation. FSA will not write down more of the debt than is necessary for you to show a feasible plan. You have the choice to select a smaller cash flow margin without a writedown. If you choose to do this, you will avoid taking your one time debt forgiveness as explained below.

The writedown is used only when the loan servicing programs listed in 1–7 above alone will not be enough for you to have a feasible plan. If you get writedown, some of the principal and interest on your loans will be written down in addition to changing the payback period, and possibly the interest rate, using 1–7 above.

You can receive a writedown if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written down on all loans is $300,000.

II. *Who Can Qualify for Primary Loan Service Programs*

To qualify you must prove that:

(1) You cannot repay your FSA debt due to circumstances beyond your control. If you have certain nonessential assets with a value high enough to bring your account current, then you are not eligible for Primary Loan Service Programs. These assets are only those that are not essential for necessary family living or for your farm operation. FSA cannot reduce or write off any of your debt that you could pay by selling any of these assets or borrowing against your equity in the assets.

You must have had less income than expected due to such things as:

(a) A natural disaster, weather, or insect problems;
(b) Family illness or injury;
(c) Loss or reduction of off-farm income;
(d) Disease in your livestock;
(e) Low commodity prices and high operating expenses in your local area; or
(f) Other circumstances beyond your control.

(2) You have acted in ''good faith'' to keep your agreements with FSA in that you have kept all written agreements with FSA including those for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

You must agree to give FSA a lien on certain other assets for additional security for the FSA debt. If you are offered restructuring and accept the offer, you must provide this lien at closing.

You must agree to meet, at your own cost, FSA's training requirements in production and financial management. The cost will be included in your farm plan as an operating expense. The training must be completed within 2 years from the date of restructuring. This requirement may be waived if you are able to demonstrate that you have adequate training in this area. To request a waiver of this training requirement, complete Form FmHA 1924–27, ''Request for Waiver of Borrower Training Requirements,'' and submit with your request for FSA servicing. This training requirement is not applicable if you have previously received a waiver or you have successfully completed the required FSA Borrower Training program.

Who Will Decide if You Qualify?

The FSA servicing official will decide if you qualify. The servicing official will decide whether you can pay as much or more on the loan as FSA would get if they foreclosed and sold the collateral for the loan plus the value of any nonessential assets. To do this, the servicing official must decide whether the total payments of principal and interest on your adjusted debt will be at least as much as the ''recovery value'' defined in part I above.

Can You Get Your Debts Written Down?

Only if FSA will get as much or more by writing down part of your debt than through foreclosure or sale of the collateral for the loan and any nonessential assets. You also must be delinquent on your FSA debt payments.

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 10 years. Under the terms of the agreement:

• You must repay a part of the sum written down.

• The amount you must repay depends on how much your real estate collateral increases in value.

During this 10 years, FSA will ask you to repay part of the debt written down if you do one of the following:

(1) Sell or convey the real estate
(2) Stop farming
(3) Pay off the entire debt

If you do not do one of these things during the 10 years, FSA will ask you to repay part of the debt written down at the end of the 10 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

Date To Begin Restructured Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be restructured. You must notify FSA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

III. Preservation Loan Servicing Program

Purpose

This program applies when the primary loan service programs cannot help you.

Homestead Protection. (Keeping your farm home.) You may lease your farm home, certain outbuildings and up to 10 acres of land. The lease time will be for up to 5 years. The lease will include an option for you to purchase the property you lease.

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm or ranch must have been similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you still may qualify.

(4) You must be the owner or former owner of the property.

(5) If FSA has already taken your property, you must apply within 30 days of the date FSA took your property.

How To Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FSA reasonable rent. The rent prices FSA charges you will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FSA, FSA will force you to leave.

You can buy back your homestead property at current market value at any time during the lease. FSA may place an easement on your property to protect and restore any wetlands or converted wetlands. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection. The appraised value of your property will reflect the value of the land after any placement of a wetland conservation easement.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FSA's inventory, may have restrictions or easements placed on the property which prevent your use of all or a portion of the property, should you choose to lease or buy your former dwelling. These restrictions and encumbrances will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

V. Debt Settlement Programs.

Purpose

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and homestead protection. If you do not have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. Please apply for debt settlement from FSA by submitting an application for debt settlement on Form RD 1956–1 within 30 days of receiving an additional debt settlement notice. See section IX. These programs are subject to the discretion of the agency and are not a matter of entitlement or right.

Programs Available

(1) Compromise offer: A lump-sum payment of less than the total FSA debt owed.

(2) Adjustment offer: One or more payments of less than the total amount owed to FSA. Your payments can be spread out over a maximum of five years if FSA decides you will be able to make the payments as they become due.

(3) Cancellation: The final settlement of a debt without any payment. FSA must decide there is no FSA security or other asset from which FSA can collect. You must be unable to pay any part of the debt now or in the future.

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise and adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present fair market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

All debt settlements of FLP loans must be recommended by the County Committee with a finding that the statements on your application are true. The committee must certify that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

VI. How to Apply for Primary and Preservation Loan Servicing Programs.

Application Forms and Information Needed

The forms set out below should be included with this notice. If they are not, you can obtain them from the FSA county office or as directed below.

(1) Attachment 2 or 4 of Exhibit A Response form to apply for loan services.

(2) FmHA 410–1 Application for FSA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals and entities personally liable for the FSA debt.

(3) FmHA 431–2 Farm and Home Plan, or other acceptable plan of operation. The commodity prices to use for this plan of operation or Farm and Home Plan are included with the form. You may request the servicing official to assist you in completing your plans.

(4) FmHA 440–32 Request for Statement of Debts and Collateral. Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the forms. FSA will obtain the creditor information.

(5) FmHA 1910–5 Request for Verification of Employment. Complete employer's name and address, employee's name and address, social security number, sign and date. FSA will send the form to your employer to obtain the needed information.

(6) SCS–CPA–026 Highly Erodible Land and Wetland Conservation Determination (This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.)

(7) AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification (You will be required to complete this form in the FSA office if the one you have on file does not reflect all the land you own and lease.)

(8) FmHA 1960–12 Financial and Production Farm Analysis Summary (Complete the backside of the form or other similar type worksheets to provide production and expense history for crops, livestock, livestock products, etc. for each of the five years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the FSA case file. You must be able to support this information with farm or income tax records.)

(9) Copies of income tax records and any supporting documents for the last five years immediately preceding the year of application if not already on file with the FSA county office. (If you have been farming for less than 5 years, submit the tax records for the tax years immediately preceding the year of application during which you farmed. If copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service (IRS).)

(10) Map or aerial photo of your farm from FSA or Natural Resources Conservation Service if you are applying for the conservation contract program. (Identify on the map or photo the portion of the land and approximate number of acres to be considered in the contract.)

(11) RD 1956–1 Application for Settlement of Indebtedness (Complete this form only if you wish to apply for debt settlement.)

Time to Apply for Primary and Preservation Loan Servicing Programs

To apply, you must complete the appropriate forms and return them and the required information to the FSA county office within 60 days from the date you received this notice.

VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the servicing official decides you are not eligible, you may request a meeting with that official so the official can explain the decision.

If you do not agree with the FSA servicing official's decision, you can tell the official why. If you can make the necessary realistic changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the servicing official.

Negotiation of the Appraisal

A negotiation of the appraisal is a process whereby the borrower objects to the FSA appraisal, obtains an independent appraisal at the borrower's own costs, pays one-half of the cost for a third appraisal, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering restructuring. In all cases of primary and preservation loan servicing where the borrower presents an independent appraisal which is conducted by a qualified appraiser and is within 5 percent of the value of the FSA appraisal, the borrower must choose one of these two appraisals for the servicing official to use to continue processing the request. Negotiation of appraisal may affect your right to appeal the appraisal.

You May Request Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FSA will help you try to get your other creditors to adjust your debts. This will be done by FSA asking for mediation if your State has a mediation program approved by the United States Department of Agriculture. If there is no State mediation program, FSA will try to set up a meeting with your other creditors and suppliers if it can be shown that a reduction in these debts can provide a feasible farm plan.

You Have the Right to Appeal

Appeal. Appeal rights will be provided to you after FSA has made a decision on your request for primary loan servicing. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the agency's adverse decision. If you disagree with FSA's determination that any determination is not appealable, you may request a determination of appealability from the National Appeals Division.

You May Buyout (Pay Off) Your Loan at the "Current Market Value"

(1) *Current market Value.* If the analysis of your debt shows that you cannot "cash flow" even if your debt to FSA is reduced to the value of the collateral, the servicing official will advise you in writing that you can buyout the loan by paying the "current market value" minus any prior liens. The current market value is determined by a current appraisal completed by a qualified appraiser.

(2) *Limits.* You may receive a buyout if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written off with buyout is $300,000.

(3) *Eligibility.* To qualify you must prove that:

You cannot repay your FSA delinquent debt and the reason you cannot repay was due to circumstances beyond your control,

You have acted in good faith, and

The value of your restructured loan is less than the recovery value.

(4) *Time Limit.* If you want to buy out your farm loan debt at the current market value, you must pay FSA within 90 days of the date you receive the offer. If you appeal the servicing official's decision not to give you primary loan servicing, this 90 days will not start until the administrative appeal process ends.

(5) *Cash.* If you pay off the loan at the current market value, you must pay in cash. FSA will not make or guarantee a loan for this purpose.

Consideration for Preservation Loan Service Program

(Homestead Protection)

You will be considered for homestead protection if:

(1) You applied for primary loan servicing as required and did not qualify.

(2) You do not appeal your primary loan servicing denial, or do not win your appeal.

(3) You do not pay off the loan through buyout.

(4) You agree to give FSA title to your land at the time FSA signs the written homestead protection agreement with you. FSA will not accept title and will deny your preservation request if it is not in FSA's best financial interest to accept title. FSA will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FSA will take title only if it can obtain a recovery on its cost. Any written agreement for preservation loan servicing will include the amount you must pay for rent, the number of years you can rent, and an option to purchase the property at the fair market value at the time you exercise the option to purchase.

(5) You must request Homestead Protection within 30 days of FSA obtaining title to the property.

Consideration for Debt Settlement Programs

If you wish to be considered for debt settlement, you will need to request and return a completed Form RD 1956–1. You may request

debt settlement from FSA within 30 days of receiving an additional debt settlement notice. See section IX. Usually, the most appropriate time for making this request is when FSA has determined that Primary Loan Servicing options will not provide the best net recovery to the Government and you are requesting preservation loan servicing. If you no longer have any security remaining for the outstanding FSA loans, you may want to request debt settlement instead of primary and preservation loan servicing.

VIII. What Happens When You Are Turned Down for Homestead Protection or Debt Settlement Programs?

If FSA decides that you cannot get homestead protection or debt settlement you can ask for

(1) A meeting with FSA to discuss the decision, or

(2) Appeal the determination.

The Right to a Meeting

The servicing official will send you a letter telling you why FSA decided not to give you homestead protection or debt settlement. That letter will give you 15 days to ask for a meeting with FSA.

The Right to an Appeal

Appeal rights will be provided to you after FSA has made a decision on your request for homestead protection. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the final determination.

On appeal, you can contest FSA's rental amount and its decision not to give you homestead protection. You can also contest FSA's decision to reject your debt settlement application.

IX. Acceleration and Foreclosure

If you do not appeal an adverse determination or if you are denied relief on appeal, FSA will accelerate your loan account and make demand for payment of the whole debt. FSA will stop allowing you to use any of your crop, livestock, and milk checks, on which they have a claim, to pay for living and operating expenses. FSA will repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. FSA will continue to take by administrative offset, money which FSA and other Federal Government agencies owe you.

FSA may refrain from taking these actions if you agree to do one, or a combination of the following actions, within an agreed upon time, with FSA's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FSA. You may apply or reapply for homestead protection jointly with this action, even if you applied before and were not accepted.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FSA debt. (This is called transfer and assumption.)

If any of these options, or foreclosure, result in payment of less than you legally owe, the servicing official will send you a notice providing you with 30 days to submit a debt settlement application. If you do not respond in a timely manner, your account will be sent to the U.S. Department of the Treasury (Treasury) for collection through cross-servicing. If you submit a debt settlement application within the required time frame, and the application is rejected, your debt will be referred to Treasury for cross-servicing after all appeal rights on the debt settlement application are exhausted. Referral of debt to Treasury for cross-servicing is not an appealable action. If your debt is referred for cross-servicing, Treasury may:

(1) Take action to collect the debt by offset or garnishment, including offset of tax refunds and garnishment of salary,

(2) Refer the debt to a private collection agency for collection, or

(3) Refer the debt for collection by the U.S. Department of Justice (DOJ).

Collection fees may be charged to you when collections are made. In addition, FSA will report the debt to a credit bureau. After your account is referred to Treasury, any debt settlement offer must be submitted to Treasury, or its private collection agency contractor. If your account is referred to DOJ for collection, your offer must be made to DOJ.

[62 FR 10134, Mar. 5, 1997, as amended at 64 FR 62972, 62973, Nov. 18, 1999; 65 FR 50405, Aug. 18, 2000]

EXHIBITS B—F [RESERVED]

EXHIBIT G—DEFERRAL, REAMORTIZATION AND RECLASSIFICATION OF DISTRESSED FARMER PROGRAM (FP) LOANS FOR SOFTWOOD TIMBER PRODUCTION (ST) LOANS

I. GENERAL.

Borrowers with distressed FP loans, as defined in this exhibit, with 50 or more acres of marginal land may request FmHA or its successor agency under Public Law 103–354 assistance under the provisions of this section. Such distressed FP loans may be reamortized with the use of future revenue produced

from the planting of softwood timber on marginal land as set out in this section. The basic objectives of the FmHA or its successor agency under Public Law 103–354 in reamortizing and deferring payments of distressed FP loans (ST loans) to financially distressed farmers are to develop a feasible plan to assist eligible FmHA or its successor agency under Public Law 103–354 borrowers to improve their financial condition, to repay their outstanding FmHA or its successor agency under Public Law 103–354 debts in an orderly manner, to carry on a feasible farming operation, and to take marginal land, including highly erodible land, out of the production of agricultural commodities other than for the production of softwood timber. County Supervisors are authorized to approve softwood timber (ST) loans subject to the limitations in paragraph VI of this exhibit.

(A) *Management assistance*. FmHA or its successor agency under Public Law 103–354 management assistance will be provided to borrowers to assist them to achieve loan objectives and protect the Government's financial interests, in accordance with subpart B of part 1924 of this chapter.

(B) *Definitions*.

(1) *Distressed FmHA or its successor agency under Public Law 103–354 loan*. An FP loan which is delinquent or in financial distress because a borrower cannot project a feasible plan by using the other loan modification actions including rescheduling, reamortizing or deferral for the maximum term.

(2) *Marginal land*. Land determined suitable for softwood timber production by the Soil Conservation Service (SCS) that was previously pasture land or within the last five years used for the production of agricultural commodities, as defined in §12.2 of subpart A of part 12 of this chapter and which is Attachment 1 of Exhibit M of subpart 1940 of this chapter. This could include:

(a) Highly erodible land as defined or classified by the SCS under §12.2 of subpart A of part 12 of this chapter, or

(b) Marginal lands that predominantly include soils that are in Class IV, V, VI, VII, or VIII in the SCS's Land Capability Classification System. However, marginal land shall not include wetlands as defined in §12.2 (a)(26) of subpart A of part 12 of this chapter and which is attachment 1 of exhibit M of subpart G of part 1940 of this chapter.

(3) *Softwood timber*. The wood of a coniferous tree having soft wood that is easy to work or finish and is commonly grown and commercially sold for pulpwood, chip, and sawtimber.

(c) *ST loan eligibility*. A borrower must:

(1) Have the debt repayment ability and reliability, managerial ability and industry to carry out the proposed timber production operation.

(2) Be willing to place not less than 50 acres of marginal land in softwood timber production; such land (including timber) may not have any lien against it other than a lien for ST loans.

(3) Have properly maintained chattel (i.e. movable property) and real estate security and accurately accounted for the sale of security, including crops, and livestock production.

(4) Be an FmHA or its successor agency under Public Law 103–354 FP loan borrower who owns 50 acres or more of marginal land which SCS determines to be suitable for softwood timber.

(5) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed timber operation.

(6) Have one or more distressed FmHA or its successor agency under Public Law 103–354 loans as defined by this exhibit.

(7) Not have a total indebtedness of ST loan(s) that will exceed $1,000 per acre for the marginal land at closing. Example: If 50 acres of marginal land is put in softwood timber production, the total ST loan indebtedness may not exceed $50,000 at closing.

(8) Be able to obtain sufficient money through FmHA or its successor agency under Public Law 103–354 or other sources including cost-sharing programs for forestry purposes for the planting, caring, and harvesting of the softwood timber trees.

II. REAMORTIZATION REQUIREMENTS.

(A) A Timber Management Plan must be developed with the assistance of the Federal Forest Service (FS), State Forest Service or such other State or Federal agencies or qualified private forestry service. The plan will outline the necessary site preparation, planting practices, environmental protection practices, tree varieties, the harvesting projection, the planned use of the timber, etc.

(B) The following requirements must also be met:

(1) If the borrower is otherwise eligible, the County Supervisor must determine that a feasible farm plan as defined by subpart B of part 1924 of this chapter on the present farm operation is not possible without using the provisions of this section. The County Supervisor must calculate the borrower's plan of operation, using the maximum terms for the rescheduling, reamortization and deferral authorities set out in this subpart. If a feasible projection can be achieved by using any of these authorities, the borrower's account will be rescheduled, reamortized or deferred, as applicable. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a feasible plan can be achieved. The County Supervisor must document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. A copy of this documentation must also be given to

the borrower. If a feasible plan is shown, the borrower is not eligible for a reamortization of a distressed loan(s) as set out in this section. The borrower will be given an opportunity to appeal the FmHA or its successor agency under Public Law 103–354 denial, as provided in §1951.909(i) of this subpart after the County Supervisor determines the borrower's eligibility for the other servicing programs in this subpart.

(2) If a feasible plan cannot be developed on the present farm operation, the County Supervisor will determine if a feasible plan would be possible by deferring and reamortizing a portion of one or more distressed FP loans as ST loans. The ST loan is limited to the loan amount (rounded up to the nearest $1,000) sufficient to produce a feasible plan. However, the amount of the loan cannot exceed the $1,000 per acre specified in paragraph I (C)(7) of this exhibit. The borrower, with assistance from the County Supervisor, must be able to develop a feasible farm plan for the first full crop year of the deferral.

(3) For applications received before November 28, 1990, when a loan is reamortized the accrued interest less than 90 days overdue will not be capitalized. For new applications, as defined in §1951.906 of this subpart, the total amount of outstanding accrued interest will be added to the principal at the time of reamortization. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII(B) of this section. If income is available, payments will be required as determined in paragraph II(B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX(H) of this exhibit.

(4) If assistance is granted, an annual plan will be developed each year to determine if there is any balance available to pay interest and/or principal on ST loans before the deferral period ends. If a balance is available, the borrower will sign Form FmHA or its successor agency under Public Law 103–354 440–9, ''Supplementary Payment Agreement.''

(5) Applicable requirements of subpart G of part 1940 of this chapter must be met.

(C) If a borrower has requested an ST loan that has a portion of the debt set-aside under this subpart, the set-aside will be cancelled at the time the reamortization is granted. The borrower may retain the set-aside on other loans. A borrower who requests a reamortization of a distressed set-aside loan must agree in writing to the cancellation of the set-aside. The written agreement must be placed in the borrower's case file.

(D) If the total amount of the distressed FP loan(s) exceeds $1,000 per acre of the marginal land designated for softwood timber production, the FP loan must be split. The split portion of the loan may not exceed $1,000 per acre for the marginal land. A new mortgage will be required to secure this portion of the loan unless the FmHA or its successor agency under Public Law 103–354 State supplement allows otherwise. The mortgage must ensure that FmHA or its successor agency under Public Law 103–354 has a security interest in the timber. The remaining balance of such a split loan will be secured by the remaining portion of the farm and such other security previously held as security prior to the split. Separate promissory notes will be executed for each portion of the split loan. The remaining portion of the note will be rescheduled, deferred, or reamortized, as applicable, in accordance with this subpart. The ST loan will be deferred and reamortized in accordance with this section. The ST loan(s) will be secured by the marginal land including timber.

(E) The County Supervisor will release all other liens securing FmHA or its successor agency under Public Law 103–354 loans including NP loans on such marginal land when the ST loan is closed. Only ST loans will be secured by such marginal land including timber. Releases will be processed in accordance with subpart A of part 1965 of this chapter. Such releases are authorized by this paragraph. If other lenders have liens on this marginal land, the lenders must release their liens before or simultaneously with FmHA or its successor agency under Public Law 103–354's release of liens. No additional liens can be placed on the marginal land and timber after the closing of a ST loan.

III. INTEREST RATE OF ST LOANS.

See Exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 for the applicable interest rate (available in any FmHA or its successor agency under Public Law 103–354 office). The interest rate will be the lower of (1) the rate of interest on the original loan which has been deferred and reamortized as the ST loan or (2) the Exhibit B rate.

IV. SPECIAL REQUIREMENTS.

(A) *Size of the timber tract.* The minimum parcels of marginal land selected as a tract for softwood timber production must be contiguous parcels of land containing at least 50 acres. Small scattered parcels will be excluded.

(B) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm, the loan will be serviced by the county office serving

the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(C) *Graduation of ST borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from cooperative or private credit source at reasonable rates and terms, the borrower will, upon FmHA or its successor agency under Public Law 103–354 request, apply for and accept such financing.

V. PLANNING.

A farm plan will be completed as provided in subpart B of part 1924 of this chapter. The State Director will supplement this subpart with a State supplement to guide the County Supervisor regarding the sources available to obtain a Timber Management Plan. The required Timber Management Plan developed with the assistance of the FS, State Forest Service or such other State or Federal agencies or qualified private forestry service should provide management recommendations to assist the borrower in establishing, managing and harvesting softwood timber. Borrowers are responsible for implementing the Timber Management Plan.

VI. DISTRESSED REAMORTIZED LOAN APPROVAL OR DISAPPROVAL.

County Supervisors are authorized to approve or disapprove the reamortization of distressed FmHA or its successor agency under Public Law 103–354 loans as described in this section. No more than 50,000 acres nationwide can be placed in the program. Acres for the program will be allocated to borrowers on a first-come, first-serve basis. ''Administrative Notices'' containing reporting requirements will be issued to field offices so that the National Office can keep a tally of the acres placed in the program. The County Supervisor will obtain a verification from the State Director that the acres can be allocated to the program prior to approval of the reamortization of the distressed FP loan(s). Normally, the verification of allocated acres will be obtained when the loan docket is complete and ready for approval. Loans for the program will not be approved until a confirmation is received for the allocation of acres for the loan(s). When a reamortization is approved, the County Supervisor will notify the borrower by letter of the approval of the ST loan(s). The FmHA or its successor agency under Public Law 103–354 field office will process the reamortization via the FmHA or its successor agency under Public Law 103–354 field office terminal system in accordance with Form FmHA or its successor agency under Public Law 103–354 1940–18.

VII. REAMORTIZING DISAPPROVAL.

When a reamortization is disapproved, the County Supervisor will notify the borrower in writing of the action taken and the reasons for the action, and include any suggestions that could result in favorable action. The borrower will be given written notice of the opportunity to appeal as provided in §1951.909 (i) of this subpart after the County Supervisor has determined whether the borrower is eligible for the remaining servicing programs authorized by this subpart.

VIII. PROCESSING OF ST LOANS.

(A) If the reclassified ST loan is approved, all other FmHA or its successor agency under Public Law 103–354 loans must be current on or before the date the reclassified ST notes are signed except for FmHA or its successor agency under Public Law 103–354-authorized recoverable cost items that cannot be rescheduled or reamortized. All other delinquent loans including NP loans will be rescheduled, reamortized, consolidated, deferred or paid current as applicable to bring the borrower's account current.

(B) ST loans on the dwelling. If the only liens on the borrower's dwelling are the reclassified ST loans, the borrower must make payments on the loan(s):

(1) The total of which will be at least equal to the market value rent for the dwelling as determined by the County Supervisor, or

(2) The minimum equally amortized installment for the term of the loan, whichever is less. Such payments cannot be deferred and will be shown in the promissory note as a regular scheduled payment for the reclassified ST loan.

(C) Form FmHA or its successor agency under Public Law 103–354 1940–18, ''Promissory Note for ST Loans,'' will be used for ST loans. Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will be used for any remaining portion of a split distressed loan. The forms will be completed, signed and distributed as provided in the Forms Manual Inset.

(D) For applications for Primary and Preservation Loan Service Programs received before November 28, 1990, interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period; interest less than 90 days past due will not be capitalized and will be payable at the end of the Softwood Timber deferral period. For new applications, as defined in §1951.906 of this subpart, the total amount of outstanding accrued interest will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period. The FMI for Form FmHA or its successor agency

under Public Law 103–354 1940–17 has examples (IV, V) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with subpart A of part 1951 of this chapter.

(E) The following addendum will be typed and signed by the borrower and attached to the promissory note:

Addendum For Deferred Interest For Softwood Timber Loans

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the above note. $_____ of each regular payment on the note will be applied to the interest which will accrue during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR part 1951, subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

_____

Borrower

(F) New mortgages on farm property or related assets must be filed unless otherwise excused from being filed by the State supplement. If a new mortgage or separate security agreement is taken, the new mortgage and/or security agreement should be filed and perfected in the manner described by the State supplement. In many cases a survey of the land securing the ST loan will be required.

(G) The borrower will obtain any required releases for previous mortgages from other lienholders and the County Supervisor will release any other FmHA or its successor agency under Public Law 103–354 liens in accordance with paragraph II (E) of this exhibit.

IX. SERVICING.

ST loans will be serviced in accordance with Subpart A of Part 1965 of this chapter with the following exceptions:

(A) ST loans will not be subordinated for any purpose.

(B) Security property for ST loans will not be leased except for softwood timber production as authorized by the ST loan.

(C) During the life of the ST loan, land designated for softwood timber production cannot be used for grazing or the production of other agricultural commodities, as defined in § 12.2(a)(1) of Subpart A of Part 12 of this chapter and which is in Attachment 1 of Exihibit M of subpart G of part 1940 of this chapter.

(D) ST loans will only be transferred as NP loans in accordance with subpart A of part 1965 of this chapter except in the case of the death of the borrower. Deceased borrower cases involving transfers will be handled by FmHA or its successor agency under Public Law 103–354 in accordance with Subpart A of Part 1962 of this chapter.

(E) Land designated for softwood timber production under this subpart must remain in the production of softwood timber for the life of the loan. If the trees die or are destroyed or the production of timber ceases, as recognized by acceptable timber management practices, and the borrower is unable to develop feasible plans for the reestablishing of the timber production, the account will be liquidated in accordance with the provisions of Subpart A of Part 1965 of this chapter. *Any appeal to FmHA or its successor agency under Public Law 103–354 must be concluded before any adverse action can be taken on the loan.*

(F) The Timber Management Plan will be updated and revised, as needed, every five years or more often if necessary.

(G) Harvesting softwood timber for Christmas trees is prohibited.

(H) An ST loan will only be reamortized if:

(1) The timber is not harvested in the year stated in the initial promissory note, and

(2) The borrower is unable to pay the note as agreed.

Interest charges more than 90 days overdue will be capitalized at the time of the reamortization. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

(3) For applications received before November 28, 1990, the interest less than 90 days past due will not be capitalized. For new applications, the total amount of outstanding accrued interest will be capitalized. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

S. *State supplements.*

State supplements will be issued immediately and updated as necessary to implement this section.

ATTACHMENT 1—NOTICE OF AVAILABILITY OF OPTION TO REAMORTIZE CERTAIN LOANS SECURED BY FUTURE REVENUE PRODUCED BY PLANTING SOFTWOOD TIMBER

(Used by the County Supervisor to inform borrowers of the availability of Softwood Timber Loans)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(Name and Address)

Dear _____:

To implement a provision in the 1985 Farm Bill, the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) is offering the additional loan servicing option of reamortizing Farmer Program loans with repayment secured by and postponed until the harvesting of a Softwood timber crop. Eligible applicants may request or receive an operating loan to cover the actual cost of the required planting. If you are using marginal land for farming or pasture, and desire to use at least 50 acres of this marginal land to plant and produce softwood timber, contact this office within 15 days of the receipt of this letter to apply for this option so that your request can be processed in a timely manner. Please note the following limitations to this program: FmHA or its successor agency under Public Law 103–354 must be the sole lienholder of both the land growing the softwood timber and the revenues from the timber; the total amount of loans secured by the land and softwood timber cannot exceed $1,000 per acre; and the program is limited to 50,000 acres of softwood timber nationwide.

Sincerely,
County Supervisor

[53 FR 35718, Sept. 14, 1988, as amended at 56 FR 3396, Jan. 30, 1991; 57 FR 18661, Apr. 30, 1992]

EXHIBIT H—CONSERVATION CONTRACT PROGRAM

I. General

A Conservation Contract (CC) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of the borrower's FSA indebtedness. The CC may be considered alone, or with other Primary Loan Servicing Programs as set forth in 7 CFR 1951.909. These contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved. All Farm Loan Programs loans which are secured by real estate may be considered for a CC. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) *Wetland,* except when such term is part of the term *Converted wetland,* is land that the Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) *Hydric soils* means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) *Hydrophytic vegetation* means a plant growing in—

(*A*) Water; or

(*B*) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) *Highly erodible land* is land that NRCS has determined has an erodibility index of 8 or more.

(c) *Upland* is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency

administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the NRCS's Land Capability Classification System.

(d) *Wildlife habitat* is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Management authority*. Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by FSA to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of a contract or its management plan. The borrower whose land is subject to the contract may be eligible to be designated as a management authority.

(3) *Person*. Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(4) *Recreational purposes*. These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise.

(5) *Wildlife*. Means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(6) *Wildlife purposes*. These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation contract. If the borrower is found to be ineligible, the FSA servicing official will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the contract after a final decision is made on whether the borrower qualifies for any other servicing options. The servicing official must find that:

(1) All Farm Loan Programs loans which are secured by real estate may be considered for a CC. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farm Loan Programs loan qualifies as real estate security.

(2) The proposed contract helps a qualified borrower to repay the loan in a timely manner.

(3) If the land being proposed for the contract is within the FSA Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing the Contract Review Team

The servicing official will establish a contract review team by notifying the appropriate field offices of the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a contract. The notified parties may in turn notify other eligible entities. NRCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the servicing official will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on the contract review team.

IV. Responsibilities of the Contract Review Team

NRCS will lead the contract review team which in every case will be composed of an NRCS, FSA and FWS representative, plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder and the borrower will be informed of the site visit time and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the servicing official. The report will cover the items listed in paragraphs (A) through (F) of this paragraph and will be

prepared by the review team. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient management of the contract's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked.

First, priority will be given to land contract opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land contracts already established or under review within the local area and the intent of these contracts has been established, the review team will consider these actions as purpose rankings are developed.

(C) If appropriate, any special terms or conditions that would need to be placed on the contract plus unique or important features of the property which would not be adequately addressed by the standard contract terms and conditions.

(D) A proposed management plan consistent with the purpose or purposes for which the contract would be established. The management plan will outline the various management alternatives for the proposed contract. The selection of the alternatives to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the contract. This management plan will specifically recommend whether or not public recreational use and public hunting should be allowed on the contract and provide supporting reasons for the recommendation made. Whenever changes are required in the management plan, FSA, may update the management plan to reflect the changes.

V. FSA's Review of Contract Team's Report

Upon receipt, the Servicing Official will review the contract team's report. If the report indicates that a contract is not feasible given the nature of the land, or other factors, the servicing official will inform the borrower of the reasons that the contract has been denied and that the borrower may appeal the denial of the contract or meet with the servicing official.

VI. Terms of Contracts

Borrowers participating in the debt cancellation conservation contract program will be given the option of selecting a 50, 30 or 10 year contract term. The amount of debt to be canceled will be directly proportional to the length of the contract. The area placed under the conservation contract cannot be used for the production of agricultural commodities during the term of the contract.

VII. Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled

(A) *Calculate the amount of debt to be canceled for a delinquent borrower as follows:*

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans.

Contract acres divided by *Total Farm and Ranch Acres = Percent of Contract Acres to Total Acres.*

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Determine the current value of the land in the contract by multiplying the present market value of the farm that secures the borrower's FLP loans by the percent calculated in step 1. *PMV of Total Farm × Percent Calculated in step 1 =* _____

(4) *Step 4.* Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step 2. *Result from step 2 − Result from step 3 =* _____

(5) *Step 5.* Select the greater of the amounts calculated in step 3 and step 4.

(6) *Step 6.* Select the lessor of the amounts calculated in steps 2 and 5. This will be the maximum amount of debt that can be canceled for a 50-year contract term.

(7) *Step 7.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. *Result from Step 6 × 60% =* _____

(8) *Step 8.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 6. *Result from Step 6 × 20% =* _____

(B) Calculate the amount of debt to be canceled for a current borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP

loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract Acres* divided by *Total Farm and Ranch Acres* = _____%

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1* = _____

(3) *Step 3.* Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by thirty-three (33) percent. *Total FLP Debt × 33%* = _____

(4) *Step 4.* Select the lessor of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

(5) *Step 5.* For a 30-year contact term, the borrower will receive 60 percent of the amount calculated in step 4. *Amount calculated in step 4 × 60%* = _____

(6) *Step 6.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. *Amount calculated in Step 4* X *20%* = _____

(C) *Feasibility of debt cancellation.* The servicing official will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum amount calculated in paragraphs (A) or (B) above. If the borrower would not be able to develop a feasible plan, the servicing official will notify the borrower of the reason that the contract has been denied and that the borrower may appeal this adverse decision after the servicing official has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(D) *The boundaries of the contract area will be determined by the most appropriate method including rectangular surveys, and aerial photographs.* A professional survey of the contract area will not be required but can be used where needed.

(E) *Reaching an agreement with the borrower.* The borrower will be informed of the contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. The borrower also will be provided a copy of the contract review team's report. If the borrower decides to enter into the contract, approval will be made by the servicing official, and the borrower by signing Form FSA 1951–39.

(F) *Recording of noncash credit.* The total credit to the borrower's account will not exceed the greater of the value of the land on which the contract is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate taking into consideration the term of the contract. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the contract is obtained taking into consideration the term of the contract. In all cases, the amount credited will be applied on the FSA loan as an extra payment in order of lien priority on the security. The loan may be reamortized if needed for both current and delinquent borrowers.

(G) [Reserved]

(H) *Contract Records.* If State law allows, the CC will be recorded in the real estate records.

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the contract, the violations will be handled in accordance with the provisions outlined in the contract.

IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951–39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

[62 FR 10147, Mar. 5, 1997 as amended at 65 FR 50405, Aug. 18, 2000]

Subpart T—Disaster Set-Aside Program

SOURCE: 60 FR 46756, Sept. 8, 1995, unless otherwise noted.

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for the Disaster Set-Aside (DSA) Program. The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster or low commodity prices in 1999. FLP loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic

Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FLP loans.

[60 FR 46756, Sept. 8, 1995, as amended at 64 FR 393, Jan. 5, 1999; 65 FR 31249, 31250, May 17, 2000]

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FLP loans may be permitted to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by a disaster or low commodity prices and avoid foreclosure by the Government. DSA is not intended to circumvent the servicing available under subpart S of this part.

[60 FR 46756, Sept. 8, 1995, as amended at 64 FR 394, Jan. 5, 1999; 65 FR 31249, May 17, 2000]

§ 1951.953 Notification and request for DSA.

(a) [Reserved]

(b) *Deadline to apply*. All FLP borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, in accordance with 7 CFR part 1945, subpart A. Applications due to low commodity prices in 1999 must be received on or before August 31, 2000.

(c) *Information needed to apply*. (1) A written request for DSA signed by all parties liable for the debt; and

(2) Actual production, income, and expense records for the production and marketing period in which the disaster occurred. Other information may be requested by the servicing official when needed to make an eligibility determination.

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 41252, Aug. 1, 1997; 64 FR 394, Jan. 5, 1999; 65 FR 31249, May 17, 2000]

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements*. The following requirements must be met to be eligible for DSA:

(1)(i) The borrower must have operated a farm or ranch in a county designated a disaster area as contained in 7 CFR part 1945, subpart A, or a county contiguous to such an area, and must have been a borrower and operated the farm or ranch at the time of the low commodity prices or disaster period.

(ii) If the borrower is applying for a second installment to be set aside based on a declared disaster, the borrower must have operated in a county declared a major disaster by the President or the Secretary, or in a county contiguous to such a county, and the Agency must have determined that second set-asides can be processed and approved for declared disasters in the specified year. The first set aside must have been provided for a previous crop year.

(iii) All FLP borrowers may apply for an installment to be set aside based on low commodity prices during 1999. If the borrower is applying for a second installment to be set aside based on low commodity prices, the first set-aside must have been provided for a previous crop year. County location, or proximity to a disaster declared county is not a consideration when the DSA is justified by low commodity prices.

(iv) A borrower cannot have more than two installments set aside on any loan.

(2) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part.

(3) All nonmonetary defaults must have been resolved. This means that even though the borrower has acted in good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming, prior lienholder foreclosure, bankruptcy or under court jurisdiction, not properly maintaining chattel and real estate security, not properly accounting for the sale of security, or not carrying out any other agreement made with the Agency.

(4) The borrower must be current or not more than one installment behind on any and all FLP loans at the time the scheduled installment will be set–aside. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 are not eligible.

(5) As a direct result of the declared disaster or the 1999 low commodity prices, both pursuant to paragraph (a)(1) of this section, the borrower does not have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of a disaster. Consideration will also be given to insufficient income for the next production and marketing period following the affected year if the borrower establishes that production will be reduced or expenses increased as a result of the disaster or the 1999 low commodity prices.

(6) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts. The cash flow projection must be prepared in accordance with 7 CFR 1924.56. The borrower will provide any documentation required to support the cash flow projection.

(7) After the scheduled installments are set-aside, all FLP and NP farm type loans must be current.

(8) The borrower's FLP loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster or the low commodity prices occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the disaster.

(2)(i) Except as provided in paragraph (a) of this section, only one unpaid installment for each FLP loan may be set-aside.

(ii) For disaster declarations during 1998, or low commodity prices in 1998, borrowers who already have one installment set aside from a previous disaster may set aside a second installment.

(iii) If all set-asides are paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and the loan may be considered for DSA.

(3) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(4) The amount of set-aside shall be limited to the amount the borrower was unable to pay FSA from the production and marketing period in which the disaster or low commodity prices occurred. However, if the installment due immediately after the disaster was paid, but other creditors and expenses were not, the amount set-aside will be the lessor of the amount the borrower is unable to pay other creditors and expenses, rounded up to the nearest whole installment, or the next FLP installment due.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster or low commodity prices occurred, unless that installment is paid, then the next scheduled annual installment may be set-aside.

(6) The amount set-aside will be the unpaid balance remaining on the installment at the time the borrower signs exhibit A of FmHA Instruction 1951–T (available in any FSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items charged to FO, SW, and RHF loans may be set-aside with the annual installment. Cost items identified with a loan number different from the parent loan cannot be set-aside.

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 41252, Aug. 1, 1997; 64 FR 394, Jan. 5, 1999; 65 FR 31249, 31250, May 17, 2000]

§§ 1951.955–1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* Upon receipt of a DSA request, the County Supervisor will determine whether the borrower meets the requirements set forth in 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A.

(1) The borrower has up to 30 days to sign exhibit A of FmHA Instruction 1951–T (available in any FSA office), for each loan installment set-aside. The County Supervisor may provide for a longer period of time not to exceed 90 days under extenuating circumstances, including but not limited to situations where the Agency's approval is contingent upon the borrower doing something to be eligible, such as paying a portion of the FLP payments from proceeds that may not be available until after the 30 day period.

(2) Pending requests for primary loan servicing will continue to be considered in accordance with subpart S of this part. However, borrowers are not eligible for servicing under both programs. The application for the program not received will automatically be withdrawn at the time the installment is set-aside or the loan restructured, whichever is applicable. The automatic withdrawal is not appealable because the borrower is no longer delinquent. If the borrower again becomes delinquent or in financial distress, or requests primary loan servicing, the borrower will be notified or the request processed in accordance with subpart S of this part.

(b) *Processing.*

(1) [Reserved]

(2) Interest will accrue on any principal amount set-aside at the same rate charged the non-set-aside portion. Interest will not accrue on the interest portion set-aside. Limited resource interest rate changes will affect the principal set-aside.

(3) The amount set-aside, including interest accrual on any principal set-aside, will be due on or before the final due date of the loan.

(4) There are no additional security requirements attached to the DSA program. All existing security instruments will remain in effect.

(5)–(6) [Reserved]

(7) Payments applied to the amount set-aside will be applied first to interest and then to principal. If more than one installment is set-aside on the loan, payments will be applied to the oldest installment set-aside until paid in full, before applying payments to the second installment set-aside.

(c) *Adverse determination.* If the borrower becomes more than one installment behind on any FLP loan while processing the DSA request, or while an appeal is being considered, and the second installment cannot be paid current prior to exhibit A of FmHA Instruction 1951–T (available in any FSA office) being signed, the DSA request will be denied.

[60 FR 46756, Sept.8, 1995, as amended at 62 FR 41253, Aug. 1, 1997; 65 FR 31250, May 17, 2000]

§ 1951.958 Cancellation and reversal of DSA.

(a) *Reasons for cancellation.* The set-aside may be reversed and exhibit A of FmHA Instruction 1951–T cancelled under the following described situations:

(1) The loan is later restructured with primary loan servicing, (the total unpaid balance must be restructured);

(2) If prior to the first scheduled installment due date after set-aside, the servicing official determines that the current borrower, if delinquent, would qualify for a writedown or buyout in accordance with subpart S of this part; or

(3) When it has been determined that the borrower was provided unauthorized DSA assistance. (The set-aside will be cancelled after all appeal rights are exhausted. The set-aside will be removed from the account and the payment terms of the original promissory note will be retained as if DSA was never granted. Borrowers financially distressed or delinquent after reversal of the set-aside will be serviced in accordance with subpart S of this part).

(b) [Reserved]

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 10157, Mar. 5, 1997]

§ 1951.959 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if it is determined that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Deputy Administrator for Farm Credit Programs, or upon request initiated by the Deputy Administrator for Farm Credit Programs.

§§ 1951.960–1951.999 [Reserved]

§ 1951.1000 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0163. Public reporting burden for this collection of information is estimated to be 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office OIRM, Room 404–W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0163), Washington, DC 20503.

PART 1955—PROPERTY MANAGEMENT

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 50 FR 23904, June 7, 1985, unless otherwise noted.

EDITORIAL NOTE: Exhibits A, C, D, and E referenced in this part are not published in the Code of Federal Regulations.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of loans to individuals and to organizations as identified in § 1955.3. It pertains to the Farm Credit programs of the Farm Service Agency (FSA),

Water and Waste programs of the Rural Utilities Service (RUS), Multi-Family Housing (MFH) and Community Facility (CF) programs of the Rural Housing Service (RHS), and direct programs of the Rural Business–Cooperative Service (RBS). Guaranteed RBS loans are liquidated upon direction from the Deputy Administrator, Business Program, RBS. This subpart does not apply to RHS single family housing loans, or to CF loans sold without insurance in the private sector. These CF loans will be serviced in the private sector and future revisions to this subpart no longer apply to such loans.

[61 FR 59778, Nov. 22, 1996]

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or its successor agency under Public Law 103–354 or by foreclosure as outlined in this subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA or its successor agency under Public Law 103–354 in accordance with applicable portions of § 1955.10 of this subpart. Nonprogram (NP) loans, except for Community and Business Programs, will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

[51 FR 4138, Feb. 3, 1986, as amended at 53 FR 27826, July 25, 1988; 58 FR 52652, Oct. 12, 1993]

§ 1955.3 Definitions.

As used in this subpart, the following definitions apply:

Closing agent. An attorney or title insurance company which is approved as a loan closing agent in accordance with subpart B of part 1927 of this chapter.

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA or its successor agency under Public Law 103–354.

Farmer Programs loans. The term ''Farmer Program loans'' (FP) refers to the following types of loans: Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing Loans for farm service buildings (RHF).

Government. The United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354), U.S. Department of Agriculture; used interchangeably herein with ''FmHA or its successor agency under Public Law 103–354.''

Homestead protection. The Farmer Programs borrower-owner's right to lease with an option to purchase the principal residence located on or off the farm and up to 10 acres of adjoining land possessed and occupied by the borrower-owner, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead.

Interest credit. The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH) loans, are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

Loans to individuals. Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing loans for farm service buildings (RHF), whether to individuals or entities, referred to in this subpart as Farmer Programs (FP)

loans; and Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Section 502 and 504 loans.

Loans to Native Americans. Farmer Program loans secured by real estate located within the boundaries of a federally recognized Indian reservation. The Native American borrower-owner is defined as the party who pledged real estate as collateral for an FP loan and is the tribe or a member of the tribe with control over the reservation.

Loans to organizations. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Nonrecoverable cost is a contractual or noncontractual program loan cost expense not chargeable to a borrower, property account, or part of the loan subsidy.

OGC. The Office of the General Counsel, U.S. Department of Agriculture; refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

Prior lien. A security instrument (such as a mortgage or deed of trust) or a judgment which was of public record before the FmHA or its successor agency under Public Law 103–354 security instrument(s) as well as real estate taxes or assessments which are or will become a lien against the property which is superior to FmHA or its successor agency under Public Law 103–354's security instrument(s).

Recoverable cost is a contractual or noncontractual program loan cost expense chargeable to a borrower, property account, or part of the loan subsidy.

Servicing official. For loans to individuals as defined in paragraph (d) of this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For RDLF and IRP, the servicing official is the Director, Business and Industry Division. For NNC, the servicing official is the Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985; 52 FR 26138, July 13, 1987; 53 FR 27826, July 25, 1988; 53 FR 30664, Aug. 15, 1988; 53 FR 35762, Sept. 14, 1988; 56 FR 15821, Apr. 18, 1991; 56 FR 29402, June 27, 1991; 56 FR 67484, Dec. 31, 1991; 58 FR 68723, Dec. 29, 1993; 60 FR 55147, Oct. 27, 1995; 62 FR 44395, Aug. 21, 1997; 63 FR 41716, Aug. 5, 1998]

§ 1955.4 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) Except as provided in § 1900.6(c) of this chapter, any authority in this subpart which is specifically delegated to the Administrator or to an Deputy Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director is authorized to redelegate, in writing, any authority delegated to the State Director in this subpart to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.115(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(c) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in §1955.15(a)(1) of this subpart may not be redelegated. However, a duly designated Acting District Director may approve or disapprove foreclosure. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor is authorized to redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7, or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska and Area Supervisors in the Western Pacific Territories and American Samoa.

(e) The monetary limitations on acceptance of voluntary conveyance as provided in §1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower level official.

[53 FR 27826, July 25, 1988, as amended at 54 FR 6875, Feb. 15, 1989; 59 FR 43441, Aug. 24, 1994; 62 FR 44395, Aug. 21, 1997]

§ 1955.5 General actions.

(a) *Assignment of notes to FmHA or its successor agency under Public Law 103–354.* When liquidation action is approved and the insured note is not held in the County or District Office, the approval official will request the Finance Office to purchase the note and forward it to the appropriate office. Voluntary conveyance may be closed pending receipt of the note(s), and foreclosure may also be processed pending receipt of the note(s), unless the original note is required in connection with the foreclosure action.

(b) *Execution of documents.* (1) After liquidation of loans to individuals has been approved by the appropriate official, the County Supervisor is authorized to execute all necessary forms and documents except notices of acceleration required to complete transactions covered by this subpart.

(2) After liquidation of loans to organizations has been approved by the appropriate official, the District Director is authorized to execute all forms and documents for completion of the liquidation except:

(i) Notice of acceleration; or

(ii) Other form or document which specifically required State or National Office approval because of monetary limits or policy statement established elsewhere in this subpart.

(c) *Unused loan funds.* (1) Funds remaining in a supervised bank account will be handed in accordance with §1902.15 of subpart A of part 1902 of this chapter before a voluntary conveyance or foreclosure is processed.

(2) Funds remaining in a construction or other account will be applied to the borrower's FmHA or its successor agency under Public Law 103–354 accounts.

(d) *Payment of costs.* Costs related to liquidation of a loan or acquisition of property will be paid according to FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office) as either a recoverable or nonrecoverable cost as defined in §1955.3 of this subpart.

(e) *Escrow funds.* Any funds remaining in the borrower's escrow account at the time of liquidation by voluntary conveyance or foreclosure are nonrefundable and will be credited to the borrower's loan account.

[50 FR 23904, June 7, 1985, as amended at 56 FR 6953, Feb. 21, 1991, 57 FR 36590, Aug. 14, 1992]

§§ 1955.6–1955.8 [Reserved]

§ 1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian reservation owned by a Native American borrower-owner.

(a) The borrower-owner is a member of the tribe that has jurisdiction over the reservation in which the real property is located. An Indian tribe may also meet the borrower-owner criterion if it is indebted for Farm Credit Programs loans.

(b) A voluntary conveyance will be accepted only after all preacquisition primary and preservation servicing actions have been considered in accordance with subpart S of part 1951 of this chapter.

(c) When all servicing actions have been considered under subpart S of part 1951 of this chapter and a positive outcome cannot be achieved, the following additional actions are to be taken:

(1) The county official will notify the Native American borrower-owner and the tribe by certified mail, return receipt requested, and by regular mail if the certified mail is not received, that:

(i) The borrower-owner may convey the real estate security to FSA and FSA will consider acceptance of the property into inventory in accordance with paragraph (d) of this section.

(ii) The borrower-owner must inform FSA within 60 days from receipt of this notice of the borrower and owner's decision to deed the property to FSA;

(iii) The borrower-owner has the opportunity to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located, or counsel, to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under Agency regulations;

(2) If the borrower-owner does not voluntarily deed the property to FSA, not later than 30 days before the foreclosure sale, FSA will provide the Native American borrower-owner with the following options:

(i) The Native American borrower-owner may require FSA to assign the loan and security instruments to the Secretary of the Interior. If the Secretary of the Interior agrees to such an assignment, FSA will be released from all further responsibility for collection of any amounts with regard to the loans secured by the real property.

(ii) The Native American borrower-owner may require FSA to complete a transfer and assumption of the loan to the tribe having jurisdiction over the reservation in which the real property is located if the tribe agrees to the assumption. If the tribe assumes the loans, the following actions shall occur:

(A) FSA shall not foreclose the loan because of any default that occurred before the date of the assumption.

(B) The assumed loan shall be for the lesser of the outstanding principal and interest of the loan or the fair market value of the property as determined by an appraisal.

(C) The assumed loan shall be treated as though it is a regular Indian Land Acquisition Loan made in accordance with subpart N of part 1823 of this chapter.

(3) If a Native American borrower-owner does not voluntarily convey the real property to FSA, not less than 30 days before a foreclosure sale of the property, FSA will provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of the following:

(i) The sale;

(ii) The fair market value of the property; and

(iii) The ability of the Native American borrower-owner to require the assignment of the loan and security instruments either to the Secretary of the Interior or the tribe (and the consequences of either action) as provided in §1955.9(c)(2).

(4) FSA will accept the offer of voluntary conveyance of the property unless a hazardous substance, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is located on the property which will require FSA to take remedial action to protect human health or the environment if the property is taken into inventory. In this case, a voluntary conveyance will be accepted only if FSA determines that it is in the best interests of the Government to acquire title to the property.

(d) When determining whether to accept a voluntary conveyance of a Native American borrower-owner's real property, the county official must consider:

(1) The cost of cleaning or mitigating the effects if a hazardous substance is found on the property. A deduction equal to the amount of the cost of a hazardous waste clean-up will be made to the fair market value of the property to determine if it is in the best interest of the Government to accept

title to the property. FSA will accept the property if clear title can be obtained and if the value of the property after removal of hazardous substances exceeds the cost of hazardous waste clean-up.

(2) If the property is located within the boundaries of a federally recognized Indian reservation, and is owned by a member of the tribe with jurisdiction over the reservation, FSA will credit the Native American borrower-owner's account based on the fair market value of the property or the FSA debt against the property, whichever is greater.

[62 FR 44395, Aug. 21, 1997]

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA or its successor agency under Public Law 103–354 will not make a demand on a borrower to voluntarily convey. If there is equity in the property. FmHA or its successor agency under Public Law 103–354 should advise the borrower, in writing, that there is equity in the property before accepting an offer to voluntarily convey. If FmHA or its successor agency under Public Law 103–354 receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. FmHA or its successor agency under Public Law 103–354 should refuse the voluntary conveyance, if the FmHA or its successor agency under Public Law 103–354 lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical. Instead, for loans to individuals, FmHA or its successor agency under Public Law 103–354 should release its lien as valueless in accordance with § 1965.25(d) of subpart A of part 1965 of this chapter or § 1965.118(c) of subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent exhibit A with attachments 1 and 2 of subpart S of 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA or its successor agency under Public Law 103–354 may recover its investment in return for the acceptance of the voluntary conveyance. In addition, prior to acceptance of a voluntary conveyance of farm real property that collateralizes an FP loan, the County Supervisor will remind the borrower-owner of possible deed restrictions and easement that may be placed on the property in the event the property contains wetlands, floodplains, historical sites and/or other federally protected environmental resources as set forth in exhibit M of subpart G of part 1940 of this chapter and § 1955.137 of subpart C of part 1955 of this chapter. When it is determined that all conditions of § 1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter will be sent prior to accepting a voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who wish to voluntarily convey property will not be sent exhibit A with attachments 1 and 2 of subpart S of part 1951

of this chapter. For Farmer Program borrowers who have received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the nonfarm tract. For newly constructed SFH properties with major construction defects, see subpart F of part 1924 of this chapter.

(a) *Authority*—(1) *Loans to individuals.* (i) *SFH loans.* The County Supervisor is authorized to accept voluntary conveyances regardless of amount of indebtedness.

(ii) *FP loans.* The County Supervisor is authorized to accept voluntary conveyance of property secured by Farmer Program loans if the total indebtedness against the property including prior and junior liens, does not exceed his/her approval authority for the type of loan (or combination of types) involved. Loan approval authorities are outlined in exhibits A through E of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 office). The State Director is authorized to approve voluntary conveyances regardless of amount of indebtedness.

(2) *Loans to organizations.* (i) The State Director is authorized to approve voluntary conveyance of property securing Farmer Programs and EOC loans regardless of amount of indebtedness.

(ii) The State Director is authorized to approve voluntary conveyance of property securing MFH loans if the total indebtedness against the property, including prior and junior liens, does not exceed his/her approval authority for the type loan involved. Loan approval authorities are outlined in exhibits A through E of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance offer. Submissions will include the case file; OGC's opinion on settling any other liens involved; a statement of essential facts; and recommendations of the State Director and Program Chief. Submissions are to be addressed to the Administrator, ATTN: (appropriate program division.)

(b) *Forms and documents.* All forms and documents in connection with voluntary conveyance will be prepared and distributed in accordance with the respective FMI or applicable OGC instructions. For loans to individuals when the County Supervisor has approval authority, the facts will be documented in the running record of the borrower's case file. For all other loans, the servicing official will submit the voluntary conveyance offer, the case file and a narrative report to the appropriate approval official.

(c) *Liens against the property other than FmHA or its successor agency under Public Law 103–354 liens*—(1) *Prior liens.* (i) The approval official will determine whether or not prior liens will be paid. Normally, the Government will pay prior liens in full prior to acquisition if:

(A) A substantial recovery on the Government's investment plus the amount of the prior lien(s) can be obtained; and

(B) The holder of the prior lien(s) objects to the Government accepting voluntary conveyance subject to the prior lien(s), if consent of the prior lienholder(s) is required.

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of subpart B of part 1955 of this chapter.

(2) *Junior liens.* The borrower must satisfy junior liens on the property (except FmHA or its successor agency

under Public Law 103–354 liens) and pay real estate taxes or assessments which are or will become a lien on the property. However, if the borrower is unable or unwilling to do so, settlement of the liens may be made by FmHA or its successor agency under Public Law 103–354 if settlement would be in the best interest of the Government, considering all factors such as length of time required to foreclose, vandalism or other deterioration of the property which might occur, and effect on management of a MFH project and its tenants. An FmHA or its successor agency under Public Law 103–354 official will contact junior lienholders, negotiate the most favorable settlement possible, and determine whether it is in the Government's best interest to settle the junior liens and accept the voluntary coveyance.

(i) For loans to individuals, the approval official is authorized to settle junior liens in the smallest amount possible, but not to exceed an aggregate amount of $1,000 in each SFH case or $5,000 for other type loans. For junior liens in greater amounts when the approval official is the County Supervisor or District Director, prior authorization must be obtained from the State Director.

(ii) For loans to organizations, the State Director will determine whether or not junior liens will be settled and voluntary conveyance accepted.

(3) *Payment of liens.* A lien to be settled in accordance with paragraph (c)(1)(i) or (c)(2) of this section will be paid as outlined in §1955.5(d) of this subpart and charged to the borrower's account as a recoverable cost.

(d) *Offer of voluntary conveyance.* An offer of voluntary conveyance will consist of the following:

(1) Form FmHA or its successor agency under Public Law 103–354 1955–1, ''Offer to Convey Security.''

(2) Warranty deed, or other deed approved by OGC to comply with State Laws. The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borrowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA or its successor agency under Public Law 103–354 1955–1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance.

(3) A current financial statement containing information similar to that required to complete Forms FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services'' or FmHA or its successor agency under Public Law 103–354 442–3, ''Balance Sheet,'' and information on present income and potential earning ability. Exception for SFH loans: FmHA or its successor agency under Public Law 103–354 requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

(4) For organization borrowers, a duly-adopted Resolution by the governing body authorizing the conveyance and certified by the attesting official with the corporate seal affixed. The Resolution will indicate which officials are authorized to execute the offer to convey and the deed on behalf of the borrower. If shareholder approval is necessary, the Resolution will specifically recite that shareholder approval has been obtained.

(5) If water rights, mineral rights, development rights, or other use rights are not fully covered in the deed, the advice of OGC will be obtained and appropriate documents to transfer rights to the Government will be obtained before the voluntary conveyance is accepted. The documents will be recorded, if necessary, in connection with closing the conveyance.

(6) If property is under lease, an assignment of the lease to the Government will be obtained with the effective date being the date the voluntary conveyance is closed. If an oral lease is in force, it will be reduced to writing and assigned to the Government.

(7) The borrower may be required to provide a title insurance policy or a final title opinion from a designated attorney when the State Director determines it is necessary to protect the

Government's interest. Such title insurance policy or final title opinion will show title vested to the Government subject only to exceptions and liens approved by the County Supervisor.

(8) Farmer program loan borrowers who voluntarily convey after receiving the appropriate loan servicing notice(s) contained in the attachments of exhibit A of subpart S of part 1951 of this chapter, must properly complete and return the acknowledgement form sent with the notice.

(9) For MFH loans, assignment of Housing Assistance Payment (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that FmHA or its successor agency under Public Law 103–354 has title to the property, but may be suspended while the conveyance is pending according to exhibit E of subpart C of part 1930 of this chapter.

(e) *Appraisal of property*. After an offer of voluntary conveyance, but before acceptance by FmHA or its successor agency under Public Law 103–354, an appraisal of the property will be made to establish the current market value of the property. If a qualified FmHA or its successor agency under Public Law 103–354 appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA or its successor agency under Public Law 103–354 in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA or its successor agency under Public Law 103–354. For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with §761.7 of this title for FP property, or subpart C of part 1922 for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(1) Certification by a National or State Appraisal Society.

(2) If a certified appraiser is not available, the appraiser may be one who meets the criteria for certification in a National or State Appraisal Society.

(3) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(f) *Processing offer to convey security and acceptance by FmHA or its successor agency under Public Law 103–354*. If a borrower has both SFH and other type loans, the portion of this paragraph dealing with the loan(s) other than SFH will be followed.

(1) *SFH loans*. FmHA or its successor agency under Public Law 103–354 does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government's interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under §1965.125(a) of subpart C of part 1965 of this chapter, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA or its successor agency under Public Law 103–354 pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA or its successor agency under Public Law 103–354, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not automatically be released of liability. The unsatisfied debt, after acceleration under §1955.10(h)(5) of this subpart, may be settled according to subpart B of part 1956 of this chapter; however, a deficiency judgment will not be pursued when the borrower was granted a moratorium if the borrower faithfully tried to meet loan obligations. The conveyance is processed as follows:

(i) Before accepting the offer, the County Supervisor will transmit the deed to a closing agent requesting a title search covering the period of time since the latest title opinion in the case file. The same agent who closed the loan should be used, if possible; otherwise one will be selected from the

approved list of closing agents, taking care that cases are distributed fairly among approved agents. The closing agent may be instructed that the County Supervisor considers the voluntary conveyance offer conditionally approved, and the closing agent may record the deed after the title search if there are no liens against the property other than:

(A) The FmHA or its successor agency under Public Law 103–354 lien(s);

(B) Prior liens when FmHA or its successor agency under Public Law 103–354 has advised the closing agent that title will be taken subject to the prior lien(s) or has told the closing agent that the prior lien(s) will be handled in accordance with §1955.10(c)(1) of this subpart; and/or

(C) Real estate taxes and/or assessments which must be paid when title to the property is transferred.

(ii) If junior liens are discovered, the closing agent will be requested to provide FmHA or its successor agency under Public Law 103–354 with the lienholder's name, amount of lien, date recorded, and the recording information (recording office, book and page), return the unrecorded deed to FmHA or its successor agency under Public Law 103–354, and await further instructions from FmHA or its successor agency under Public Law 103–354. In such cases, the County Supervisor will proceed in accordance with §1955.10(c)(2) of this subpart. If agreement has been reached with the lienholder(s) for settling the junior lien(s) in order to accept the conveyance, the deed will be returned to the closing agent for a title update and recording.

(iii) The closing agent will be requested to provide a certification of title to FmHA or its successor agency under Public Law 103–354 after recordation of the deed. A certification of title in a statement that fee title is vested in the Government subject only to the FmHA or its successor agency under Public Law 103–354 lien(s) and prior liens previously approved by FmHA or its successor agency under Public Law 103–354. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with §1955.10(g) of this subpart.

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals*. For CONACT loans to individuals, as defined in §1955.3 of this subpart, where the FmHA or its successor agency under Public Law 103–354 indebtedness plus any prior liens exceeds the market value of the property, the County Committee must take certain action if it is to recommend that the borrower and any cosigner be released from liability.

(i) *Release from liability*. The County Committee must determine that the borrower(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration their assets and income at the time of the conveyance; and that the borrower and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and they must recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government. This action will be documented by checking the appropriate block on Form FmHA or its successor agency under Public Law 103–354 440–2, ''County Committee Certification or Recommendation,'' as specified in the Forms Manual Insert (FMI).

(ii) *Unsatisfied indebtedness*. If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior lien(s) (if any) and the borrower will determine if the borrower wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account as outlined in §1955.18(f) of this subpart. When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. All cases requiring a release of liability

will be submitted for review in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any FSA office).

(iii) *Crediting accounts.* FmHA or its successor agency under Public Law 103–354 will credit the account of a Native American borrower-owner whose real property secured an FP loan with the fair market value or the FmHA or its successor agency under Public Law 103–354 debt against the property, whichever is greater. To receive such credit, the real property must be located within the boundaries of a federally recognized Indian reservation and the County Committee must certify that:

(A) The borrower-owner is a member of a tribe or the tribe.

(B) The property is located within the confines of a federally recognized Indian reservation.

(iv) *Loans which are within the County Supervisor's approval authority.* The same procedure outlined in paragraph (f)(1)(i) through (f)(1)(iii) of this section will be followed. The conveyance will be accepted in full satisfaction of the indebtedness unless:

(A) The market value of the property to be conveyed is less than the total of FmHA or its successor agency under Public Law 103–354 indebtedness and prior lien(s), if any, and the County Committee has *not* recommended the borrower be released from liability; or

(B) The borrower has made a new offer agreeing to accept a credit in the amount of the market value of the security property less prior lien(s), if any, in which case the conveyance will be accepted for the market value of the property conveyed to FmHA or its successor agency under Public Law 103–354 less prior lien(s), if any.

(v) *Loans which are NOT within the County Supervisor's approval authority*

(A) When an offer to convey is received from the borrower, the County Supervisor will request a closing agent, selected in accordance with paragraph (f)(l)(i) of this section, to make a title search covering the period of time since the latest title opinion in the case file. The case file containing the following will be forwarded to the appropriate approval official:

(*1*) Form FmHA or its successor agency under Public Law 103–354 1955–2, ''Report on Real Estate Problem Case;''

(*2*) Report of title search;

(*3*) Borrower's offer of voluntary conveyance (consisting of applicable items outlined in paragraphs (d)(1) through (d))(8) of this section);

(*4*) Current appraisal of property;

(*5*) Unpaid balance on FmHA or its successor agency under Public Law 103–354 indebtedness and other liens, both prior and junior, if any:

(*6*) Form FmHA or its successor agency under Public Law 103–354 440–2 executed in accordance with the FMI concerning release from liability if property value is less than the debt plus prior liens, if any;

(B) If the approval official determines the conveyance should be accepted, the file will be returned to the County Supervisor with a memorandum of conditional approval. The same conditions for release of liability apply an in paragraph (f)(2)(i) of this section. If the approval official does not concur in acceptance of the conveyance, the file will be returned with a memorandum stating the reasons for rejecting the offer and giving instructions to the County Supervisor for further servicing of the account.

(C) After the approval official has conditionally approved the conveyance, the County Supervisor will forward the deed to a closing agent with instructions to record it provided no liens have been recorded since the recent title search. The closing agent will be requested to provide a certification of title to FmHA or its successor agency under Public Law 103–354 after recordation of the deed. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with paragraph (h) of this section.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, the servicing official will submit the offer and the case file containing the items outlined in paragraph (f)(3)(ii) or (f)(3)(iii) of this section, as applicable, to the State Director. The State Director will obtain the advice of OGC on all

offers of voluntary conveyance from organization borrowers. OGC will be requested to issue instructions for processing and closing the conveyance. When the market value of the property being conveyed (less prior liens, if any) is less than the FmHA or its successor agency under Public Law 103–354 debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the FmHA or its successor agency under Public Law 103–354 debt. In such a case, the County Committee must make a favorable recommendation if the borrower is to be released from liability; and if the FmHA or its successor agency under Public Law 103–354 debt less the market value and prior liens exceeds $25,000, release of liability must be approved by the Administrator.

(i) *Items to be included in the borrower's case file for MFH loans:*

(A) Report on Multiple-Family Housing Problem Case, (exhibit A to this subpart available in any FmHA or its successor agency under Public Law 103–354 office);

(B) Liquidation and management plan with specific recommendations of the District Director;

(C) Form FmHA or its successor agency under Public Law 103–354 1955–1;

(D) Resolution authorizing the conveyance, if applicable;

(E) Report of title search from an approved closing agent covering the period of time since the latest title opinion is the case file;

(F) Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Statement of Budget and Cash Flow,'' (operating budget for first year and typical year);

(G) Form FmHA or its successor agency under Public Law 103–354 1930–8, ''Year End Report and Analysis for Fiscal Year Ending _____,'' (Balance Sheet Portion);

(H) Current appraisal prepared by a MFH designated appraiser;

(I) Balance on FmHA or its successor agency under Public Law 103–354 account(s) and other liens, if any;

(J) Assignment of Housing Assistance Payment (HAP) contracts, if applicable, along with evidence of contract with HUD;

(K) Current statement of account from the Finance Office;

(L) Development plan with breakdown of costs, if applicable; and

(M) Form FmHA or its successor agency under Public Law 103–354 440–2, executed in accordance with the FMI, when applicable.

(ii) *Items to be included in the borrower's case file for loans other than MFH:*

(A) Report on Servicing Action (exhibit A to subpart E of part 1951 of this Chapter, available in any FmHA or its successor agency under Public Law 103–354 office);

(B) Liquidation and management plan;

(C) Form FmHA or its successor agency under Public Law 103–354 1955–1;

(D) Organization's Resolution authorizing the conveyance;

(E) Report of title search from an approved closing agent covering the period of time since the latest title opinion in the case file;

(F) Form FmHA or its successor agency under Public Law 103–354 442–3;

(G) Current appraisal;

(H) Statement showing income and expenses due but unpaid;

(I) Balance on FmHA or its successor agency under Public Law 103–354 account(s) and other liens, if any; and

(J) Form FmHA or its successor agency under Public Law 103–354 440–2, executed in accordance with the FMI concerning release from liability if property value is less than the FmHA or its successor agency under Public Law 103–354 indebtedness plus prior liens, if any.

(g) *Closing of conveyance.* (1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA or its successor agency under Public Law 103–354, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA or its successor agency under Public Law 103–354 lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly. The property will be assigned an

ID number and entered into the Acquired Property Tracking System through the Automated Discrepancy Processing System (ADPS) terminal in the County Office.

(2) When costs incident to the completion of the transaction are to be paid by the Government, the servicing official will prepare and process the necessary documents as outlined in §1955.5(d) of this subpart and the costs will be charged to the borrower's account as recoverable costs. This includes taxes and assessments, water charges which protect the right to receive water, other liens, closing agent's fee, and any other costs related to the conveyance.

(h) *Actions to be taken after closing conveyance.* (1) When the FmHA or its successor agency under Public Law 103–354 account is satisfied, the note(s) will be stamped ''Satisfied by Surrender of Security and Borrower Released from Liability,'' and the statement must be signed by the servicing official.

(2) When the FmHA or its successor agency under Public Law 103–354 account is not satisfied and the borrower is not released from liability, the note(s) will be retained by FmHA or its successor agency under Public Law 103–354.

(3) The servicing official will release the lien(s) of record, indicating that the debt was satisfied by surrender of security or that the lien is released but the debt not satisfied, whichever is applicable. If the lien is to be released but the debt not satisfied, OGC will provide the type of instrument required to comply with applicable State laws.

(4) After release of the lien(s), the servicing official will return the following to the borrower:

(i) If borrower is released from liability, the satisfied note(s) and a copy of Form FmHA or its successor agency under Public Law 103–354 1955–1 showing acceptance by the Government; or

(ii) If borrower is not released from liability, a copy of Form FmHA or its successor agency under Public Law 103–354 1955–1 showing acceptance by the Government.

(5) When the FmHA or its successor agency under Public Law 103–354 account is not satisfied and the borrower not released from liability, the account balance, after deducting the ''as is'' market value and prior liens, if any, will be accelerated utilizing exhibit F of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(6) For MFH loans, the State Director will cancel any interest credit and suspend any rental assistance. These actions will be accomplished by notifying the Finance Office unit which handles MFH accounts. In the interm the tenants will continue rental payments in accordance with their lease. Tenants will be informed of the pending liquidation action and the possible consequences of the action. FmHA or its successor agency under Public Law 103–354 Guide Letters 1965–E–2, 1965–E–3, and 1965–E–5 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used to inform tenants, but should be modified to reflect the specific action and circumstances. If the project is to be removed from the FmHA or its successor agency under Public Law 103–354 program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced as required by §1965.215(e)(4) of subpart E of part 1965 of this chapter.

(7) Actions outlined in §1955.18 of this subpart will be taken, as applicable.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985; 51 FR 45433, Dec. 18, 1986; 52 FR 48519, Dec. 23, 1987; 53 FR 27826, July 25, 1988; 53 FR 35762, Sept. 14, 1988; 56 FR 12645, Mar. 27, 1991; 56 FR 15821, Apr. 18, 1991; 56 FR 40245, Aug. 14, 1991; 57 FR 1372, Jan. 14, 1992; 58 FR 38926, July 21, 1993; 58 FR 44752, Aug. 25, 1993; 58 FR 68725, Dec. 29, 1993; 60 FR 28320, May 31, 1995; 64 FR 62568, Nov. 17, 1999]

§1955.11 Conveyance of property to FmHA or its successor agency under Public Law 103–354 by trustee in bankruptcy.

(a) *Authority.* With the advice of OGC (and prior approval of the National Office for MFH, Community Programs, and insured B&I loans), the State Director within his/her authority is authorized to accept a conveyance of property to the Government by the Trustee in Bankruptcy, provided:

(1) The Bankruptcy Court has approved the conveyance;

(2) The conveyance will permit a substantial recovery on the FmHA or its successor agency under Public Law 103–354 debt; and

(3) FmHA or its successor agency under Public Law 103–354 will acquire title free of all liens and encumbrances except FmHA or its successor agency under Public Law 103–354iens.

(b) *Fees and deed.* (1) FmHA or its successor agency under Public Law 103–354 may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of $300 for any loan type(s) other than Farmer Programs or $1,000 for Farmer Program loans, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in § 1955.5(d) of this subpart for payment of fees as recoverable costs.

(2) Conveyance may be by Trustee's Deed instead of a warranty deed. If upon advice of OGC it is determined a deed from any other person or entity (including the borrower) is necessary to obtain clear title, a deed from such person or entity will be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA or its successor agency under Public Law 103–354 account(s) as set forth in § 1955.18(e)(4) of this subpart.

(d) *Reporting.* Acquisition of property under this section will be reported in accordance with § 1955.18(a) of this subpart.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27827, July 25, 1988]

§ 1955.12 Acquisition of property which served as security for a loan guarantee by FmHA or its successor agency under Public Law 103–354 or at sale by another lienholder, bankruptcy trustee, or taxing authority.

When the servicing regulations for the type of loan(s) involved permit FmHA or its successor agency under Public Law 103–354 to acquire property by one of these methods, the acquisition will be reported in accordance with § 1955.18(a) of this subpart.

§ 1955.13 Acquisition of property by exercise of Government redemption rights.

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. For Farmer Program loans, the County Supervisor will document the determination on exhibit G of this subpart. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 U.S.C. 2410) may be waived without consideration. If a State law right of redemption exists and may be sold, it will not be disposed of for less than its value.

[53 FR 35762, Sept. 14, 1988]

§ 1955.14 [Reserved]

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; when either a net recovery can be made or when failure to foreclose would adversely affect FmHA or its successor agency under Public Law 103–354 programs in the area. Also, in Farmer Program cases (except graduation cases under subpart F of part 1951 of this chapter), the borrower must have received exhibit A with attachments 1 and 2 of subpart S of part 1951

of this chapter, and any appeal must have been concluded. For real property located within the confines of a federally recognized Indian reservation and owned by a Native American borrower, proper notice of voluntary conveyance must be given as outlined in §1955.9 (c)(1) of this subpart.

(a) *Authority*—(1) *Loans to individuals.* The District Director is authorized to approve or disapprove foreclosure and accelerate the account.

(2) *Loans to organizations.* (i) The State Director or District Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA or its successor agency under Public Law 103–354 secured debt does not exceed their respective loan approval authority. The State Director is authorized to approve or disapprove foreclosure of I&D, Shift-In-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

(ii) For all other organization loans, foreclosure will not be initiated without prior approval of the Administrator. The State Director will obtain OGC's opinion on the steps necessary to foreclose the loan, and forward the appropriate problem case report, a statement of essential facts, his/her recommendation, a copy of the OGC opinion, and the borrower's case file to the Administrator, Attn: Assistant Administrator (appropriate loan division) with a request for authorization to initiate foreclosure.

(b) *Problem case report.* When foreclosure is recommended, the servicing official will prepare Form FmHA or its successor agency under Public Law 103–354 1955–2 for Farmer Program or SFH loans, exhibit A to this subpart for MFH loans, or exhibit A of FmHA or its successor agency under Public Law 103–354 Instruction 1951–E (available in any FmHA or its successor agency under Public Law 103–354 office) for other organization loans. If chattel security is also involved, Forms FmHA or its successor agency under Public Law 103–354 455–1, ''Request for Legal Action''; 455–2, ''Evidence of Conversion''; and 455–22, ''Information for Litigation''; as applicable to the case, will be prepared in accordance with the respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA or its successor agency under Public Law 103–354 loan servicing regulations have been taken and all required notices given to the borrower.

(1) *Appraisal.* The market value of the property may be estimated in completing the problem case report unless there are one or more prior liens other than current-year real estate taxes. Where such prior liens are involved, an appraisal report reflecting market value in existing condition will be included in the case file as a basis for determining the Government's prospects for financial recovery through foreclosure.

(2) *Recommendation for deficiency judgment.* If the debt will not be satisfied by the foreclosure, the borrower's financial situation will be assessed to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the applicable problem case report. For SFH loans subject to recapture of subsidy, the debt includes total interest credit granted and principal reduction attributed to subsidy in addition to unpaid principal and interest. However, a deficiency judgment will not be recommended in a SFH case to recapture subsidy or where the borrower was granted a moratorium provided the borrower faithfully tried to meet loan obligations. In crediting security value against indebtedness, credit will be given first to interest, principal and recoverable costs and then to recapture of subsidy.

(3) *Historic preservation.* If it is likely that FmHA or its successor agency under Public Law 103–354 will acquire title to the property as a result of the foreclosure, and the structure(s) on the property will be in excess of 50 years old at the time of acquisition or meet any of the other criteria contained in §1955.137(c) of subpart C of part 1955 of this chapter, steps should be initiated to meet the requirements of the National Historic Preservation Act as

outlined in §1955.137(c). Formal steps should not be initiated until the conclusion of all appeals. However, any such documentation required may be completed when the problem case report is prepared. This action should eliminate delays in selling the property after acquisition.

(c) *Submission of problem case.* The servicing official will submit the completed problem case docket to the official authorized to approve the foreclosure (approval official). Before approval of foreclosure and acceleration of the account, the approval official is responsible for review of the problem case report to see that all items are complete and that all required servicing actions have been taken and all required notices given the borrower. The narrative portion of the report should provide complete information on the borrower's financial condition, deficiency judgment in case the debt is not satisfied by the foreclosure, and other pertinent background items. The approval official will approve or disapprove the foreclosure, or make a recommendation and refer the case to the National Office, if not within his/her approval authority. If foreclosure is not approved, the case will be returned to the originating office with instructions for further servicing. Problem case submission is as follows:

(1) *For loans to individuals.* The County Supervisors will submit the case to the District Director.

(2) *For loans to organizations.* The District Director will submit the case to the State Director along with a proposed liquidation and management plan covering the time the foreclosure is in process. The State Director will obtain the advice of OGC if required in connection with the type of loan being liquidated.

(d) *Approval of foreclosure.* When foreclosure is approved, it will be handled as follows:

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA or its successor agency under Public Law 103–354 will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA or its successor agency under Public Law 103–354 loan(s), either settling the prior lien or foreclosing subject to it. The provisions of §1965.11(c) of subpart A of part 1965 of this chapter must be followed for loans serviced under subpart A of part 1965. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA or its successor agency under Public Law 103–354's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed. For real property located within the confines of a federally recognized Indian reservation owned by a Native American borrower-owner, an analysis of whether FmHA or its successor agency under Public Law 103–354 should acquire title must include facts which demonstrate the fair market value after considering the cost of clean-up of hazardous substances on the property.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to exhibits B, C, D, or E of this subpart, or for multi-family housing, FmHA or its successor agency under Public Law 103–354 Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA or its successor agency under Public Law 103–354 Office), as appropriate, to be signed by the official who approved the foreclosure. The accounts of borrowers with pending Chapter 12 and 13 cases which have not been discharged will be accelerated in accordance with instructions from OGC. Upon OGC approval, accounts of these borrowers may be accelerated using a notice substantially similar to exhibit D of this subpart. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with §1965.26 (c) of subpart A of part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each

obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under subpart A of part 1962 of this chapter, the Finance Office will be sent a copy of exhibits D, E, or E–1 (available in any FmHA or its successor agency under Public Law 103–354 office) as applicable. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(i) Where monetary default is involved, the account may be accelerated immediately after approval of foreclosure.

(ii) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(iii) If borrower obtained the loan while a civilian, entered military service after the loan was closed, the FmHA or its successor agency under Public Law 103–354 has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(iv) If the decision is made to liquidate the farm loan(s) of a borrower who also has a SFH loan(s), and the dwelling was used as security for the farm loan(s) it will not be necessary to meet the requirements of subpart G of part 1951 of this chapter prior to accelerating the account. Except that, if the borrower is in default on his/her farm loan(s), the SFH account must have been considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration. If it is later determined the FP loan(s) are to receive additional servicing in lieu of liquidation, the RH loan will be reinstated simultaneously with the FP servicing actions and may be reamortized in accordance with §1951.315 of subpart G of part 1951 of this chapter. Accounts of a borrower who has both Farmer Program and SFH loan(s) may be accelerated as follows:

(A) When the borrower's dwelling is financed with an SFH loan(s) is secured by and located on the same farm real estate as the Farmer Program loan(s) (dwelling located on the farm), the SFH loan(s) will be serviced in accordance with §1965.26(c)(1) of subpart A of part 1965 of this chapter.

(B) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which also serves as additional security for the Farmer Program loan(s), the loans(s) will be serviced in accordance with §1965.26 (c)(2) of subpart A of part 1965 of this chapter.

(C) When the borrower's dwelling is financed with an SFH loan(s) and is on a non-farm tract which does not serve as additional security for the Farmer Program loan(s), it will NOT be accelerated simultaneously with sending out attachments 5 and 6, or 5–A and 6–A, or attachment 9 and 10, or 9–A and 10–A, of exhibit A of subpart S of part 1951 of this chapter, as applicable, unless it is subject to liquidation based on provisions of §1965.125 of subpart C of part 1965 of this chapter, taking into consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. If the SFH loan is in default and subject to liquidation

based on provisions of § 1965.125 of subpart C of part 1965 of this chapter, the SFH loan(s) must be accelerated at the same time the borrower is sent attachment 5 and 6, or 5–A and 6–A, or attachments 9 and 10, or 9–A and 10–A, to exhibit A of subpart S of part 1951 of this chapter, as applicable. For those borrowers who are in non-monetary default on their Farmer Programs loans and fail to return attachment 4 of exhibit A of subpart S of part 1951 of this chapter, the Farmer Programs loans and SFH loans will be accelerated at the same time. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(D) If a borrower's FP loan(s) were accelerated prior to May 7, 1987, and the SFH loan(s) is not accelerated, the SFH loan will be accelerated at the same time the borrower is sent attachments 5 and 6, or 5–A and 6–A, or attachments 7 and 8 to exhibit A of subpart S of 1951 of this chapter, as applicable, unless the requirements of § 1965.26 of subpart A of part 1965 of this chapter are met or the liquidation of the SFH loan is based on provisions of § 1965.125 of subpart C of part 1965 of this chapter. If the borrower is sent attachments 5 and 6, or 5–A and 6–A to exhibit A of subpart S of 1951 of this chapter, as applicable, and requests an appeal, one hearing and one review will be held for both the adverse action on the FP loan restructuring request and SFH acceleration notices. If the borrower is sent attachments 7 and 8 to exhibit A of subpart S of 1951 of this chapter, there are no further appeals on the FP loans; but, the borrower is entitled to a hearing and a review on the SFH acceleration notice.

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable prepayment requirements, in accordance with subpart E of part 1965 of this chapter. The requirements include the application of restrictive-use provisions to loans made on or after December 21, 1979, prepaid in response to acceleration notices and all tenant and agency notifications. The acceleration notice will also remind borrowers that rent levels cannot be raised during the acceleration without FmHA or its successor agency under Public Law 103–354 approval, even after subsidies are canceled or suspended. Tenants are to be notified of the status of the project and of possible consequences of these actions. FmHA or its successor agency under Public Law 103–354 Form Letters 1965–E–2, 1965–E–3 and 1965–E–5 may be used as guides, but modified appropriately. If the borrower wishes to prepay the project in response to the acceleration and FmHA or its successor agency under Public Law 103–354 makes a determination that the housing is no longer needed, a minimum of 180 days' notice to tenants is required before the project can be removed from the FmHA or its successor agency under Public Law 103–354 program. Letters of Priority Entitlement must be made available in accordance with § 1965.215(e)(4) or subpart E of part 1965 of this chapter.

(3) *Offers by borrowers after acceleration of account*—(i) *Farmers Programs (FP) accelerations*. This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the borrower will have 30 days from the date of the acceleration notice to make payment in full to stop the acceleration, unless State or tribal law requires that the foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify the requirement.

(A) Payment in full [see exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office)] may consist of the following means of fully satisfying the debt.

(*1*) Cash.

(*2*) Transfer and assumption.

(*3*) Sale of property.

(*4*) Voluntary conveyance.

(B) Payments which do not pay the account in full can be accepted subject to the following requirements:

(*1*) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(*2*) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed. In States where payments cannot be accepted unless the acceleration is reversed, the payments will not

be accepted. A State supplement will be issued to address State law on accepting payments after acceleration.

(*3*) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or convenant in the real estate instruments will result. Disposition of such payments will be made after consulting OGC.

(*4*) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations*. After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue rental payments in accordance with their leases, and all rental rates and lease renewals and provisions will be continued as if acceleration had not taken place.

(4) *Statement of account*. If a statement of account is required for foreclosure proceedings, Form FmHA or its successor agency under Public Law 103–354 451–10, ''Request for Statement of Account,'' will be processed in accordance with the FMI. When an official statement of account is not required,

account balances and recapture information may be obtained from the field office terminal.

(5) *Appeals.* All appeals will be handled pursuant to subpart B of part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or until the time has elapsed during which an appeal or a request for review may be made. In Farmer Programs cases, (except graduation cases under subpart F of part 1951 of this chapter), the borrower must have received the appropriate notices and consideration for primary loan servicing per subpart S of part 1951 of this chapter. Any Farmer Programs cases may be accelerated after all primary loan servicing options have been considered and all related appeals concluded, but will not be submitted to OGC for foreclosure action until all appeals related to any preservation rights have been concluded.

(6) *Petition in bankruptcy filed by borrower after acceleration of account.*

(i) When bankruptcy is filed after an account has been accelerated, any foreclosure action initiated by FmHA or its successor agency under Public Law 103–354 must be suspended until:

(A) The bankruptcy case is *dismissed* or *closed* (a discharge of debtor does not close the case);

(B) An Order lifting the automatic stay is obtained from the Bankruptcy Court; or

(C) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(ii) The State Director will request the assistance of OGC in obtaining the Order(s) described in paragraph (c)(6)(i)(B) of this section.

(e) *Referral of case.* If the borrower fails to satisfy the account during the period of time specified in the acceleration notice, and no appeal is pending, the foreclosure process will continue:

(1) If the District Director is the approval official, he/she will forward the case file with all pertinent documents and information concerning the foreclosure action and appeal, if any, to the State Director for completion of the foreclosure.

(2) If the State Director is the approval official, or in cases referred by the District Director under paragraph (e)(1) of this section, the State Director will forward to OGC the case file and all documents needed by OGC to process the foreclosure. A State Supplement will be issued, with the advice and assistanced of OGC, to reflect the make–up of the foreclosure docket. Since foreclosure processing varies widely from State to State, each State Supplement will be explicit in outlining step–by–step procedures. At the time indicated by OGC in the foreclosure instructions, Form FmHA or its successor agency under Public Law 103–354 1951–6, ''Borrower Account Description Flag,'' will be processed in accordance with the FMI. After referral to OGC, further actions will be in accordance with OGC's instructions for completion of the foreclosure. If prior approval of the Administrator is obtained, nonjudicial foreclosure for monetary default may be handled as outlined in a State Supplement approved by OGC without referral to OGC before foreclosure.

(f) *Completion of foreclosure*—(1) *Foreclosure advertisement for organization loans subject to title VI of the Civil Rights Act of 1964*—(i) The advertisement for foreclosure sale of property subject to title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: ''The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later.'' At least 30 days before the foreclosure sale, the County Supervisor will notify, in writing, the Indian tribe which has jurisdiction over the reservation, and in which the

real property is owned by a Native American member of said tribe that a foreclosure sale will be conducted to resolve this account, and will provide:

(A) Projected sale date and location;

(B) Fair market value of property;

(C) Amount FmHA or its successor agency under Public Law 103–354 will bid on the property; and

(D) Amount of FmHA or its successor agency under Public Law 103–354 debt against the property.

(ii) The purchaser will be required to sign Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement,'' if the property will be used for its original or similar purposes.

(2) *Restrictive-use provisions for MFH loans*. For MFH loans, the advertisement will state the restrictive-use provisions which will be included in any deed used to transfer title.

(3) *Expenses*. Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in §1955.5 (d) of this subpart. Costs will be charged as outlined in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(4) *Notice of judgment*. In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA or its successor agency under Public Law 103–354 1962–20, ''Notice of Judgment,'' will be processed in accordance with the FMI. This will establish a judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

(5) *Gross investment*. The gross investment is the sum of the following:

(i) The unpaid balance of one of the following, as applicable:

(A) In States with nonjudicial foreclosure, the borrower's FmHA or its successor agency under Public Law 103–354 account balance reflecting secured loan(s) and advances; and where State law permits, unsecured debts; or

(B) In States with judicial foreclosure, the judgment account established as a result of the foreclosure judgment in favor of FmHA or its successor agency under Public Law 103–354.

(ii) All recoverable costs charged (or to be charged) to the borrower's account in connection with the foreclosure action and other costs which OGC advises must be paid from proceeds of the sale before paying the FmHA or its successor agency under Public Law 103–354 secured debt, including but not limited to payment of real estate taxes and assessments, prior liens, legal fees including U.S. Attorney's and U.S. Marshal's, and management fees; and

(iii) If a SFH loan subject to recapture of interest credit is involved, the total amount of subsidy granted and principal reduction attributed to subsidy.

(6) *Amount of Government's bid*. Except for FP loans and as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA or its successor agency under Public Law 103–354's gross investment or the market value of the security, whichever is less. For real property located within the confines of a federally recognized Indian reservation and which is owned by an FmHA or its successor agency under Public Law 103–354 borrower who is a member of the tribe with jurisdiction over the reservation, the Government's bid will be the greater of the fair market value or the FmHA or its successor agency under Public Law 103–354 debt against the property, unless FmHA or its successor agency under Public Law 103–354 determines that, because of the presence of hazardous substances on the property, it is not in the best interest of the Government to bid such amount, in which case there may be a deduction from the bid for the costs for hazardous material assessment and/or mitigation. For FP loans, except as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA or its successor agency under Public Law 103–354's gross investment or the amount determined by use of exhibit G–1 of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current

appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA or its successor agency under Public Law 103–354 appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA or its successor agency under Public Law 103–354 in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

(7) *Bidding*. The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings or State nonjudicial foreclosure law provides for someone other than an FmHA or its successor agency under Public Law 103–354 employee to enter the Government's bid. When the State Director determines attendance of an FmHA or its successor agency under Public Law 103–354 employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid will result in the property being sold for less than the bid authorized in paragraph (f)(6) of this section.

(i) When FmHA or its successor agency under Public Law 103–354 is the senior lienholder, only one bid will be entered, and that will be for the amount authorized by the State Director.

(ii) When FmHA or its successor agency under Public Law 103–354 is not the senior lienholder *and* OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, the State Director may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, the State Director's instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

(g) *Reports on sale and finalizing foreclosure*. Immediately after a foreclosure sale at which the State Director has designated a person to bid on behalf of the Government, the servicing official will furnish the State Director a report on the sale. The State Director will forward a copy of this report to OGC and, for MFH loans, to the National Office. Based on OGC's instructions, a State supplement will provide a detailed outline of actions necessary to complete the foreclosure.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985; 51 FR 4138, Feb. 3, 1986; 51 FR 45433, Dec. 18, 1986; 53 FR 27827, July 25, 1988; 53 FR 35763, Sept. 14, 1988; 56 FR 6953, Feb. 21, 1991; 56 FR 15822, Apr. 18, 1991; 57 FR 18671, Apr. 30, 1992; 57 FR 31642, July 17, 1992; 57 FR 60085, Dec. 18, 1992; 58 FR 38927, July 21, 1993; 58 FR 58648, Nov. 3, 1993; 58 FR 68725, Dec. 29, 1993; 60 FR 55147, Oct. 27, 1995; 62 FR 44396, Aug. 21, 1997]

§§ 1955.16–1955.17 [Reserved]

§ 1955.18 Actions required after acquisition of property.

The approval official may employ the services of local designated attorneys, of a case by case basis, to process all legal procedures necessary to clear the title of foreclosure properties. Such attorneys shall be compensated at not more than their usual and customary charges for such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

(a)–(d) [Reserved]

(e) *Credit to the borrower's account or foreclosure judgment account*.

(1) *For SFH accounts*. When FmHA or its successor agency under Public Law 103–354 acquired the property, the account will be satisfied unless:

(i) In a voluntary conveyance case where the debt exceeds the market value of the property and the borrower is *not* released from liability, in which case the account credit will be the market value (less outstanding liens if any); or

(ii) In a foreclosure where the bid is less than the account balance and a deficiency judgment will be sought for the difference, in which case the account credit will be the amount of FmHA or its successor agency under Public Law 103–354's bid.

(2) *For all types of accounts other than SFH*. When FmHA or its successor

agency under Public Law 103–354 acquired the property, the account credit will be as follows:

(i) In a voluntary conveyance case:

(A) Where the market value of the property equals or exceeds the debt or where the borrower is released from liability for any difference, the account will be satisfied.

(B) Where the debt exceeds the market value of the property and the borrower is *not* released from liability, the account credit will be the market value (less outstanding liens, if any).

(ii) In a foreclosure, the account credit will be the amount of FmHA or its successor agency under Public Law 103–354's bid *except* when incremental bidding as provided for in § 1955.15(f)(7)(ii) of this subpart was used, in which case the account credit will be the maximum bid that was authorized by the State Director.

(3) *For all types of accounts when FmHA or its successor agency under Public Law 103–354 did not acquire the property*. The sale proceeds will be handled in accordance with applicable State laws with the advice and assistance of OGC, including remittance of funds, application of the borrower's account credit, and disbursement of any funds in excess of the amount due FmHA or its successor agency under Public Law 103–354.

(4) *In cases where FmHA or its successor agency under Public Law 103–354 acquired security property by means other than voluntary conveyance or foreclosure*. In these cases, such as conveyance by a bankruptcy trustee or by Court Order, the account credit will be as follows:

(i) If the market value of the acquired property equals or exceeds the debt, the account will be satisfied.

(ii) If the debt exceeds the market value of the acquired property, the account credit will be the market value.

(f)–(l)

[50 FR 23904, June 7, 1985, as amended at 52 FR 41957, Nov. 2, 1987; 53 FR 27827, July 25, 1988; 53 FR 35764 Sept. 14, 1988; 55 FR 35295, Aug. 29, 1990; 56 FR 10147, Mar. 11, 1991; 56 FR 29402, June 27, 1991; 58 FR 38927, July 21, 1993; 58 FR 68725, Dec. 29, 1993; 60 FR 34455, July 3, 1995]

§ 1955.19 [Reserved]

§ 1955.20 Acquisition of chattel property.

Every effort will be made to avoid acquiring chattel property by having the borrower or FmHA or its successor agency under Public Law 103–354 liquidate the property according to Subpart A of Part 1962 of this chapter and apply the proceeds to the borrower's account(s). Methods of acquisition authorized are:

(a) *Purchase at the following types of sale:* (1) Execution sale conducted by the U.S. Marshal, sheriff or other party acting under Court order to satisfy judgment liens.

(2) FmHA or its successor agency under Public Law 103–354 foreclosure sale conducted by the U.S. Marshal or sheriff in States where a State Supplement provides for sales to be conducted by them.

(3) Sale by trustee in bankruptcy.

(4) Public sale by prior lienholder.

(5) Public sale conducted under the terms of Form FmHA or its successor agency under Public Law 103–354 455–4, ''Agreement for Voluntary Liquidation of Chattel Security,'' the power of sale in security agreements or crop and chattel mortgage, or similar instrument, if authorized by State Supplement.

(b) *Voluntary conveyance*. Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens *and* the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA or its successor agency under Public Law 103–354 in order to accept voluntary conveyance of chattels is not authorized. Before a voluntary conveyance from a Farmer Program loan borrower can be accepted, the borrower must be sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

(1) *Offer*. The borrower's offer of voluntary conveyance will be made on Form FmHA or its successor agency under Public Law 103–354 1955–1. If it is determined the conveyance offer can be accepted, the borrower will execute a

bill of sale itemizing each item of chattel property being conveyed and will provide titles to vehicles or other equipment, where applicable.

(2) *Acceptance of offer release from liability*. Before accepting an offer to convey chattels to FmHA or its successor agency under Public Law 103–354, the concurrence of the State Director must be obtained. When chattel security is voluntarily conveyed to the Government and the borrower and cosigner(s), if any, are to be released from liability, the servicing official will stamp the note(s) ''Satisfied by Surrender of Security and Borrower Released from Liability.'' When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with Exhibit A of Subpart B of Part 1956 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). Form FmHA or its successor agency under Public Law 103–354 1955–1 will be executed by the servicing official showing acceptance by the Government, and the satisfied note(s) and a copy of Form FmHA or its successor agency under Public Law 103–354 1955–1 will be furnished to the borrower.

(3) *Release of lien(s)*. When an offer has been accepted as outlined in paragraph (b)(2) of this section, the servicing official will release any liens of record which secured the satisfied indebtedness.

(4) *Rejection of offer*. If it is determined an offer of voluntary conveyance will not be accepted, the servicing official will indicate on Form FmHA or its successor agency under Public Law 103–354 1955–1 that the offer is rejected, execute the form, and furnish a copy to the borrower.

(c) *Attending sales*. The servicing official will:

(1) Attend all sales described in paragraph (a)(5) of this section unless an exception is authorized by the State Director because of physical danger to the FmHA or its successor agency under Public Law 103–354 employee or adverse publicity would be likely.

(2) Attend public sales by prior lienholders when the market value of the chattel property is significantly more than the amount of the prior lien(s).

(3) Obtain the advice of the State Director on attending sales described in paragraphs (a) (1), (2), and (3) of this section.

(d) *Appraising chattel property*. Prior to the sale, the servicing official will appraise chattel property using Form FmHA or its successor agency under Public Law 103–354 440–21, ''Appraisal of Chattel Property.'' If a qualified appraiser is not available to appraise chattel property, the State Director may obtain an appraisal from a qualified source outside FmHA or its successor agency under Public Law 103–354 by contract in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(e) *Abandonment of security interest*. The State Director may authorize abandonment of the Government's security interest when chattel property, considering costs of moving or rehabilitation, has no market value and obtaining title would not be in the best interest of the Government.

(f) *Bidding at sale*. (1) The servicing official is authorized to bid at sales described in paragraph (a) of this section. Ordinarily, only one bid will be made on items of chattel security unless the State Director authorizes incremental bidding. Bids will be made only when no other party bids or when it appears bidding will stop and the property will be sold for less than the amount of the Government's authorized bid. When the State Director determines attendance of an FmHA or its successor agency under Public Law 103–354 employee might pose physical danger, a written bid may be submitted to the party holding the sale. The bid(s) will be the lesser of:

(i) The market value of the item(s) less the estimated costs involved in the acquisition, care, and sale of the item(s) of security; or

(ii) The unpaid balance of the borrower's secured FmHA or its successor agency under Public Law 103–354 debt plus prior liens, if any.

(2) Bids will not be made in the following situations unless authorized by the State Director:

(i) When chattel property under prior lien has a market value which is not significantly more than the amount owed the prior lienholder. If FmHA or its successor agency under Public Law 103–354 holds a junior lien on several items of chattel property, advice should be obtained from the State Director on bidding.

(ii) After sufficient chattel property has been bid in by FmHA or its successor agency under Public Law 103–354 to satisfy the FmHA or its successor agency under Public Law 103–354 debt; prior liens, and cost of the sale.

(iii) When the sale is being conducted by a lienholder junior to FmHA or its successor agency under Public Law 103–354.

(iv) At a private sale.

(v) When the sale is being conducted under the terms of Form FmHA or its successor agency under Public Law 103–354 455–3, ''Agreement for Sale by Borrower (Chattels and/or Real Estate)''.

(g) *Payment of costs.* Costs to be paid by FmHA or its successor agency under Public Law 103–354 in connection with acquisition of chattel property will be paid as outlined in § 1955.5(d) of this subpart as recoverable costs.

NOTE: Payment of other lienholders' debts in connection with voluntary conveyance of chattels is not authorized.

(h) *Reporting acquisition of chattel property.* Acquisition of chattel property will be reported by use of Form FmHA or its successor agency under Public Law 103–354 1955–3 prepared and distributed in accordance with the FMI.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45783, Nov. 1, 1985; 51 FR 45433, Dec. 18, 1986; 53 FR 27828 July 25, 1988; 53 FR 35764, Sept. 14, 1988; 60 FR 28320, May 31, 1995]

§ 1955.21 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.22 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA or its successor agency under Public Law 103–354 officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2006–B (available in any FmHA or its successor agency under Public Law 103–354 office).

§§ 1955.23–1955.49 [Reserved]

§ 1955.50 OMB control number.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0109. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of .56 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information,

including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0109), Washington, DC 20503.

[57 FR 1372, Jan. 14, 1992]

EXHIBITS A–F [RESERVED]

EXHIBIT G OF SUBPART A—WORKSHEET FOR ACCEPTING A VOLUNTARY CONVEYANCE OF FARM CREDIT PROGRAM SECURITY PROPERTY INTO INVENTORY

_____
(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951–S for guidance in estimating the incomes and expenses to be used in this exhibit. The holding period to be used is 105 days (3.5 months).

1. Market Value of Property (Part 7, Form FmHA or its successor agency under Public Law 103–354 1922–1) $_____
   Estimated Holding Period in Years _____
2. Income
   a. Annual Rent _____ × Holding Period _____ = _____
   b. Annual Royalties _____ × Holding Period _____ = _____
   c. Other Annual Income _____ × Holding Period _____ = _____
   d. Annual Land Appreciation _____ × Holding Period _____ = _____
   e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____
   f. Other (describe) _____ × Holding Period _____ = _____

   Total Additions = $_____
3. Expenses
   a. Total Prior Lienholder Indebtedness (P and I) = _____
   b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, junior liens, etc.) List:
   _____ _____
   _____ _____ = _____
   c. Annual Taxes & Assessment _____ × Holding Period _____ = _____
   d. Annual Building Depreciation _____ × Holding Period _____ = _____
   e. Annual Management Costs _____ × Holding Period _____ = _____
   f. Total Essential Repairs to Secure & Resell = _____
   g. Annual Decrease In Land Value (if applicable) _____ × Holding Period _____ = _____
   h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____
   i. Total Interest Cost
   MKT Value $_____ × Regular[1] OL Rate _____ × Holding Period _____ = _____
   j. Value loss due to restrictions that are placed on the farm such as Conservation Easements, and Conservation Reserve Program (CRP), etc. = $_____
   k. Hazardous Waste Clean-up Costs = _____

   Total Deductions (Items a through k) = _____
4. Recovery Value End of Holding Period

1. _____	+	2. _____	–	3. _____	=	_____
Market Value		Total Additions		Total Deductions		Recovery Value

_____
County Official

_____
Date

Concurrence by:

_____
State Executive Director

_____
Date

[56 FR 15823, Apr. 18, 1991, as amended at 58 FR 44752, Aug. 25, 1993; 62 FR 44396, Aug. 21, 1997]

EXHIBIT G–1 OF SUBPART A—WORKSHEET FOR DETERMINING FARM CREDIT PROGRAMS, MAXIMUM BID ON REAL ESTATE PROPERTY

_____
(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951–S for guidance in estimating the incomes and expenses to be used in this exhibit. The holding period to be used is 105 days (3.5 months).

1. Market Value of Property (Part 7, Form FmHA or its successor agency under Public Law 103–354 1922–1) $_____
   Estimated Holding Period in Years _____
2. Income
   a. Annual Rent _____ × Holding Period _____ = _____
   _____ _____ = _____

[1] The regular operating loan rate more nearly reflects the Government's cost of money.

b. Annual Royalties _____ × Holding Period _____ = _____
c. Other Annual Income _____ × Holding Period _____ = _____
d. Annual Land Appreciation _____ × Holding Period _____ = _____
e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = $_____
f. Other (describe) _____ × Holding Period _____ = _____

Total Additions = $_____

3. Expenses
a. Total Prior Lienholder Indebtedness (P and I) = _____
b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, etc.) List:
_____ _____
_____ _____ = _____
c. Annual Taxes & Assessment _____ × Holding Period _____ = _____
d. Annual Building Depreciation _____ × Holding Period _____ = _____
e. Annual Management Costs _____ × Holding Period _____ = _____
f. Total Essential Repairs to Secure & Resell = _____
g. Annual % Decrease In Land Value (if applicable) _____ × Holding Period _____ = _____
h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____
i. Total Interest Cost
MKT Value $_____ × Regular[2] OL Rate _____ × Holding Period _____ = _____
j. Value loss due to restrictions that are placed on the farm such as Conservation Easements, and Conservation Reserve Program (CRP), etc. = $_____
k. Hazardous Waste Clean-up Costs = _____

Total Deductions (Items a through k) = _____

4. Bid will be the lesser of:

a. 1. _____	+	2. _____	–	3. _____	=	_____
Market Value		Total Additions		Total Deductions		Total

or,

b. _____	+	_____	=	_____
Unpaid FmHA or its successor agency under Public Law 103–354 Balance on Secured Debt		Prior Liens		Total

_____
County Official

_____
Date
Concurrence by:

_____
State Executive Director

_____
Date

[56 FR 15823, Apr. 18, 1991, as amended at 58 FR 44752, Aug. 25, 1993; 62 FR 44396, Aug. 21, 1997]

Subpart B—Management of Property

SOURCE: 53 FR 35765, Sept. 14, 1988, unless otherwise noted.

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for the Rural Housing Service (RHS), Rural Business–Cooperative Service (RBS), the Water and Waste programs of the Rural Utilities Service (RUS), and Farm Service Agency (FSA), herein referred to as ''Agency,'' and references contained in this subpart to the Farmers Home Administration (FmHA) are synonymous with ''Agency.'' This subpart does not apply to RHS single family housing loans or community program loans sold without insurance to the private sector. These community program loans will be serviced by the private sector and future revisions to this subpart no longer apply to such loans. This subpart covers:

(a) Management of real property which has been taken into custody by

[2]The regular operating loan rate more nearly reflects the Government's cost of money.

the respective Agency after abandonment by the borrower;

(b) Management of real and chattel property which is in Agency inventory; and

(c) Management of real and chattel property which is security for a guaranteed loan liquidated by an Agency (or which the Agency is in the process of liquidating).

[61 FR 59778, Nov. 22, 1996]

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA or its successor agency under Public Law 103–354 will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA or its successor agency under Public Law 103–354 will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in subpart A of part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA or its successor agency under Public Law 103–354.

Contracting Officer (CO). CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

Custodial property. Borrower-owned real property and improvements which serve as security for an FmHA or its successor agency under Public Law 103–354 loan, have been abandoned by the borrower, and of which FmHA or its successor agency under Public Law 103–354 has taken possession.

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Government. The United States of America, acting through the FmHA or its successor agency under Public Law 103–354, U.S. Department of Agriculture.

Indian reservation. 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.

Inventory property. Real and chattel property and related rights to which the Government has acquired title.

Loans to individuals. Farmer Program loans, as defined above, whether to individuals or entities; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

Loans to organizations. Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use (Grazing Associations) Business and Industrial (B&I) to both individuals and groups, Rural Development

Loan Fund (RDLF), Intermediary Relending Program (IRP), Nonprofit National Corporation (NNC), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA or its successor agency under Public Law 103–354 requirements for existing housing as described in subpart A of part 1944 of this chapter. It may contain a structure which would meet program standards; however, is so remotely located it would not serve as an adequate residential unit or an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

Nonrecoverable cost is a contractual or noncontractual program loan cost expense not chargeable to a borrower, property account, or part of the loan subsidy.

Office of the General Counsel (OGC). The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

Recoverable cost is a contractual or noncontractual program loan expense chargeable to a borrower, property account, or part of the loan subsidy.

Servicing official. For loans to individuals as defined in this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For Rural Development Loan Fund and Intermediary Relending Program loans, the servicing official is the Director, Business and Industry Division. For Nonprofit National Corporations loans, the servicing official is Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

Suitable property. For FSA inventory property, real property that can be used for agricultural purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. It also includes a residence or other off-farm site that could be used as a basis for a farming operation. For agencies other than FSA, real property that could be used to carry out the objectives of the Agency's loan program with financing provided through that program.

Surplus property. For FSA inventory property, real property that cannot be used for agricultural purposes including nonfarm properties. For other agencies, property that cannot be used to carry out the objectives of financing available through the applicable loan program.

[53 FR 35765, Sept. 14, 1988, as amended at 56 FR 29402, June 27, 1991; 57 FR 19525, 19528, May 7, 1992; 58 FR 58648, Nov. 3, 1993; 62 FR 44396, Aug. 21, 1997; 63 FR 41716, Aug. 5, 1998]

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this

subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s), if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State supplement may be issued if necessary to further define ''abandonment'' based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmers Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of this part. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) *Taking security property into FmHA or its successor agency under Public Law 103–354 custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of this part, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of § 1965.26 of Subpart A of Part 1965 of this chapter will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA or its successor agency under Public Law 103–354 to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this chapter.

(ii) If the unpaid loan balance plus recoverable costs exceeds the State Director's loan approval authority, the

State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of this part and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that foreclosure be initiated in accordance with § 1955.15 of Subpart A of this part and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property*. The FmHA or its successor agency under Public Law 103–354 official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises*. If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA or its successor agency under Public Law 103–354 has taken the real property into custody.

Actions by FmHA or its successor agency under Public Law 103–354 must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA or its successor agency under Public Law 103–354 security.

(2) *Repairs to custodial property*. Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the state Director.

(d) *Emergency advances where liquidation is pending*. Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs*. Income received from the property will be handled in accordance with FmHA or its successor

agency under Public Law 103–354 Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office) and applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost. Costs will be paid in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(f) *Off-site procurements.* Circumstances may require off-site procurement action(s) to be taken by FmHA or its successor agency under Public Law 103–354 to protect custodial, security or inventory property from damage or destruction and/or protect the Government's investment in the property. Such procurements may include, but are not limited to construction or reconstruction of roads, sewers, drainage work or utility lines. This type work may be accomplished either through FmHA or its successor agency under Public Law 103–354 procurement or cooperative agreement. However, if FmHA or its successor agency under Public Law 103–354 is obtaining a service or product for itself only, it must be a procurement and any such actions will be in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). Funding will come from the appropriate insurance fund.

(1) *Conditions for procurement.* Such expenditures may be made only when all of the following conditions are met:

(i) A determination is made that failure to procure work would likely result in a property loss greater than the expenditure;

(ii) There are no other feasible means (including cooperative agreements) to accomplish the same result;

(iii) The recovery of such advance(s) is not authorized by security instruments in the case of security or custodial property (no such limitation exists for inventory property);

(iv) Written documentation supporting subparagraphs (i), (ii) and (iii) has been obtained from the authorized program official;

(v) Approval has been obtained from the appropriate Assistant Administrator.

(2) *Direct procurement action.* Where direct procurement action is contemplated, an opinion must be obtained from the Regional Attorney that:

(i) FmHA or its successor agency under Public Law 103–354 has the authority to enter the off-site property to accomplish the contemplated work, or

(ii) A specific legal entity has authority to grant an easement (right-of-way) to FmHA or its successor agency under Public Law 103–354 for the contemplated work and such an easement, in a form approved by the Regional Attorney, has been obtained.

(3) *Cooperative agreements.* Cooperative agreements between FmHA or its successor agency under Public Law 103–354 and other entities may be made to accomplish the requirement where the principal purpose is to provide money, property, services or items of value to state or local governments or other recipients to accomplish a public purpose. Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) is an example of a typical cooperative agreement. A USDA handbook providing detailed guidance for all parties is available from the USDA—Office of Operations and Finance. Although cooperative agreements are not a contracting action, the authority, responsibility and administration of these agreements will be handled consistent with contracting actions.

(4) *Consideration of maintenance agreements.* Maintenance requirements must be considered in evaluating the economic benefits of off-site procurements. Where feasible, arrangements or agreements should be made with state, local governments or other entities to ensure continued maintenance by dedication or acceptance, letter agreements, or other applicable statutes.

[53 FR 35765, Sept. 14, 1988, as amended at 54 FR 20521, May 12, 1989; 57 FR 36591, Aug. 14, 1992]

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority*. Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2) or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Regional Director may or may not concur that the proposed action does or does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review*. Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions*. In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§ 1955.57 Real property containing underground storage tanks.

Within 30 days of acquisition of real property into inventory, FmHA or its successor agency under Public Law 103–354 must report certain underground storage tanks to the State agency identified by the Environmental Protection Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA or its successor agency under Public Law 103–354 since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are *exempt* from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under; (i) The Natural Gas Pipeline Safety Act of 1968; (ii) the Hazardous Liquid Pipeline Safety Act of 1979; or (iii) for an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA or its successor agency under Public Law 103–354 inventory property with a reportable underground storage tank will be informed of the reporting requirement, and provided a copy of the form filed by FmHA or its successor agency under Public Law 103–354.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA or its successor agency under Public Law 103–354 will comply with such requirements and a State supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA or its successor agency under Public Law 103–354 personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

§§ 1955.58–1955.59 [Reserved]

§ 1955.60 Inventory property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. Routine care and maintenance will be provided according to § 1955.64 of this subpart to preserve and protect the property. Repairs are limited to those essential to prevent further deterioration of the property or to remove a health or safety hazard to the community in accordance with § 1955.64(a) of this subpart unless State law permits full recovery of cost of repairs in which case usual policy on repairs is applicable. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA or its successor agency under Public Law 103–354 will not rent the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of this part.

[54 FR 20522, May 12, 1989]

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

Advice and assistance will be obtained from OGC where eviction from realty or dispossession of chattel property is necessary. Where OGC has given written authorization, eviction may be effected through State courts rather than Federal courts when the former borrower is involved, or through local courts instead of Federal/State courts when the party occupying/possessing the FmHA or its successor agency under Public Law 103–354 property is not the former borrower. In those cases, a State Supplement will be

issued to provide explicit instructions. For MFH, eviction of tenants will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

[54 FR 20522, May 12, 1989]

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA or its successor agency under Public Law 103–354 lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA or its successor agency under Public Law 103–354 official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA or its successor agency under Public Law 103–354 unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA or its successor agency under Public Law 103–354 unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA or its successor agency under Public Law 103–354 file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA or its successor agency under Public Law 103–354 from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted according to FmHA or its successor agency under Public Law 103–354 Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office) and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA or its successor agency under Public Law 103–354 loan account, if any.

(iii) To the borrower, if whereabouts are known.

(2) If personal property is not sold, a mover or hauler may be authorized to

take the items for moving costs. Refer to FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office) for guidance.

(c) *Payment of costs*. Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA or its successor agency under Public Law 103–354 will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property*. Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State laws.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property can be used for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Determination*. Property which secured loans or was acquired under the CONACT will be classified as suitable or surplus in accordance with the definitions for''suitable'' and ''surplus'' found in § 1955.53 of this subpart. For FSA property, the county committee will make this determination. For other agencies, this determination will be made by the State Director, or designee.

(b) *Grouping and subdividing farm properties larger than family-size*. The county official will subdivide farm properties larger than family-size whenever possible into parcels for the purpose of creating one or more suitable farm properties. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. Such land shall be subdivided into parcels of land the shape and size of which are suitable for farming, the value of which shall not exceed the direct farm ownership loan limit of $200,000 or the guaranteed farm ownership loan limit of $300,000. The county official may also group two or more individual properties into one or more suitable farm properties. The environmental effects will also be considered pursuant to subpart G of part 1940 of this chapter. Also refer to § 1955.140 of subpart C of this part.

(c) *Housing property*. Property which secured housing loans will be classified as ''program'' or ''nonprogram (NP).'' After a determination of whether the property is suited for retention in the respective program, the repair policy outlined in § 1955.64(a) of this subpart will be followed. In determining whether a property is suited for retention in the program, items such as size, design, possible health and/or safety hazards and obsolescence due to functional, economic, or locational conditions must carefully be considered. Generally, program property will meet, or can be realistically repaired to meet, the standards for existing housing outlined in Subpart A of Part 1944 of this chapter provided the property is typical of modest homes in the area. The cost of repairs will generally not be considered in determining suitability. Since houses, sites and locations vary widely throughout the country, discretion and sound judgment must be used in determining suitability. The majority of houses RHS acquires will be suited for retention and classified as program property. In some instances, property will not be suited for retention in the program and will be classified as ''nonprogram (NP)'' property. Situations of this type include, but are not limited to:

(1) A dwelling which has been enlarged or improved to the point where it is clearly above modest.

(2) When a determination is made that the property should not have been financed originally.

(3) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by the Agency but which does not conform to current policies. This includes older and/or larger houses of a type which have proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(4) A dwelling which is obsolete due to location, design, construction or age.

(5) A dwelling which requires major redesign/renovation to be brought to program standards.

(d) [Reserved]

[53 FR 35765, Sept. 14, 1988, as amended at 54 FR 20522, May 12, 1989; 58 FR 58648, Nov. 3, 1993; 60 FR 34455, July 3, 1995; 60 FR 55147, Oct. 27, 1995; 62 FR 44396, Aug. 21, 1997]

§ 1955.64 [Reserved]

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority*—(1) *County Supervisor*. The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director*. The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods*. Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection of repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA or its successor agency under Public Law 103–354). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is approporiate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66(e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties*. Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(1) *Management contracts*. Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA or its successor agency under Public Law 103–354 is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the

amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, ''Affirmative Fair Housing Marketing Plan,'' subject to FmHA or its successor agency under Public Law 103–354's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in FmHA or its successor agency under Public Law 103–354 Instruction 2024–Q (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparer of his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any

FmHA or its successor agency under Public Law 103–354 office). For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 Office).

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

[53 FR 35765, Sept. 14, 1988, as amended at 57 FR 36591, Aug. 14, 1992]

§ 1955.66 Lease of real property.

When inventory real property, except for FSA and MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or the Agency on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart. The requirements of subpart G of part 1940 of this chapter will be met for all leases.

(a) *Authority to approve lease of property.* (1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of the Agency.

(2) *Inventory property.* Inventory property may be leased under the following conditions. Except for farm property proposed for a lease under the Homestead Protection Program, any property that is listed or eligible for listing on the National Register of Historic Places may be leased only after the servicing official and the State Historic Preservation Officer determine that the lease will adequately ensure the property's condition and historic character.

(i) *SFH.* SFH inventory will generally not be leased; however, if unusual circumstances indicate leasing may be prudent, the county official is authorized to approve the lease.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with subpart C of part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by a prior owner who was personally liable for a Farm Credit Programs loan must first be considered for Homestead Protection in accordance with subpart S of part 1951 of this chapter.

(B) Other than for Homestead Protection and except as provided in paragraph (c), the county official may only approve the lease of farm property to a beginning farmer or rancher who was selected through the random selection process to purchase the property but is

not able to complete the purchase due to the lack of Agency funding.

(C) When the servicing official determines it is impossible to sell farm property after advertising the property for sale and negotiating with interested parties in accordance with §1955.107 of subpart C of this part, farm property may be leased, upon the approval of the Administrator, on a case-by-case basis. This authority cannot be delegated. Any lease under this paragraph shall be for 1 year only, and not subject to renewal or extension. If the servicing official determines that the prospective lessee may be interested in purchasing the property, the lease may contain an option to purchase.

(D) When a lease with an option to purchase is signed, the lessee should be advised that FSA cannot make a commitment to finance the purchase of the property.

(E) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetlands to produce an agricultural commodity. See Exhibit M of subpart G of part 1940 of this chapter. All prospective lessees of inventory property will be notified in writing of the presence of highly erodible land, converted wetlands and wetland and other important resources such as threatened or endangered species. This notification will include a copy of the completed and signed Form SCS–CPA–26, ''Highly Erodible Land and Wetland Conservation Determination,'' which identifies whether the property contains wetland or converted wetlands or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that the Agency's compliance requirements for wetlands, converted wetlands, and highly erodible lands are contained in Exhibit M of subpart G of part 1940 of this chapter. Additionally, a copy of the completed and signed Form SCS–CPA–26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form RD 1955–20, ''Lease of Real Property,'' prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. A lease of utilities may require approval by State regulatory agencies.

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income or a credit report (to be paid for by the prospective lessee) as he or she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for FSA property.* FSA inventory property may only be leased to an eligible beginning farmer or rancher who was selected to purchase the property through the random selection process in accordance with §1955.107(a)(2)(ii) of subpart C of this part. The applicant must have been able to demonstrate a feasible farm plan and Agency funds must have been unavailable at the time of the sale. Any applicant determined not to be a beginning farmer or rancher may request that the State Executive Director conduct an expedited review in accordance with §1955.107(a)(2)(ii) of subpart C of this part.

(d) *Property securing Farm Credit Programs loans located within an Indian Reservation.* (1) State Executive Directors will contact the Bureau of Indian Affairs Agency supervisor to determine the boundaries of Indian Reservations and Indian allotments.

(2) Not later than 90 days after acquiring a property, FSA will afford the Indian tribe having jurisdiction over the Indian reservation within which the inventory property is located an opportunity to purchase the property.

The purchase shall be in accordance with the priority rights as follows:

(i) To a member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

(iii) To the Indian tribe.

(3) The Indian tribe having jurisdiction over the Indian reservation may revise the order of priority and may restrict the eligibility for purchase to:

(i) Persons who are members of such Indian tribe;

(ii) Indian corporate entities that are authorized by such Indian tribe to purchase lands within the boundaries of the reservation; or

(iii) The Indian tribe itself.

(4) If any individual, Indian corporate entity, or Indian tribe covered in paragraphs (d)(1) and (d)(2) of this section wishes to purchase the property, the county official must determine the prospective purchaser has the financial resources and management skills and experience that is sufficient to assure a reasonable prospect that the terms of the purchase agreement can be fulfilled.

(5) If the real property is not purchased by any individual, Indian corporate entity or Indian tribe pursuant to paragraphs (d)(1) and (d)(2) of this section and all appeals have concluded, the State Executive Director shall transfer the property to the Secretary of the Interior if they are agreeable. If present on the property being transferred, important resources will be protected as outlined in §§1955.137 and 1955.139 of subpart C of this part.

(6) Properties within a reservation formerly owned by entities and nontribal members will be treated as regular inventory that is not located on an Indian Reservation and disposed of pursuant to this part.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). Inventory property will not be leased for a token amount.

(1) *Farm property.* To arrive at a market rent amount, the county official will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential. The income-producing capability of the property during the term of the lease must also be considered. This rental data will be maintained in an operational file as well as in the running records of case files for leased inventory properties. While cash rent is preferred, the lease of a farm on a crop-share basis may be approved if this is the customary method in the area. The lessee will market the crops, provide FSA with documented evidence of crop income, and pay the pro rata share of the income to FSA.

(2) *SFH property.* The lease amount will be the market rent unless the lessee is a potential program applicant, in which case the lease amount may be set at an amount approximating the monthly payment if a loan were made (reflecting payment assistance, if any) calculated on the basis of the price of the house and income of the lessee, plus 1/12 of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property containing wetlands or located in a floodplain or mudslide hazard area.* Inventory property located in areas identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FSA, the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease. Property containing floodplains and wetlands will be leased

subject to the same use restrictions as contained in § 1955.137(a)(1) of subpart C of this part.

(g) *Highly erodible land.* If farm inventory property contains ''highly erodible land,'' as determined by the NRCS, the lease must include conservation practices specified by the NRCS and approved by FSA as a condition for leasing.

(h) *Lease of FSA property with option to purchase.* A beginning farmer or rancher lessee will be given an option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation.

(1) The lease payments will not be applied toward the purchase price.

(2) The purchase price (option price) will be the advertised sales price as determined by an appraisal prepared in accordance with § 761.7 of this title.

(3) For inventory properties leased to a beginning farmer or rancher applicant, the term of the lease shall be the earlier of:

(i) A period not to exceed 18 months from the date that the applicant was selected to purchase the inventory farm, or

(ii) The date that direct, guaranteed, credit sale or other Agency funds become available for the beginning farmer or rancher to close the sale.

(4) Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with subpart N of part 1823 of this chapter.

(i) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to subpart B of part 1924 of this chapter. Expenditures on custodial property as limited in § 1955.55 (c) (2) of this subpart will be charged to the borrower's account as recoverable costs.

(j) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit.

(k) *Lease form.* Form RD 1955–20 approved by OGC will be used by the agency to lease property.

(l) *Lease income.* Lease proceeds will be remitted according to subpart B of part 1951 of this chapter.

(1) *Custodial property.* The proceeds from a lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense.

(2) *Inventory property.* The proceeds from a lease of inventory property will be applied to the lease account.

[62 FR 44397, Aug. 21, 1997, as amended at 64 FR 62568, Nov. 17, 1999]

§§ 1955.67–1955.71 [Reserved]

§ 1955.72 Utilization of inventory housing by Federal Emergency Management Agency (FEMA) or under a Memorandum of Understanding between the Agency and the Department of Health and Human Services (HHS) for transitional housing for the homeless.

(a) *FEMA.* By a Memorandum of Understanding between the Agency and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

(b) *HHS.* By a Memorandum of Understanding between the Agency and HHS, inventory housing property not under lease or sales agreement may be made available by lease to public bodies and nonprofit organizations to provide transitional housing for the homeless. See Exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). Authority is hereby delegated to the

State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors. Copies of all executed leases and/or questions regarding this program should be referred by State Offices to the Single Family Housing Servicing and Property Management (SFH/SPM) Division in the National Office.

[54 FR 20523, May 12, 1989, as amended at 60 FR 34455, July 3, 1995]

§§ 1955.73–1955.80 [Reserved]

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart, or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law, if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the appropriate program Assistant Administrator or upon a request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

[53 FR 35765, Sept. 14, 1988, as amended at 58 FR 58649, Nov. 3, 1993]

§ 1955.82 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA or its successor agency under Public Law 103–354 officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83–1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0110.

EXHIBITS TO SUBPART B

All exhibits are available in any FmHA or its successor agency under Public Law 103–354 County Office. Exhibit B is also published in the Code of Federal Regulations.

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

EXHIBIT B—NOTIFICATION OF TRIBE OF AVAILABILITY OF FARM PROPERTY FOR PURCHASE

(To Be Used By Farm Service Agency to Notify Tribe)

From: County official
To: (Name of Tribe and address)
Subject: Availability of Farm Property for Purchase

[To be Used within 90 days of acquisition]

Recently the Farm Service Agency (FSA) acquired title to _____ acres of farm real property located within the boundaries of your Reservation. The previous owner of this property was _____. The property is available for purchase by persons who are members of your tribe, an Indian Corporate entity, or the tribe itself. Our regulations provide for those three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of categories. Following is a more detailed description of these categories:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FSA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities. You may restrict eligible Indian corporate entities to those authorized by your Tribe to purchase

lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to purchase the property. If available, Indian Land Acquisition funds may be used or the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FSA county office of your selection or intentions within 45 days of receipt of this letter, regarding the purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned above, please contact our office. If the Tribe wishes to purchase the property, but is unable to do so at this time, contact with the FSA county office should be made.

Sincerely,

County official

[62 FR 44399, Aug. 21, 1997]

EXHIBIT C—COOPERATIVE AGREEMENT (EXAMPLE)

EXHIBIT D—FACT SHEET—THE FEDERAL INTERAGENCY TASK FORCE ON FOOD AND SHELTER FOR THE HOMELESS

Subpart C—Disposal of Inventory Property

INTRODUCTION

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property. Credit sales of inventory property to ineligible (nonprogram (NP)) purchasers will be handled in accordance with subpart J of part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this subpart. This subpart does not apply to Single Family Housing (SFH) inventory property.

[50 FR 23904, June 7, 1985, as amended at 58 FR 52652, Oct. 12, 1993; 61 FR 59778, Nov. 22, 1996]

§ 1955.102 Policy.

The terms ''nonprogram (NP)'' and ''ineligible'' may be used interchangeably throughout this subpart, but are identical in their meaning. Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that will enable a qualified applicant for one of Farmers Home Administration or its successor agency under Public Law 103–354s (FmHA or its successor agency under Public Law 103–354's) loan programs to meet the objectives of that loan program, preference will be given to the program applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: (RH) property; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

[53 FR 35776, Sept. 14, 1988, as amended at 58 FR 52652, Oct. 12, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.103 Definitions.

As used in this subpart, the following apply:

Approval official. The FmHA or its successor agency under Public Law 103–354 official having loan and grant approval authority auhorized under Subpart A of Part 1901 of this chapter.

Auction sale. A public sale in which property is sold to the highest bidder in open verbal competition.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Is an eligible applicant for FO loan assistance in accordance with

§ 1943.12 of subpart A of part 1943 of this chapter or § 1980.180 of subpart B of part 1980 of this chapter.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 25 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103–354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103–354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103–354 debt.

Capitalization value. The value determined in accordance with subpart E of part 1922 of this chapter.

Closing agent. An attorney or title insurance company which is approved as a loan closing agent in accordance with subpart B of part 1927 of this chapter.

CONACT or CONACT property, Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA or its successor agency under Public Law 103–354.

Credit sale. A sale in which financing is provided to an applicant for the purchase of inventory property.

Decent, safe and sanitary (DSS) housing. Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949, as amended. ''DSS'' housing unit(s) are structures

which meet the requirements of FmHA or its successor agency under Public Law 103–354 as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements:

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems,

(4) Meet the Thermal Performance Standards as outlined in exhibit D of subpart A of part 1924 of this chapter, and

(5) Are safe; that is, a hazard does not exist that would endanger the safety of dwelling occupants.

Eligible terms. Credit terms, for other than SFH or MFH property sales, prescribed in FmHA or its successor agency under Public Law 103–354 program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For SFH and MFH properties, see the definition of ''Program terms.''

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF).

Homestead protection (FP only). The program which permits former Farmer Program borrowers to lease their former principal residence with an option to buy. See subpart S of part 1951 of this chapter.

Indian Reservation. 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.

Ineligible terms. Credit terms, for other than SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA or its successor agency under Public Law 103–354's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as surplus. Loans made on ineligible terms are classified as Nonprogram (NP) loans and are serviced accordingly. For SFH and MFH properties, see the definition of ''Nonprogram (NP) terms.''

Inventory property. Property for which title is vested in the Government and which secured an FmHA or its successor agency under Public Law 103–354 loan or which was acquired from another Agency for program purposes.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Negotiated sale. A sale in which there is a bargaining of price and/or terms.

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA or its successor agency under Public Law 103–354 requirements for existing housing as described in subpart A of part 1944 of this chapter. It may contain a structure which would meet program standards, however is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

Nonprogram (NP) terms. Credit terms for SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA or its successor agency under Public Law 103–354's loan programs. Applicable when the purchaser does not meet program

eligibility requirements or when the property is classified as nonprogram (NP). Loans made on NP terms are classified as NP loans and are serviced accordingly. For property other than SFH and MFH, see the definition of ''Ineligible terms.''

Organization property. Property for which the following loans were made is considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-In-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

Owner. An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory.

Participating broker. A duly licensed real estate broker who has executed a listing agreement with FmHA or its successor agency under Public Law 103–354.

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

Program terms. Credit terms for SFH or MFH property sales, prescribed in FmHA or its successor agency under Public Law 103–354 program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For property sales other than SFH and MFH, see the definition of ''Eligible terms.''

Regular FmHA or its successor agency under Public Law 103–354 sale. Sale made by other than sealed bid, auction, or negotiation by FmHA or its successor agency under Public Law 103–354 employees or real estate brokers.

Regular sale. Sale by FmHA or its successor agency under Public Law 103–354 employees or real estate brokers other than by sealed bid, auction or negotiation.

Safe. No hazard exists on property which would likely endanger the health or safety of occupants or users.

Sealed bid sale. A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

Servicing official. For loans to individuals, as defined in § 1955.53 of subpart B of part 1955 of this chapter, the servicing official is the County Supervisor. For all other loans, excluding insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

Socially disadvantaged applicant. An applicant/borrower who has been subjected to racial, ethnic, or gender prejudice because of his/her identity as a member of a group, without regard to his/her individual qualities. For entity applicants, the majority interest has to be held by socially disadvantaged individuals. FmHA or its successor agency under Public Law 103–354 has identified socially disadvantaged groups to consist only of Women, Blacks, American Indians, Alaskan Natives, Hispanic, Asians, and Pacific Islanders.

Suitable property. For FSA inventory property, real property that can be used for agricultural purposes, including those farm properties that may be used as a start-up or add-on parcel of farmland. It would also include a residence or other off-farm site that could be used as a basis for a farming operation. For Agencies other than FSA, real property that could be used to carry out the objectives of the Agency's loan programs with financing provided through that program.

Surplus property. For FSA inventory property, real property that cannot be used for agricultural purposes including nonfarm properties. For other agencies, property that cannot be used to carry out the objectives of financing available through the applicable loan program.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45783, Nov. 1, 1985; 51 FR 18436, May 20, 1986; 53 FR 27830, July 25, 1988; 53 FR 30664, Aug. 15, 1988; 53 FR 35776, Sept. 14, 1988; 56 FR 29403, June 27, 1991; 56 FR 67484, Dec. 31, 1991; 57 FR 19525, 19528, May 7, 1992; 57 FR 31642, July 17, 1992; 58 FR 44752, Aug. 25, 1993; 58 FR 48290, Sept. 15, 1993; 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority*. FmHA or its successor agency under Public Law 103–354 officials will redelegate authorities to the maximum extent possible, consistent with program objectives and available resources.

(1) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(2) Except as provided in paragraph (a)(1) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(3) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(4) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

(b) *Responsibility*. (1) National Office program directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and insuring compliance with FmHA or its successor agency under Public Law 103–354 regulations.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA or its successor agency under Public Law 103–354 regulations and State Supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance*. The servicing official has the authority to offer for sale, accept and/or reject bids or offers for inventory property regardless of amount. Any credit request, however, must be approved by an approval official within his/her respective loan approval authority as outlined in the applicable Exhibits of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 office).

[53 FR 27830, July 25, 1988]

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT (CONACT) REAL PROPERTY

§ 1955.105 Real property affected (CONACT).

(a) *Loan types*. Sections 1955.106–1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Reserve Conservation and Development (RC&D); Watershed (WS); Association Recreation; EOC:

Rural Renewal; Water Facility; Business and Industry (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporation (NNC); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Homestead Protection, as set forth in Subpart S of Part 1951 of this chapter, is only applicable to Farmer Program loans as defined in § 1955.103 of this subpart.

(b) *Controlled substance conviction.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of ''controlled substance'') prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services,'' that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(c) *Effects of farm property sales on farm values.* State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA or its successor agency under Public Law 103–354 farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this Part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

(1) The number of farms and acres that FmHA or its successor agency under Public Law 103–354 expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory.

(3) The number of farms and acres that FmHA or its successor agency under Public Law 103–354 currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (c)(3) and (c)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) *Highly erodible land.* If farm inventory property contains ''highly erodible land,'' as determined by the SCS, the lease must include conservation practices specified by the SCS and approved by FmHA or its successor agency under Public Law 103–354 as a condition for leasing. Refer to § 1955.137(d) of this subpart for implementation requirements.

[53 FR 35777, Sept. 14, 1988, as amended at 57 FR 19528, May 7, 1992; 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification.* Before property which secured a Farm Credit Programs loan is taken into inventory, the FSA county official will advise the borrower-owner of

Homestead Protection rights (see subpart S of part 1951 of this chapter.)

(b) *Racial, ethnic, and gender consideration.* The County Supervisor will make a special effort to insure that prospective purchasers, who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial, ethnic, or gender prejudice, are informed of the availability of the Socially Disadvantaged Program. Emphasis will be placed on providing assistance to such socially disadvantaged applicants in accordance with the applicable sections of subpart A of part 1943 of this chapter.

(c) *Nonprogram (NP) borrowers.* Nonprogram (NP) borrowers are not eligible for Homestead Protection provisions as set forth in subpart S of part 1951 of this chapter. When it is determined that all conditions of § 1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and will be eligible for homestead protection.

[53 FR 35777, Sept. 14, 1988, as amended at 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.107 Sale of FSA property (CONACT).

FSA inventory property will be advertised for sale in accordance with the provisions of this subpart. If a request is received from a Federal or State agency for transfer of a property for conservation purposes, the advertisement should be conditional on that possibility. Real property will be managed in accordance with the provisions of subpart B of this part until sold.

(a) *Suitable Property.* Not later than 15 days from the date of acquisition, the Agency will advertise suitable property for sale. For properties currently under a lease, except leases to beginning farmers and ranchers under § 1955.66(a)(2)(iii) of subpart B of this part, the property will be advertised for sale not later than 60 days after the lease expires or is terminated. There will be a preference for beginning farmers or ranchers. The advertisement will contain a provision to lease the property to a beginning farmer or rancher for up to 18 months should FSA credit assistance not be available at the time of sale. The first advertisement will not be required to contain the sales price but it should inform potential beginning farmer or rancher applicants that applications will be accepted pending completion of the advertisement process. When possible, the sale of suitable FSA property should be handled by county officials. Farm property will be advertised for sale by publishing, as a minimum, two weekly advertisements in at least two newspapers that are widely circulated in the area in which the farm is located. Consideration will be given to advertising inventory properties in major farm publications. Either Form RD 1955–40 or Form RD 1955–41, ''Notice of Sale,'' will be posted in a prominent place in the county. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian reservations (see § 1955.103 of this subpart) shall be responsible for notifying those parties in § 1955.66(d)(2) of subpart B of this part.

(1) *Price.* Property will be advertised for sale for its appraised market value based on the condition of the property at the time it is made available for sale. The market value will be determined by an appraisal made in accordance with § 761.7 of this title. Property contaminated with hazardous waste will be appraised ''as improved'' which will be used as the sale price for advertisement to beginning farmers or ranchers.

(2) *Selection of purchaser.* After homestead protection rights have expired, suitable farmland must be sold in the priority outlined in this paragraph. When farm inventory property is larger than family size, the property will be subdivided into suitable family size farms pursuant to § 1955.140 of this subpart.

(i) *Sale to Beginning Farmers/Ranchers.* Not later than 75 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in § 1955.103 of this subpart, as of the time of sale.

(ii) *Random selection*. The county official will first determine whether applicants meet the eligibility requirements of a beginning farmer or rancher. For applicants who are not determined to be beginning farmers or ranchers, they may request that the State Executive Director provide an expedited review and determination of whether the applicant is a beginning farmer or rancher for the purpose of acquiring inventory property. This review shall take place not later than 30 days after denial of the application. The State Executive Director's review decision shall be final and is not administratively appealable. When there is more than one beginning farmer or rancher applicant, the Agency will select by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn name will be held in suspense pending sale to the successful applicant. The random selection drawing will be open to the public, and applicants will be advised of the time and place.

(iii) *Notification of applicants not selected to purchase suitable farmland*. When the Agency selects an applicant to purchase suitable farmland, in accordance with this paragraph, all applicants not selected will be notified in writing that they were not selected. The outcome of the random selection by lot is not appealable if such selection is conducted in accordance with this subpart.

(3) *Credit sale procedure*. Subject to the availability of funds, credit sale to program applicants will be processed as follows:

(i) The interest rate charged by the Agency will be the lower of the interest rates in effect at the time of loan approval or closing.

(ii) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(iii) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(A) Form RD 1955–49, ''Quitclaim Deed,'' or other form of nonwarranty deed approved by the Office of the General Counsel (OGC) will be used.

(B) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(iv) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, see Exhibit M of subpart G of part 1940 of this chapter. All prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

(b) *Surplus Property and Suitable Property not sold to a Beginning Farmer or Rancher*. Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with §1955.147 or §1955.148 of this subpart. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with §1955.107 (a) of this subpart but has not sold within 75 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. All prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

(1) *Advertising surplus property*. FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with the provisions or paragraph (a) of this section, within 75 days of the date of acquisition.

(2) *Sale by sealed bid or auction*. Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 105 days from the date of acquisition to the

highest bidder. Preference will be given to a cash offer which is at least *percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.) Equally acceptable sealed bid offers will be decided by lot.

(3) *Negotiated sale.* If no acceptable bid is received through the sealed bid or auction process, the State Executive Director will sell surplus property at the maximum price obtainable without further public notice by negotiation with interested parties, including all previous bidders. The rates and terms offered for a credit sale through negotiation will be within the limitations established in paragraph (b) (4) of this section. A sale made through negotiation will require a bid deposit of not less than 10 percent of the negotiated price in the form of a cashier's check, certified check, postal or bank money order, or bank draft payable to FSA. Preference will be given to a cash offer which is at least* percent of the highest offer requiring credit. [*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.] Equally acceptable offers will be decided by lot.

(4) *Rates and terms.* Subject to the availability of funds, rates and terms for Homestead Protection will be in accordance with subpart S of part 1951 of this chapter. Sales of suitable property offered to program eligible applicants will be on rates and terms provided in subpart A of part 1943 of this chapter. Surplus property and suitable property which has not been sold to program eligible applicants will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. The State Executive Director will determine the loan terms for surplus property within these limitations. A credit sale made on ineligible terms will be closed at the interest rate in effect at the time the credit sale was approved. After extensive sales efforts where no acceptable offer has been received, the State Executive Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return for the Government. The term of financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

[62 FR 44399, Aug. 21, 1997, as amended at 64 FR 62569, Nov. 17, 1999]

§1955.108 Sale of (CONACT) property other than FSA property.

Program officials will immediately contact the National Office whenever they acquire real property to obtain further instructions on the time frames and procedures for advertising and disposing of such property.

[62 FR 44401, Aug. 21, 1997]

§1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' should be used for all eligible FSA applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of FSA loan. Purchasers requesting credit on ineligible terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

(b) [Reserved]

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to the Agency and handled in accordance with subpart B of part 1951 of this chapter.

(d)–(e) [Reserved]

(f) *Earnest money*. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's downpayment.

(g) *Closing and reporting sales*. Title clearance, loan closing and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA or its successor agency under Public Law 103–354 1955–49, in accordance with § 1955.141(a) of this subpart.

(h) *Classification*. Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) [Reserved]

(j) *Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.''* The County Supervisor or District Director must review Form FmHA or its successor agency under Public Law 103–354 1910–11 ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant, and the form must be signed by the applicant.

[53 FR 35780, Sept. 14, 1988, as amended at 54 FR 29333, July 12, 1989; 58 FR 52652, Oct. 12, 1993; 60 FR 34455, July 3, 1995; 62 FR 44401, Aug. 21, 1997]

RURAL HOUSING (RH) REAL PROPERTY

§ 1955.110 [Reserved]

§ 1955.111 Sale of real estate for RH purposes (housing).

Sections 1955.112 through 1955.120 of this subpart pertain to the sale of acquired property pursuant to the Housing Act of 1949, as amended, (RH property). Single family units (generally which secured loans made under section 502 or 504 of the Housing Act of 1949, as amended) are referred to as SFH property. All other property is referred to as MFH property. Notwithstanding the provisions of §§ 1955.112 through 1955.118 of this subpart, § 1955.119 is the governing section for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless.

[55 FR 3942, Feb. 6, 1990]

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA or its successor agency under Public Law 103–354*. Sales customarily will be made by FmHA or its successor agency under Public Law 103–354 personnel in accordance with §§ 1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method is used. No earnest money will be collected in connection with sales by FmHA or its successor agency under Public Law 103–354. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator, Housing.

(b) *Real estate brokers*. The County Office will utilize the services of real estate brokers for regular sales when there are five or more properties in inventory at any one time during the calendar year. When real estate brokers are used, first consideration will be given to utilizing such services under an exclusive broker contract as provided for in § 1955.130 of this subpart. Only when it is determined that an exclusive broker contract is not practicable, will the services of real estate brokers under an open listing agreement be utilized. The use of real estatebrokers in offices having less than five properties in inventory at any one time during the calendar year is optional provided staffing and workload permit diligent and timely sales by FmHA or its successor agency under Public Law 103–354. When broker services for SFH are utilized, the FmHA or its successor agency under Public Law 103–354 office will not conduct direct sales, but will refer inquiries to the broker or list of participating brokers. However, if FmHA or its successor agency under Public Law 103–354 has been approached by a potential buyer desiring to purchase a specific property and a sales contract has been accepted, the property will not be listed for sale with real estate brokers. Earnest

money held by real estate brokers will be used to pay the purchaser's closing costs with any balance of the costs to be paid by the purchaser. Any required earnest money deposit is exclusive of any required credit report fee. Brokers may only be used for MFH with authorization of the Assistant Administrator, Housing.

(c) *Sealed bid or auction.* The use of sealed bids or auctions is an effective method by which to sell inventory property. If the State Director determines that NP SFH property has been given adequate market exposure and that diligent sales efforts have not produced buyers, or under unusual circumstances as outlined in § 1955.115(a)(1) of this subpart, he/she will authorize sale by sealed bid or auction unless additional sales methods appear more prudent. Program SFH property will be sold by regular sale *only,* unless the Assistant Administrator, Housing, authorizes sale by sealed bid or auction. The State Director will request such authorization when all reasonable marketing efforts fail to produce buyers and the conditions of § 1955.114(a)(6) of this subpart have been met. The case file, including documentation of all marketing efforts, will be forwarded to the Assistant Administrator, Housing, ATTN: Single Family Housing Servicing and Property Management (SFH/SPM) Division, to request authority to sell program property by sealed bid or auction. The decision to utilize a sealed bid or auction must be carefully weighed when the property is located in a subdivision, since the resultant sale may have an adverse effect on surrounding property values. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

[53 FR 27831, July 25, 1988]

§ 1955.113 Price (housing).

Real property will be offered or listed for its present market value, as adjusted by any administrative price reductions provided for in this section. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any. Market value for multifamily housing projects will be determined through an appraisal conducted in accordance with subpart B to part 1922 of this chapter. Multi-family housing appraisals conducted shall reflect the impact of any restrictive-use provisions attached to the project as part of the credit sale.

(a) *SFH price reduction.* SFH property will be appraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. For ease in computing dates for administrative price reductions, each month is assumed to have thirty days. The following schedule of administrative price reductions will be followed:

(1) *Program property.* If program property has not sold after being actively marketed at the current appraised value for 45 days during which time program applicants have exclusive rights to purchase the property, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. During the first 45 days after the price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If at the end of this 75-day period the property remains unsold, a second price reduction of 10 percent of the appraised value will be made. During the first 45 days after the second price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If the property does not sell within 75 days of the second price reduction, further guidance is provided in

§ 1955.114(a)(6) and Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office) of this subpart.

(2) *Nonprogram (NP) property*. If NP property has not been sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after an additional 45-day period of active marketing, one further price reduction of 10 percent of the appraised value will be made. If the property does not sell within 45 days of the second price reduction, further guidance is provided in § 1955.115(a)(1) and Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office) of this subpart.

(b) *MFH price reduction*. For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions in price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

[53 FR 27831, July 25, 1988; 54 FR 6875, Feb. 15, 1989, as amended at 58 FR 38927, July 21, 1993]

§ 1955.114 Sales steps for program property (housing).

Program property will be sold by regular sale unless the Assistant Administrator, Housing, authorizes another method. If the State Director determines that program property has been given adequate market exposure and that diligent sales efforts including the use of real estate brokers has not produced purchasers, the State Director may request the Assistant Administrator, Housing, to authorize sale by sealed bid or public auction as specified in § 1955.112(c) of this subpart.

(a) *Single family housing (SFH)*. Sale prices will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property or list it with real estate brokers for regular sale under the provisions of § 1955.112 of this subpart. See Exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) which outlines chronologically the sales steps for program property.

(1) The following provisions apply to all offers to purchase SFH inventory property:

(i) Program property will be available for purchase only by program applicants for the first 45 days from the date of the initial offering or listing, and for the first 45 days following the date of any reduction in price. During these 45-day period(s), offers from others may be received and held until the first business day following the 45-day period (the 46th day) when any such offer(s) will be considered as received on the 46th day along with offers received on that same (46th) day. After the expiration of each 45-day exclusive period for program applicants, program property may be purchased by offerors requesting credit on program terms, nonprogram (NP) terms or for cash in the order of priority set forth in paragraph (a)(3) of this section.

(ii) In regular sales, an acceptable offer *must* be for at least the sale price. No offer for less than the sale price will be considered, accepted or held. Offers will be considered as acceptable or unacceptable independent of any accompanying credit request (on program or NP terms).

(iii) All offers will be date-stamped when received. Selection of equally acceptable offers, considering offers in the category order outlined in paragraph (a)(3) of this section, received on the same business day will be made by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror, unless the offeror has specifically noted on the offer that it may not be held as a back-up offer.

(iv) An offer may be submitted any time after the effective date the property is available for sale or any price reduction; however, it is not considered until five business days after the effective date. An offer received during the five business day period is considered

on the 6th day, at the same time as any offer received on the 6th day.

(v) If an offer subject to FmHA or its successor agency under Public Law 103–354 financing is accepted, and the offeror's credit request is later denied, the next offer (if any) will be accepted regardless of whether the rejected applicant appeals the adverse decision (NP applicants do not receive appeal rights). In cases involving program property, if no back-up offers are on hand, the property will be reoffered/relisted for sale utilizing the balance of any outstanding retention period. Property will not be held off the market pending the outcome of an appeal.

(2) *Effective date and method of offering.* When ready for sale, each property will be offered for sale by use of Form FmHA or its successor agency under Public Law 103–354 1955–43 unless FmHA or its successor agency under Public Law 103–354 has on hand a signed offer from a program applicant to purchase a specific program property or an offer from any offeror to purchase a specific NP property. The date the form is posted or mailed to real estate brokers is the effective date the offer for sale has begun.

Listings will provide for sales on program and NP terms, as appropriate.

(3) *Priority of offers.* For program properties, acceptable offers received after the 45-day retention period specified in paragraph (a)(1)(i) of this section have priority in the order given in paragraphs (a)(3) (i), (ii), (iii) and (iv) of this section. For NP properties, acceptable offers have priority in the order given in paragraphs (a)(3) (ii), (iii) and (iv) of this section. Program applicants may purchase NP property, however, credit may only be extended on NP terms.

(i) Offers with requests for credit on program terms. An offer from an applicant requesting credit on program terms in excess of the sale price will be considered as equally acceptable with other acceptable offers from program applicants and will be sold for the sale price.

(ii) Cash offers, in descending order from highest to lowest, provided the cash offer is higher than any other offer which falls into the parameters of paragraph (a)(3)(iii) of this section multiplied by the current cash preference percentage listed in exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office).

(iii) Offers with requests for credit on NP terms in descending order from highest to lowest, for *more* than the sale price. An offer with a request for credit in excess of the market value of the property will not be accepted. If an offer of this type is received, the offeror will be given the opportunity to reduce the credit request to the market value (or lower) with no change to be made in the offered price.

(iv) Offers with requests for credit on NP terms for the sale price.

(4) *Back-up offers and notification to offerors.* Back-up offers will be taken in accordance with paragraph (a)(1)(iii) of this section. County offices utilizing the services of real estate brokers will advise the brokers of changes in the status of the property. County offices not utilizing real estate brokers will advise offerors of changes in the status of the property utilizing exhibit E of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) or similar format. Use of exhibit E is optional in offices utilizing real estate brokers.

(5) *Finalizing sales.* Credit sales on program terms will be made in accordance with § 1955.117 of this subpart and subpart A of part 1944 of this chapter. Cash sales will be handled in accordance with § 1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

(6) *Unsold property.* If program property remains unsold after eight months of active marketing, the case file, with documentation of all marketing efforts, will be forwarded to the State Office for review with a recommendation of future sales efforts. The State Director will determine whether a request should be made to the Assistant Administrator, Housing, to sell the property by sealed bid or auction, or whether additional guidance such as, but not limited to advertising, reappraisal, offering a special effort sales bonus, or

20-year amortization factor (with balloon after 10 years) on NP financing may facilitate a sale.

(b) *Multiple family housing*. The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, any restrictive-use provisions the project will be subject to and made part of the title, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program, which will be reviewed by the State Director or designee. The sale/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA or its successor agency under Public Law 103–354 will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with subpart B of part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but not on the sale date. All offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA or its successor agency under Public Law 103–354 employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by theapproval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer. The selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA or its successor agency under Public Law 103–354 1955–40, or another appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization from the Assistant Administrator, Housing. Cash sales of program property will remain subject to restrictive-use provisions determined needed and included in the advertisement. The deed will contain the applicable restrictive-use provisions. Tenants and prospective tenants will receive the applicable protections for the specific restrictive-use provision contained in subpart E of part 1965 of this chapter.

(c) *Single family inventory converted to MFH*. Written offers by nonprofit organizations, public bodies or for-profit entities, which have good records of providing low income housing under section 515, will be considered by FmHA or its successor agency under Public Law 103–354 for the purchase of multiple SFH units for conversion to MFH. Section 514 credit sale mortgages may contain repayment terms up to 33 years and section 515 credit sale mortgage terms may be up to 50 years.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form

AD–622, ''Notice of Preapplication Review Action.'' A preapplication with the information outlined in Exhibit A–7 of subpart E of part 1944 of this chapter, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator, Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of subpart E of part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of ''project'' set forth in subpart E of part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suited for the SFH program, it may be offered for sale as a SHF unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to a program RH applicant on *program terms only*—not for cash or on NP terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or its successor agency under Public Law 103–354 or through real estate brokers) must state this restriction.

[53 FR 27832, July 25, 1988, as amended at 55 FR 3942, Feb. 6, 1990; 56 FR 2257, Jan. 22, 1991; 58 FR 38927, July 21, 1993; 58 FR 38949, July 21, 1993; 58 FR 52652, Oct. 12, 1993]

§ 1955.115 Sales steps for nonprogram (NP) property (housing).

The appropriate FmHA or its successor agency under Public Law 103–354 office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect changes in market conditions, repairs and improvements, if any. Form FmHA or its successor agency under Public Law 103–354 1955–43 for SFH and 1955–40 for MFH will be completed to offer the property for sale. The advertising requirements and deed restrictions in § 1955.116 of this subpart apply if the property does not meet FmHA or its successor agency under Public Law 103–354 DSS standards.

(a) *Single Family Housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. See exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) which outlines chronologically the sales steps for NP properties.

(1) *Sale by sealed bid or auction.* If a NP property has not sold within 150 days after being offered for sale, the inventory case file with documentation of marketing efforts will be submitted to the State Director. The State Director will authorize sale by sealed bid or auction in accordance with §1955.112(c) of this subpart unless additional sales methods appear more prudent. Use of the sealed bid or auction method may be considered as an initial sales effort under special or unusual circumstances such as, but not limited to, structures which have been substantially destroyed by fire or other causes.

(2) *Sale as chattel.* If efforts to sell NP property by sealed bid or auction prove unsuccessful, the structure(s) may be sold as chattel (for chattel or salvage value, as appropriate) when authorized by the State Director. When the structure is to be sold as chattel (exclusive of land) further guidance is provided in §§ 1955.121, 1955.122 and 1955.141(b) of this subpart. If no offer is received, the structure(s) may be demolished and removed from the site and then the site offered for sale. If this method is utilized, FmHA or its successor agency under Public Law 103–354 will attempt to have the structure removed in exchange for the salvageable materials by contract, otherwise, will solicit for contracts to have the structure removed in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(3) *Sale of vacant land.* When FmHA or its successor agency under Public Law 103–354 has vacant land in inventory which was security for an SFH loan, the land will be sold in accordance with this subparagraph. When the lot meets the requirements of Subpart A of Part 1944 of this chapter, and a program applicant desires to purchase the lot and construct a dwelling, a credit sale will not be made. Instead, one section 502 loan will be made which will include funds for the purchase of the lot and construction of a dwelling. Otherwise, the lot will be sold for cash or on NP terms with a loan not to exceed ten years in term and amortization.

(b) *Multiple family housing.* Sales steps will be the same as for program MFH property as provided in § 1955.114(b) of this subpart except that sales must be for cash or on NP terms as set forth in § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell NP MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review. If the housing is sold out of the FmHA or its successor agency under Public Law 103–354 program as NP property, the closing of the sale may not take place until tenants have received all notifications and benefits afforded to tenants in prepaying projects in accordance with subpart E of part 1965 of this chapter.

[53 FR 27833, July 25, 1988, as amended at 58 FR 38928, July 21, 1993; 58 FR 52652, Oct. 12, 1993]

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

For real property (exclusive of improvements) which is unsafe, refer to § 1955.137(e) of this subpart for further guidance. For all other housing inventory property which does not meet decent, safe and sanitary (DSS) standards, the provisions of this section apply.

(a) *Notices and advertising.* If the inventory property has a single family dwelling or MFH unit thereon which does not meet DSS standards as defined in § 1955.103 of this subpart, but which could meet such standards through the repair or renovation activities of the future owner, any ''Notice of Real Property For Sale,'' ''Notice of Sale,'' or other advertisement used in conjunction with advertising the property for sale must include the following language which is contained in Form FmHA or its successor agency under Public Law 103–354 1955–44, ''Notice of Residential Occupancy Restriction'':

This property contains a dwelling unit or units which FmHA or its successor agency under Public Law 103–354 has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which this property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is repaired, renovated or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480. The property must be repaired and/or renovated as follows:*.

*For advertisements, the sentence preceding the asterisk may be deleted and replaced with the following, or similar sentence: ''Contact FmHA or its successor agency under Public Law 103–354 (or any real estate broker/name of exclusive broker) for a list of items which must be repaired/renovated.'' For notices other than advertising, insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bathroom.

—Drill new well to provide for an adequate and potable water supply.

—Hook-up to community water and sewage system now being installed.

—Provide a functionally adequate, safe and operable* system. *Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.

—Install*. *Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.

—Install R-* insulation in basement walls or ceiling, R-* insulation in attic, and storm

windows/doors throughout. *Insert appropriate R-Values to meet Thermal Performance Standards.

(b) *Sale agreements*. If a housing structure in inventory does not meet DSS standards, Form FmHA or its successor agency under Public Law 103–354 1955–44 must be attached to Forms FmHA or its successor agency under Public Law 103–354 1955–45 or FmHA or its successor agency under Public Law 103–354 1955–46, as appropriate, to provide notification of the deed restriction and required repairs/renovations before the dwelling can be used for residential purposes.

(c) *Quitclaim Deed*. The following, the original of Form FmHA or its successor agency under Public Law 103–354 1955–44, or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the Quitclaim Deed for properties which do not meet DSS standards at the time of sale but which could through the repair/renovation activities of the future owner:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser (''Grantee'' herein) of the above-described real property (the ''subject property'' herein) covenants and agrees with the United States acting by and through Farmers Home Administration or its successor agency under Public Law 103–354 (the ''Grantor'' herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or its successor agency under Public Law 103–354 or the unit(s) has been completely razed, upon application to the Farmers Home Administration or its successor agency under Public Law 103–354 in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated as follows:*.'' *Insert the same items referenced in the listing notice(s) and sale agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant*. Upon request of the property owner for a release of the restrictive covenant, FmHA or its successor agency under Public Law 103–354 will inspect the property to ensure that the repairs/renovations outlined in the restrictive covenant have been properly completed or the structure(s) razed. A State Supplement outlining the procedure for releasing the restrictive covenant will be issued with the advice of OGC.

[53 FR 27834, July 25, 1988]

§ 1955.117 Processing credit sales on program terms (housing).

The following provisions apply to all credit sales on program terms:

(a) *Offers*. Form FmHA or its successor agency under Public Law 103–354 1955–45 will be used to document the offer and acceptance for regular FmHA or its successor agency under Public Law 103–354 sales. The contract is accepted prior to processing Form FmHA or its successor agency under Public Law 103–354 410–4, ''Application for Rural Housing Assistance (Non-Farm Tract),'' for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing*. The FmHA or its successor agency under Public Law 103–354 regulations pertaining to the type of credit being extended will be followed in making credit sales on program terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security, less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 3 percent of the purchase price as a cash downpayment. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and restrictive-use provisions specified by the respective program requirements.

(c) *Approval*. Forms FmHA or its successor agency under Public Law 103–354 1940–1 or FmHA or its successor agency

under Public Law 103–354 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is required.

(d) *Downpayment*. When a downpayment is made, it will be collected at closing, identified by property identification number, purchaser's name and case number (and project number for MFH sales) and remitted in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office).

(e) *Interest rate*. Upon request of the applicant, the interest rate charged by FmHA or its successor agency under Public Law 103–354 will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs*. MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA or its successor agency under Public Law 103–354 and charged to the inventory account as a nonrecoverable cost items.

(g) *Closing sale*. Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH credit sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting*. After the sale is closed, it will be reported according to § 1955.142 of this subpart.

[53 FR 27834, July 25, 1988; 54 FR 6875, Feb. 15, 1989, as amended at 58 FR 38928, July 21, 1993]

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

(a) *Cash sales*. Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser Proceeds will be remitted in accordance with subparts B and K of part 1951 of this chapter.

(b) *Credit sales*. The following provisions apply to MFH credit sales on NP terms:

(1) *Offers*. Form FmHA or its successor agency under Public Law 103–354 1955–45 or FmHA or its successor agency under Public Law 103–354 1955–46, as appropriate, will be used to document the offer and acceptance. Contract acceptance is made prior to processing a request for credit on NP terms.

(2) *Processing*. Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart B of part 1910 of this chapter. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart C of part 1910 of this chapter.

(3) *Approval.* Form FmHA or its successor agency under Public Law 103–354 1944–51 will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(4) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to subpart B and K of part 1951 of this chapter.

(5) *Interest rate.* The Section 515 RRH interest rate plus ½ percent will be charged on all types of housing credit sales, except SFH. Refer to exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

(7) *Modification of security instruments.* If applicable to the type property being sold, modification of security instruments may be made. On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-use provisions on MFH projects, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and FmHA or its successor agency under Public Law 103–354 initialing the changes.

(8) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(i) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(ii) The purchaser will pay his/her own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA or its successor agency under Public Law 103–354 from the downpayment.

(iii) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

(iv) When more than one property is bought by the same buyer and the transactions are closed at the same time, a separate promissory note will be prepared for each property, but one mortgage will cover all the properties.

(9) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(10) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

(11) *Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.''* The County Supervisor or District Director must review Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant, and the form must be signed by the applicant.

[53 FR 27835, July 25, 1988, as amended at 54 FR 29333, July 12, 1989; 55 FR 3942, Feb. 6, 1990; 58 FR 38928, July 21, 1993; 58 FR 52653, Oct. 12, 1993]

§ 1955.119 Sale of SFH inventory property to a public body or nonprofit organization.

Notwithstanding the provisions of § 1955.111 through § 1955.118 of this subpart, this section contains provisions for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for

the homeless. A public body or nonprofit organization is a nonprogram applicant. All other SFH credit sales on nonprogram terms will be handled in accordance with subpart J of part 1951 of this chapter.

(a) *Method of sale*. The method of sale is according to § 1955.112 of this subpart. Upon request from a public body or nonprofit organization, FmHA or its successor agency under Public Law 103–354 will provide a list of all SFH inventory property, regardless of whether it is listed for sale with real estate brokers. The list will indicate whether the property is program or nonprogram. Upon written notice of the organization's intent to buy a specific property, if it is not under a sale contract, FmHA or its successor agency under Public Law 103–354 will withdraw the property from the market for a period not to exceed 30 days to provide the organization sufficient time to execute Form FmHA or its successor agency under Public Law 103–354 1955–45.

(b) *Price*. The price of the property will be established according to § 1955.113 of this subpart; however, a 10 percent discount of the listed price is authorized on nonprogram property. No discount is authorized on program property.

(c) *Decent, safe and sanitary (DSS) standards*. If an organization wants to buy a property which does not meet DSS standards, FmHA or its successor agency under Public Law 103–354 will repair it to meet those standards, including thermal performance standards, unless FmHA or its successor agency under Public Law 103–354 determines it is not feasible to do so according to § 1955.64(a)(1)(ii) of subpart B of part 1955 of this chapter. The price will be adjusted to reflect any resulting change in value. Cosmetic repairs, if needed, such as painting, floor covering, landscaping, etc., are the responsibility of the organization. Form FmHA or its successor agency under Public Law 103–354 1955–44, itemizing the required repairs and FmHA or its successor agency under Public Law 103–354's agreement to complete them before closing will be made a part of Form FmHA or its successor agency under Public Law 103–354 1955–45, the sales contract, before it is signed. Required repairs must be completed before closing so DSS restrictions will not be required in the deed.

(d) *Approval and closing*. Processing cash sales or MFH credit sales on nonprogram terms is according to § 1955.118 of this subpart, except as follows:

(1) *Earnest money deposit*. No earnest money deposit is required.

(2) *Downpayment*. No downpayment is required.

(3) *Term of note*. The term of the note may not exceed 30 years.

[55 FR 3942, Feb. 6, 1990, as amended at 58 FR 52653, Oct. 12, 1993]

§ 1955.120 Payment of points (housing).

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a non-FmHA or its successor agency under Public Law 103–354 loan, the County Supervisor may authorize the payment by FmHA or its successor agency under Public Law 103–354 of not more than three points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA or its successor agency under Public Law 103–354 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA or its successor agency under Public Law 103–354 official. Points will *not* be paid to reduce the purchaser's interest rate. The payment will be deducted from the funds to be received by FmHA or its successor agency under Public Law 103–354 at closing. These payments will be handled in accordance with subpart B of part 1951 of this chapter.

[53 FR 27836, July 25, 1988. Redesignated at 55 FR 3942, Feb. 6, 1990, as amended at 58 FR 52653, Oct. 12, 1993]

CHATTEL PROPERTY

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122 through 1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid,

regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA or its successor agency under Public Law 103–354 employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days after acquisition, assistance will be requested as outlined in § 1955.143 of this subpart.

(a) *Sale to beginning farmers or ranchers.* Beginning farmers or ranchers obtaining special OL loan assistance under § 1941.15 of subpart A of part 1941 of this chapter will receive priority in the purchase of farm equipment held in government inventory during the commitment period. The County Supervisor will notify such applicants/borrowers of any farm equipment held in government inventory within the service area of the FmHA or its successor agency under Public Law 103–354 County Office. These applicants/borrowers will be given 10 working days to respond that they are interested in purchasing any or all items of equipment at the appraised fair market value established by FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 Form Letter 1955–C–1 will be used to notify applicants/borrowers of the availability of farm equipment in FmHA or its successor agency under Public Law 103–354 inventory. The equipment must be essential to the success of the operation described in the loan application in order for the applicant to have an opportunity to purchase such equipment. The County Supervisor will determine what equipment is essential.

(b) *Regular sale.* Chattels will be sold by FmHA or its successor agency under Public Law 103–354 employees at market value to program applicants. Form FmHA or its successor agency under Public Law 103–354 440–21, ''Appraisal of Chattel Property,'' will be used when appraising chattels for regular sale.

(c) *Auctions.* Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction that is widely advertised and held on a regularly scheduled basis at the same facility. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA or its successor agency under Public Law 103–354 employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(d) *Sealed bid sales.* Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least ____*percent of the highest offer requiring credit.

[*Refer to exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the current percentage.]

(e) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least _____*_____ percent of the highest offer requiring credit. [*Refer to exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the current percentage.] No public notice is required to negotiate with interested parties including priorbidders. Justification for the use of this method of

sale will be documented. A copy of the sale instrument (Form FmHA or its successor agency under Public Law 103–354 1955–47, ''Bill of Sale ''A''—Sale of Government Property'') will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA or its successor agency under Public Law 103–354 Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office). A State supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

(f) *Notification*. In many States the original owner of the chattel property must personally be notified of the sale date and method of sale within a certain time prior to the sale. The State Director then will issue a State supplement clearly stating what notices are to be sent, if any. County Supervisor will review State supplements to determine what notices must be sent to the previous owner of the chattel property prior to FmHA or its successor agency under Public Law 103–354 taking action to sell the property.

No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA or its successor agency under Public Law 103–354 1955–47, ''Bill of Sale 'A'—Sale of Government Property'') will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA or its successor agency under Public Law 103–354 Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

[50 FR 23904, June 7, 1985, as amended at 53 FR 35780, Sept. 14, 1988; 58 FR 48290, Sept. 15, 1993; 58 FR 58650, Nov. 3, 1993; 62 FR 44401, Aug. 21, 1997]

§ 1955.123 Sale procedures (chattel).

(a) *Sales*. Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Chattel sales will be made to eligible purchasers in accordance with the provisions of this chapter. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. (*Refer to exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the current percentage.) Credit sales made to ineligible purchasers will require not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 5 years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Programs property set forth in exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office). Form FmHA or its successor agency under Public Law 103–354 431–2, in conjunction with Form FmHA or its successor agency under Public Law 103–354 440–32, ''Request for Statement of Debts and Collateral,'' may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove chattel sales on eligible terms in accordance with the respective loan approval authorities in exhibit C of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 office). Applicants who have been determined ineligible, and eligible applicants who have their application disapproved, will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove chattel sales on ineligible terms in accordance with the respective type of program approval authorities in exhibit E of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 office.)

(b) *Receipt of payment*. Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA or its successor agency under Public Law 103–354. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. Payments will be handled in accordance with subpart B of part 1951 of this chapter. If full payment is not received at the time of sale, the offer will be documented by Form FmHA or its successor agency under Public Law 103–354 1955–45 or FmHA or its successor agency under Public Law 103–354 1955–46 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title*. Title will be transferred to a purchaser in accordance with § 1955.141(b) of this subpart.

(d) *Reporting sale*. Sales will be reported in accordance with § 1955.142 of this subpart.

(e) *Reporting and disposal of inventory property not sold*. Refer to §§ 1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

[50 FR 23904, June 7, 1985, as amended at 58 FR 52653, Oct. 12, 1993; 58 FR 58650, Nov. 3, 1993

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form FmHA or its successor agency under Public Law 103–354 440–21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale of Form FmHA or its successor agency under Public Law 103–354 1955–45 or Form FmHA or its successor agency under Public Law 103–354 1955–46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§§ 1955.125–1955.126 [Reserved]

USE OF CONTRACTORS TO DISPOSE OF INVENTORY PROPERTY

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office) is applicable for procurement of nonpersonal services.

[53 FR 27836, July 25, 1988]

§ 1955.128 Appraisers.

(a) *Real property*. The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator, Housing, when unusual circumstances preclude the use of a qualified FmHA or its successor agency under Public Law 103–354 MFH appraiser.) The decision will be based on the availability of comparables, the capability and availability of personnel, and the number and type of properties (such as large farms and business property) requiring valuation. For Farmer Programs real estate properties, all contract (fee) appraisers should include the sales comparison, income (when applicable), and the cost approach to value. All FmHA or its successor agency under Public Law 103–354 real estate contract appraisers must be certified as State-Certified General Appraisers.

(b) *Chattel property*. For Farmer Programs chattel appraisals, the contractor/appraiser completing the report must meet at least one of the following qualifications:

(1) Certification by a National or State appraisal society.

(2) If the contractor is not a certified appraiser and a certified appraiser is

not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for a certification in a National or State appraisal society.

(3) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

[58 FR 58650, Nov. 3, 1993]

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed in Exhibit D of FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they do business.

(a) *Type of listings*. The State Director may authorize use of exclusive listings during any calendar year. Since the Agency receives many more marketing services for its commission dollar and saves time listing the property with only one broker, it is strongly recommended that all County Offices be authorized the use of exclusive brokers.

(1) *Exclusive broker contract*. An exclusive broker contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA or its successor agency under Public Law 103–354 office awarding the contract within a defined area and for specific property or type of property. Criteria will be specified in the solicitation together with a numerical weighting system to be used (usually 1—100). Responses will be calculated on the basis of the criteria such as personal qualifications, membership in Multiple Listing Service (MLS), previous experience with FmHA or its successor agency under Public Law 103–354 sales, advertising plans, proposed innovative promotion methods, and financial capability. The responsibilities of the broker under an exclusive broker contract exceed those of the open listing agreement and therefore, an exclusive broker contract is the preferred method of listing properties.

(2) *Open listing*. Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed under the terms and conditions of Form FmHA or its successor agency under Public Law 103–354 1955–42, ''Open Real Property Master Listing Agreement.'' If this method is used, a newspaper advertisement will be published at least once yearly, or a notice sent to all real estate brokers in the counties served by the FmHA or its successor agency under Public Law 103–354 office, informing brokers that sales services are being requested. The advertising will be substantially similar to the example given in Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property. When this method is used, the FmHA or its successor agency under Public Law 103–354 office is responsible for ensuring that adequate advertising is performed to effectively market the property.

(b) *Listing notices*. Forms FmHA or its successor agency under Public Law 103–354 1955–40 or FmHA or its successor agency under Public Law 103–354 1955–43, as appropriate, will be used to provide brokers with notice of initial listing, withdrawal, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers*. All offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA or its successor agency under Public Law 103–354. Priority rules for specific categories of property are:

(1) *Program SFH*. See §1955.114(a) of this subpart.

(2) *Program MFH*. Offers will be considered from program applicants only.

(3) *NP SFH*. See §1955.115(a) of this subpart.

(4) *NP MFH*. See §1955.115(b) of this subpart.

(5) *Suitable and surplus FSA CONACT*. See §1955.107 of this subpart.

(6) *Suitable and Surplus Non-FSA CONACT*. See §1955.108 of this subpart.

(d) *Price*. No offer for less than the listed price will be accepted during the period of regular sale.

(e) *Earnest money*. The broker will collect earnest money in the amount specified in paragraph (e)(1) of this section when a sale contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA or its successor agency under Public Law 103–354. When a contract is cancelled because FmHA or its successor agency under Public Law 103–354 rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchaser's initial investment.

(1) *Amount*. The amount of earnest money collected will be:

(i) For single family properties or MFH projects of 2 to 5 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA or its successor agency under Public Law 103–354 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default*. When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA or its successor agency under Public Law 103–354 as full liquidated damages and will be remitted by the servicing official according to FmHA or its successor agency under Public Law 103–354 Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office) for application to the General Fund.

(f) *Commission*—(1) *Amount*—(i) *Exclusive broker contract*. FmHA or its successor agency under Public Law 103–354 may not set the commission rate in an exclusive broker solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any broker who submits an offer with a commission rate lower than the typical rate for such services in the area must provide documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy.

(ii) *Open listing agreement*. A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses*. The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property. The State Director may authorize use of short-term (not to exceed three months) special effort sales bonuses on a group, county, district or state-wide basis, if it appears necessary to facilitate the sale of nonprogram property.

(3) *Payment of commission.* Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving FmHA or its successor agency under Public Law 103–354 credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving FmHA or its successor agency under Public Law 103–354 credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA or its successor agency under Public Law 103–354 official by completing Form AD–838 and processing Form FmHA or its successor agency under Public Law 103–354 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA or its successor agency under Public Law 103–354 shall certify to nondiscrimination practices as provided in Form FmHA or its successor agency under Public Law 103–354 1955–42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form FmHA or its successor agency under Public Law 103–354 1955–45.

[53 FR 27836, July 25, 1988, as amended at 55 FR 3943, Feb. 6, 1990; 62 FR 44401, Aug. 21, 1997]

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* FmHA or its successor agency under Public Law 103–354 may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA or its successor agency under Public Law 103–354 official completing Form AD–838 and processing Form FmHA or its successor agency under Public Law 103–354 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

GENERAL

§ 1955.132 Pilot projects.

FmHA or its successor agency under Public Law 103–354 may conduct pilot projects to test policies and procedures for the management and disposition of inventory property which deviate from

the provisions of this subpart, but are not inconsistent with the provisions of the authorizing statute or other applicable Acts. A pilot project may be conducted by FmHA or its successor agency under Public Law 103–354 employees or by contract with individuals, organizations or other entities. Prior to initiation of a pilot project, FmHA or its successor agency under Public Law 103–354 will publish notice in the FEDERAL REGISTER of its nature, scope, and duration.

[55 FR 3943, Feb. 6, 1990]

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA or its successor agency under Public Law 103–354 extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA or its successor agency under Public Law 103–354 400–4. ''Assurance Agreement.'' The instrument of conveyance will contain the following statement:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to FmHA or its successor agency under Public Law 103–354 an acceptable Form HUD 935.2, ''Affirmative Fair Housing Marketing Plan,'' for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All FmHA or its successor agency under Public Law 103–354 and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA or its successor agency under Public Law 103–354 and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA or its successor agency under Public Law 103–354, FmHA or its successor agency under Public Law 103–354 will reappraise the property. The reappraised value of the property will serve as the amount FmHA or its successor agency under Public Law 103–354 will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA or its successor agency under Public Law 103–354 is less than $500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* FmHA or its successor agency under Public Law 103–354 does not provide any warranty on property sold from inventory. Subsequent loans may be made, in accordance with applicable loan making regulations for the respective loan program, to correct defects.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

§ 1955.135 Taxes on inventory real property.

Where FmHA or its successor agency under Public Law 103–354 owned property is subject to taxation, taxes and assessment installments will be prorated between FmHA or its successor agency under Public Law 103–354 and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms FmHA or its successor agency under Public Law 103–354 1955–45 or FmHA or its successor agency under Public Law 103–354 1955–46. The purchaser will be responsible for paying all taxes and assessment installments accruing after the title is conveyed.

The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only the prorata share of assessment installments for property improvements (water, sewer, curb and gutter, etc.) accrued as of the date property is sold will be paid by FmHA or its successor agency under Public Law 103–354 for inventory property. At the closing, payment of taxes and assessment installments due to be paid by FmHA or its successor agency under Public Law 103–354 will be paid from cash proceeds FmHA or its successor agency under Public Law 103–354 is to receive as a result of the sale or by voucher and will be accomplished by one of the following:

(a) For purchasers receiving FmHA or its successor agency under Public Law 103–354 credit and required to escrow, FmHA or its successor agency under Public Law 103–354's share of accrued taxes and assessment installments will be deposited in the purchaser's escrow account.

(b) For purchasers not required to escrow, accrued taxes and assessment installments may be:

(i) Paid to the local taxing authority if they will accept payment at that time; or

(ii) Paid to the purchaser. If appropriate, for program purchasers, the funds can be deposited in a supervised bank account until the taxes can be paid.

(c) Except for SFH, deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser.

[56 FR 6953, Feb. 21, 1991]

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an enviornmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA or its successor agency under Public Law 103–354 approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500–3, ''Land Use Policy,'' in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland or Coastal Barrier Resources System (CBRS).* (1) *Use restrictions.* Executive Order 11988, ''Floodplain Management,'' and Executive Order 11990, ''Protection of Wetlands,'' require the conveyance instrument for inventory property containing floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law. Applicable restrictions will be incorporated into quitclaim deeds in a format similar to that contained in Exhibits H and I of RD Instruction 1955–C (available in any

Agency office). A listing of all restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in, subpart B of part 1806 of this chapter will not be sold for residential purposes unless determined by the county official or district director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants).

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and nonprogram (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in, paragraph 3b (1) and (2) of Exhibit C of subpart G of part 1940.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, no credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan or any other type of Federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purpose of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA.

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (a)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (a)(3)(ii) of this section must be forwarded to the Administrator for review. Approval will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Wetlands located on FSA inventory property.* Perpetual wetland conservation easements (encumbrances in deeds) to protect and restore wetlands or converted wetlands that exist on suitable or surplus inventory property will be established prior to sale of such property. The provisions of paragraphs (a) (2) and (3) of this section also apply, as does paragraph (a)(1) of this section insofar as floodplains are concerned. This requirement applies to either cash or credit sales. Similar restrictions will be included in leases of inventory properties to beginning farmers or ranchers. Wetland conservation easements will be established as follows:

(1) All wetlands or converted wetlands located on FSA inventory property which were not considered cropland on the date the property was acquired and were not used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will receive a wetland conservation easement.

(2) All wetlands or converted wetlands located on FSA inventory property that were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will not receive a wetland conservation easement.

(3) The following steps should be taken in determining if conservation

easements are necessary for the protection of wetlands or converted wetland on inventory property:

(i) NRCS will be contacted first to identify the wetlands or converted wetlands and wetland boundaries of each wetland or converted wetland on inventory property.

(ii) After receiving the wetland determination from NRCS, the FSA county committee will review the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. Property will be considered to have been used for farming if it was primarily used for agricultural purposes including but not limited to such uses as cropland, pasture, hayland, orchards, vineyards and tree farming.

(iii) After the county committee has completed their determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. Based on the technical considerations of the potential functions and values of the wetlands on the property, FWS will identify those wetlands or converted wetlands that require protection with a wetland conservation easement along with the boundaries of the required wetland conservation easement. FWS may also make other recommendations if needed for the protection of important resources such as threatened or endangered species during this review.

(4) The wetland conservation easement will provide for access to other portions of the property as necessary for farming and other uses.

(5) The appraisal of the property must be updated to reflect the value of the land due to the conservation easement on the property.

(6) Easement areas shall be described in accordance with State or local laws. If State or local law does not require a survey, the easement area can be described by rectangular survey, plat map, or other recordable methods.

(7) In most cases the FWS shall be responsible for easement management and administration responsibilities for such areas unless the wetland easement area is an inholding in Federal or State property and that entity agrees to assume such responsibility, or a State fish and wildlife agency having counterpart responsibilities to the FWS is willing to assume easement management and administration responsibilities. The costs associated with such easement management responsibilities shall be the responsibility of the agency that assumes easement management and administration.

(8) County officials are encouraged to begin the easement process before the property is taken into inventory, if possible, in order to have the program completed before the statutory time requirement for sale.

(c) *Historic preservation*. (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, ''Protection and Enhancement of the Cultural Environment,'' the Agency official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See subpart F of part 1901 of this chapter for additional guidance.) The State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historical or archaeological importance; has apparent significant architectural features; or is similar to other Agency properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior.

(3) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the Agency official responsible for the conveyance must consult with the

SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interest. The Advisory Council on Historic Preservation must be consulted by the State Director or State Executive Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(4) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to a potential bidder or purchaser through a notice procedure similar to that in §1955.13(a)(2) of this subpart.

(d) *Highly erodible farmland.* (1) The FSA county official will determine if any inventory property contains highly erodible land as defined by the NRCS and, if so, what specific conservation practices will be made a condition of a sale of the property.

(2) If the county official does not concur in the need for a conservation practice recommended by NRCS, any differences shall be discussed with the recommending NRCS office. Failure to reach an agreement at that level shall require the State Executive Director to make a final decision after consultation with the NRCS State Conservationist.

(3) Whenever NRCS technical assistance is requested in implementing these requirements and NRCS responds that it cannot provide such assistance within a time frame compatible with the proposed sale, the sale arrangements will go forward. The sale will proceed, conditioned on the requirement that a purchaser will immediately contact (NRCS) have a conservation plan developed and comply with this plan. The county official will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining NRCS assistance, the State Executive Director should consult with the NRCS State Conservationist.

(e) *Notification to purchasers of inventory property with reportable underground storage tanks.* If the Agency is selling inventory property containing a storage tank which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of §1955.57 of subpart B of this part, the potential purchaser will be informed of the reporting requirement and provided a copy of the report filed by the Agency.

(f) *Real property that is unsafe.* If the Agency has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of ''safe'' as contained in §1955.103 of this subpart and which cannot be feasibly made safe, the State Director or State Executive Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Deputy Administrator, for review and guidance.

(g) *Real property containing hazardous waste contamination.* All inventory property must be inspected for hazardous waste contamination either through the use of a preliminary hazardous waste site survey or Transaction Screen Questionnaire. If possible contamination is noted, a Phase I or II environmental assessment will be completed per the advice of the State Environmental Coordinator.

[62 FR 44401, Aug. 21, 1997]

§ 1955.138 Property subject to redemption rights.

If, under State law, FmHA or its successor agency under Public Law 103–354's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) A credit sale of a program or suitable property subject to redemption rights may be made to a program applicant when the property meets the standards for the respective loan program. In areas where State law does not provide for full recovery of the cost of repairs during the redemption period, a program sale is generally precluded unless the property already meets program standards.

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provisions of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

§ 1955.139 Disposition of real property rights and title to real property.

(a) *Easements, rights-of-way, development rights, restrictions or the equivalent thereof.* The State Director is authorized to convey these rights for conservation purposes, roads, utilities, and other purposes as follows:

(1) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Except as provided in paragraph (a)(3) of this section easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not change the classification from program/suitable to NP or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) For FSA properties only, easements, restrictions, development rights or similar legal rights may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a State, a political subdivision of a State, or a private nonprofit organization. Easements may be granted or sold to a Federal agency for conservation purposes as long as the requirements of §1955.139(c)(2) of this subpart are followed. If FSA has an affirmative responsibility such as protecting an endangered species as provided for in paragraph (a)(3(v) of this section, the requirements in §1955.139(c) of this subpart do not apply.

(i) Conservation purposes include but are not limited to protecting or conserving the following environmental resources or land uses:

(A) Fish and wildlife habitats of local, regional, State, or Federal importance,

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990,

(C) Highly erodible land as defined by SCS,

(D) Important farmland, prime forest land, or prime rangeland as defined in Departmental Regulation 9500–3, Land Use Policy,

(E) Aquifer recharge areas of local, regional or State importance,

(F) Areas of high water quality or scenic value, and

(G) Historic and cultural properties.

(ii) Development rights may be sold for conservation purposes for their market value directly to a unit of local or State governmental or a private nonprofit organization by negotiation.

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local, State, Federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the FmHA or its successor agency under Public Law 103–354 financial interest,

the State Director will submit the proposal to the Administrator for approval unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not change program/suitable property to NP or surplus. Sales proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter. Conveyances shall include terms and conditions which clearly specify the property interest(s) being conveyed as well as all appropriate restrictions and allowable uses. The conveyances shall also require the owner of such interest to permit the FmHA or its successor agency under Public Law 103–354, and any person or government entity designated by the FmHA or its successor agency under Public Law 103–354, to have access to the affected property for the purpose of monitoring compliance with terms and conditions of the conveyance. To the maximum extent possible, the conveyance should designate an organization or government entity for monitoring purposes. In developing the conveyance, the approval official shall consult with any State or Federal agency having special expertise regarding the environmental resource(s) or land uses to be protected.

(v) For FP cases except when FmHA or its successor agency under Public Law 103–354 has an affirmative responsibility to place a conservation easement upon a farm property, easements under the authority of this paragraph will not be established unless either the rights of all prior owner(s) have been met or the prior owner(s) consents to the easement. Examples of instances where an affirmative responsibility exists to place an easement on a farm property include wetland and floodplain conservation easements required by §1955.137 of this subpart or easements designed as environmental mitigation measures and required in the implementation of Subpart G of Part 1940 of this chapter for the purpose of protecting federally designated important environmental resources. These resources include: Listed or proposed endangered or threatened species, listed or proposed critical habitats, designated or proposed wilderness areas, designated or proposed wild or scenic rivers, historic or archaeological sites listed or eligible for listing on the National Register of Historic Places, coastal barriers included in Coastal Barrier Resource Systems, natural landmarks listed on national Registry of Natural Landmarks, and sole source aquifer recharge as designated by the Environmental Protection Agency.

(vi) For FP cases whenever a request is made for an easement under the authority of this paragraph and such request overlaps an area upon which FmHA or its successor agency under Public Law 103–354 has an affirmative responsibility to place an easement, that required portion of the easement, either in terms of geographical extent or content, will not be considered to adversely impact the value of the farm property.

(4) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests will be sold with the surface land and will not be sold separately, except as provided in paragrah (a) of this section and in §1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any

rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessee or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the property is appraised.

(c) *Transfer of FSA inventory property for conservation purposes.* (1) In accordance with the provisions of this paragraph, FSA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property, or an interest therein, meeting any one of the following three criteria and subject only to the homestead protection rights of all previous owners having been met.

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that NRCS has determined to be either highly erodible or generally not used for cultivation, such as soils in classes IV, V, VII or VIII of NRCS's Land Capability Classification, or

(ii) A predominance of land is environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500.

(B) Riparian zones and floodplains as they pertain to Executive Order 11988.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resources Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (*e.g.*, Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharges areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are in holdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands or interest in lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to development if such development would adversely affect the existing Federally or State-owned lands.

(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) When a State or Federal agency requests title to inventory property, the State Executive Director will make a preliminary determination as to whether the property can be transferred.

(3) If a decision is made by the State Executive Director to deny a transfer request by a Federal or State agency, the requesting agency will be informed of the decision in writing and informed that they may request a review of the decision by the FSA Administrator.

(4) When a State or Federal agency requests title to inventory property and the State Executive Director determines that the property is suited for transfer, the following actions must be taken prior to approval of the transfer:

(i) At least two public notices must be provided. These notices will be published in a newspaper with a wide circulation in the area in which the requested property is located. The notice will provide information on the proposed use of the property by the requesting agency and request any comments concerning the negative or positive aspects of the request. A 30-day comment period should be established for the receipt of comments.

(ii) If requested, at least one public meeting must be held to discuss the request. A representative of the requesting agency should be present at the meeting in order to answer questions concerning the proposed conservation use of the property. The date and time for a public meeting should be advertised.

(iii) Written notice must be provided to the Governor of the State in which the property is located as well as at least one elected official of the county in which the property is located. The notification should provide information on the request and solicit any comments regarding the proposed transfer. All procedural requirements in paragraph (c) (3) of this section must be completed in 75 days.

(5) Determining priorities for transfer or inventory lands.

(i) A Federal entity will be selected over a State entity.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purposes for which the transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(6) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (*e.g.*, Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to a habitat of National importance (*e.g.*, wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without reimbursement, over other land disposal alternatives.

(7) An individual property may be subdivided into parcels and a parcel can be transferred under the requirements of this paragraph as long as the remaining parcels to be sold make up a viable sales unit, suitable or surplus.

[50 FR 23904, June 7, 1985, as amended at 51 FR 13479, Apr. 21, 1986; 53 FR 27838, July 25, 1988; 53 FR 35781, Sept. 14, 1988; 57 FR 36592, Aug. 14, 1992; 62 FR 44403, Aug. 21, 1997]

§1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property, other than Farm Credit Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with §1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects should also be considered pursuant to subpart G of part 1940 of this chapter. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. Subdivision of acquired property will be reported on Form RD 1955–3C, ''Acquired Property—Subdivision,'' in accordance with the FMI.

(b) *Grouping of individual properties.* The county official for FCP cases, and the State Director for all other cases, may authorize the combining of two or more individual properties into a single parcel for sale as a suitable program property.

[62 FR 44403, Aug. 21, 1997]

§ 1955.141 Transferring title.

(a)–(c) [Reserved]

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be

needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase, the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property*. Interest credit and rental assistance may be granted to program applicants purchasing MFH properties in accordance with the provisions of Exhibit E of subpart C of part 1930 of this chapter.

[53 FR 27838, July 25, 1988, as amended at 56 FR 2257, Jan. 22, 1991; 57 FR 36592, Aug. 14, 1992; 60 FR 34455, July 3, 1995]

§§ 1955.142–1955.143 [Reserved]

§ 1955.144 Disposal of NP or surplus property to, through, or acquisition from other agencies.

(a) *Property which cannot be sold*. If NP or surplus real or chattel property cannot be sold (or only token offers are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, ''Report of Excess Personal Property,'' with transfer documented by Standard Form 122, ''Transfer Order Excess Personal Property.'' Real property will be reported to GSA using Standard Form 118, ''Report of Excess Real Property,'' Standard Form 118A, ''Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A),'' Standard Form 118B, ''Land (Schedule B)'' and Standard Form 118C, ''Related Personal Property (Schedule B), '' with final disposition documented by a ''Receiving Report,'' executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office.

(b) Urban Homesteading Program (UH). Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA or its successor agency under Public Law 103–354 single family residential properties sold through the HUD–UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the ''Memorandum of Agreement between the Farmers Home Administration or its successor agency under Public Law 103–354 and the Secretary of Housing and Urban Development'' dated October 2, 1981. (See Exhibit C of this subpart.) A Local Urban Homesteading Agency (LUHA) is authorized a 10 percent discount of the listed price on any SFH nonprogram property for the UH Program. No discount is authorized on program property.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27839, July 25, 1988; 55 FR 3943, Feb. 6, 1990]

EDITORIAL NOTE: At 60 FR 34455, July 3, 1995, § 1955.144 was amended by removing the second through the fourth sentences. However, there are no undesignated paragraphs in the 1995 edition of this volume.

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site*. Where real property has been determined to be NP due to location and where it is economically feasible to relocate the structure thereby making it a program property, the State Director may authorize the acquisition of a suitable parcel of land

to relocate the structure if economically feasible. The remaining NP parcel of land will be sold for its market value.

(b) *Additional land*. Where real property has been determined NP for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way*. The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make NP property a program property, if economically feasible.

[53 FR 27839, July 25, 1988]

§ 1955.146 Advertising.

(a) *General*. When property is being sold by FmHA or its successor agency under Public Law 103–354 or through real estate brokers, it is the servicing official's responsibility to ensure adequate advertising of property to achieve a timely sale. The primary means of advertisements are newspaper advertisements in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–F (available in any FmHA or its successor agency under Public Law 103–354 office), public notice using Form FmHA or its successor agency under Public Law 103–354 1955–41, ''Notice of Sale,'' and notification of known interested parties. Other innovative means are encouraged, such as the use of a bulletin board to display photographs of inventory properties for sale with a brief synopsis of the property attached; posting Forms FmHA or its successor agency under Public Law 103–354 1955–40 or FmHA or its successor agency under Public Law 103–354 1955–43, as appropriate, in the reception area to attract applicant and broker interest; posting notices of sale at employment centers; door-to-door distribution of sales notices at apartment complexes; radio and/or television spots; group meetings with potential applicants/investors/real estate brokers; and advertisements in magazines and other periodicals. If FmHA or its successor agency under Public Law 103–354 personnel are not available to perform these services, FmHA or its successor agency under Public Law 103–354 may contract for such services in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *Large-value and complex properties*. Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *MFH restrictive-use provisions*. Advertisements for multi-family housing projects will advise prospective purchasers of any restrictive-use requirements that will be attached to the project and added to the title of the property.

(d) *Racial and socio-economic considerations*. In accordance with the policies set forth in § 1901.203(c) of subpart E of part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of existing racial or socio-economic patterns are reached.

(e) *Rejected application for SFH loan*. If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27839, July 25, 1988; 58 FR 38928, July 21, 1993]

§ 1955.147 Sealed bid sales.

This section provides guidance on the sale of all FmHA or its successor agency under Public Law 103–354 inventory property, except suitable FP real property which will not be sold by sealed bid. Before a sealed bid sale, the State Director will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP or surplus property, credit may be extended to facilitate the sale. When a group of properties is to be sold at one time, advertising may indicate that FmHA or its successor agency under Public Law 103–354 will consider bids on an individual property or a group of properties and FmHA or its successor agency under Public Law 103–354 will accept the bid or bids which are in the best financial interest of the Government. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA or its successor agency under Public Law 103–354 1955–46 with any accompanying deposit in the form ofcashier's check, certified check, postal or bank money order or bank draft payable to FmHA or its successor agency under Public Law 103–354. For program and suitable property, the minimum deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property, the minimum deposit will be ten percent (10%). The bid will be considered delivered when actually received at the FmHA or its successor agency under Public Law 103–354 office. All bids will be date and time stamped. Advertisements and notices will request bidders to submit their bid in a sealed envelope marked as follows:

SEALED BID OFFER _____*_____.'' (*Insert ''PROPERTY IDENTIFICATION NUMBER _____).

(a) *Opening bids*. Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA or its successor agency under Public Law 103–354 office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other FmHA or its successor agency under Public Law 103–354 employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

(b) *Successful bids*. The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For SFH and FP (surplus property) sales, preference will be given to a cash offer on NP or surplus property sales which is at least ____*____ percent of the highest offer requiring credit [*Refer to Exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the current percentage.] Otherwise, equal bids will be accepted by public lot drawing. For program or suitable property sales, no preference will be given to program purchasers unless two identical high bids are received, in which case the bid from the program purchaser will receive preference. If a bid is received from any purchaser with a request for credit that (considering any deposit) exceeds the market value of the property or requests a term which exceeds the period for which the property will serve as adequate security, the bidder will be given the opportunity to reduce the credit request and/or term with *no* accompanying change in the offered price.

(c) *Unsuccessful bids*. Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If

there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids*. Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA or its successor agency under Public Law 103–354 official approving the sale.

(e) *Failure to close*. If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted according to Instruction FmHA or its successor agency under Public Law 103–354 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office) for application to the General Fund. However, if a credit sale complying with the FmHA or its successor agency under Public Law 103–354 notice is an element of the offer and FmHA or its successor agency under Public Law 103–354 disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale of direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid*. Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with §1955.108(d) of this subpart.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27839, July 25, 1988; 54 FR 6875, Feb. 15, 1989; 55 FR 3943, Feb. 6, 1990]

§1955.148 Auction sales.

This section provides guidance on the sale of all inventory property by auction, except FSA real property. Before an auction, the State Director, with the advice of the National Office for organizational property, will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and property. For NP property, credit may be offered to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. For program property sales, no preference will be given to program purchasers. The State Director will also consider whether an Agency employee will conduct an auction or whether the services of a professional auctioneer are necessary due to the complexity of the sale. When the services of a professional auctioneer are advisable, the services will be procured by contract in accordance with RD Instruction 2024-A (available in any Agency Office). Chattel property may be sold at public auction that is widely advertised and held on a regularly scheduled basis without solicitation. Form RD 1955–46 will be used for auction sales. At the auction, successful bidders will be required to make a bid deposit. For program and suitable property, the bid deposit will be the same as outlined in §1955.130(e)(1) of this subpart. For NP property sales, a bid deposit of 10 percent is required. Deposits will be in the form of cashier's check, certified check, postal or bank money order or bank draft payable to the Agency, cash or personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. Where credit sales are authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept a bid which requests credit in excess of the market value. When the highest bid is lower than the minimum amount acceptable to the Agency, negotiations should be conducted with the highest bidder or in turn, the next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to RD

Instruction 1951–B (available in any agency office). The bid deposit will be remitted only when the bidder defaults; otherwise it will be used at closing towards a down payment or closing costs, as applicable. The closing will be conducted in accordance with the procedures prescribed in this subpart for the type property and program involved.

[62 FR 44404, Aug. 21, 1997]

§ 1955.149 Exception authority.

(a) The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for such land.

§ 1955.150 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this Instruction to provide guidance to FmHA or its successor agency under Public Law 103–354 officials. State Supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

EXHIBIT A TO SUBPART C—NOTICE OF FLOOD, MUDSLIDE HAZARD OR WETLAND AREA

TO:_____

DATE:_____

This is to notify you that the real property located at _____ is in a floodplain, wetland or area identified by the Federal Insurance Administration of the Federal Emergency Management Agency as having special flood or mudslide hazards. This identification means that the area has at least one percent chance of being flooded or affected by mudslide in any given year. For floodplains and wetlands on the property, restrictions are being imposed. Specific designation(s) of this property is(are) (special flood) (mudslide hazard) (wetland)*. The following restriction(s) on the use of the property will be included in the conveyance and shall apply to the purchasers, purchaser's heirs, assigns and successors and shall be construed as both a covenant running with the property and as equitable servitude subject to release by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) when/if no longer applicable:

(INSERT RESTRICTIONS)

The FmHA or its successor agency under Public Law 103–354 will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service. Where additional acreage is accepted by FmHA or its successor agency under Public Law 103–354 for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

_____

(County Supervisor, District Director or Real Estate Broker)

*ACKNOWLEDGEMENT*_____

*DATE:*_____

I hereby acknowledge receipt of the notice that the above stated real property is in a (special flood) (mudslide hazard) (wetland)* area and is subject to use restrictions as above cited. [Also, if I purchase the property through a credit sale, I agree to insure the property against loss from (floods) (mudslide)* in accordance with requirements of the FmHA or its successor agency under Public Law 103–354.]

_____

(Prospective Purchaser)

* Delete the hazard that does not apply.

[57 FR 31644, July 17, 1992]

PART 1956—DEBT SETTLEMENT

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1956.149 [Reserved]
1956.150 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

SOURCE: 51 FR 45434, Dec. 18, 1986, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Debt Settlement—Farm Loan Programs and Multi–Family Housing

SOURCE: 56 FR 10147, Mar. 11, 1991, unless otherwise noted.

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policy and procedures for settlement of debts owed to the United States under the Farm Credit loan programs of the Farm Service Agency (FSA) and the Multi-Family Housing (MFH) program of the Rural Housing Service (RHS). It also applies to Nonprogram (NP) loans secured by MFH property of the RHS. Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes is also covered by this subpart. Settlement of claims against third party converters, and Economic Opportunity (EO) loans is authorized under the Federal Claims Collection Standards, 4 CFR parts 101–105. This subpart does not apply to RHS direct Single Family Housing (SFH) loans or RHS NP loans secured by SFH property.

[61 FR 59779, Nov. 22, 1996]

§§ 1956.52–1956.53 [Reserved]

§ 1956.54 Definitions.

Adjustment. The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under

the adjustment agreement(s) have been made.

Amount of debt. The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, and subsidy to be recaptured made by the Government on behalf of the borrower.

Cancellation. The final discharge of a debt without any payment on it.

Chargeoff. The writing off of a debt and termination of collection activity without release of personal liability.

Compromise. The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

Debt forgiveness. For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under subpart S of part 1951 of this chapter, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes.

Debtor. The borrower of funds under any of the FmHA or its successor agency under Public Law 103–354 programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan. Debtor also includes grant recipients.

Farm Loan Programs (FLP) loans. Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

Housing programs. All programs and claims arising under programs administered by FmHA or its successor agency under Public Law 103–354 under title V of the Housing Act of 1949.

Servicing office. The FmHA or its successor agency under Public Law 103–354 office that is responsible for the account.

Settlement. The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA or its successor agency under Public Law 103–354. The term ''Settlement'' is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

United States Attorney. An attorney for the United States Department of Justice.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21344, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997]

§§ 1956.55–1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies*. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly. FmHA or its successor agency under Public Law 103–354 personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Information needed for debt settlement*. A debtor requesting debt settlement must submit complete and accurate information from which a full determination of his/her financial condition can be made. This should include, where applicable, but is not limited to, obtaining verification of employment, providing expense verification, verifying farm program benefits (e.g., Farm Service Agency/Commodity Credit Corporation payments), and examining county records to determine what other assets the debtor has or recently disposed of. When a FLP debtor is continuing to farm, a farm operating plan must be obtained. Also, where a spouse is not a co-debtor the spouse's income will be considered in meeting family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA or its successor agency under

Public Law 103–354 should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on a debt settlement form.

(c) *Negotiating a settlement.* County Supervisors may approve or reject compromises, adjustments, cancellations, or chargeoffs of SFH debts (to include recapture receivables), regardless of the amount. District Directors and County Supervisors cannot approve other debt settlement actions; therefore, other than SFH debt settlements, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Adjustment offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A debtor is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a debtor has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) *County Committee review.* The County Committee will not review proposed settlement action for Housing Program loans. Except for the cancellation of those debts discharged in bankruptcy where there is no remaining security, proposed settlement actions for Farmer Program loans will be reviewed for approval or rejection by the County Committee, and no settlement shall be approved if it is more favorable to the debtor than recommended by the appropriate County Committee.

(g) *Settlement when legal or investigative action has been taken, recommended, or is contemplated.* (1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of subpart A of part 1962 of this chapter or to Office of the General Counsel (OGC) because of suspected criminal violation, or criminal prosecution is pending because of an illegal act(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA or its successor agency under Public Law 103–354.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to

the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA or its successor agency under Public Law 103–354 has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, if will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlement may not be approved for one joint debtor unless approved for all debtors. ''Joint debtors'' includes all parties (individuals, partnerships, joint operators, cooperatives, corporations, estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA or its successor agency under Public Law 103–354 1956–1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA or its successor agency under Public Law 103–354 1956–1 or Form FmHA or its successor agency under Public Law 103–354 1956–2 (for housing loans) ''Cancellation or Charge-off of FmHA or its successor agency under Public Law 103–354 Indebtedness,'' will be prepared by showing at the top of the form the name of the debtor requesting settlement, following by the name of the other debtor.

For example, ''John Doe, joint debtor with Bill Doe, deceased,'' ''John Doe, joint debtor with Sam Doe, discharged in bankruptcy,'' ''John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature,'' as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA or its successor agency under Public Law 103–354 1956–1, or 1956–2 for housing loans.

(k) *Settlement where debtor owes more than one type of Agency loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another agency loan and who will continue as an active borrower. In such case, the facts will be fully documented in part VIII of Form RD 1956–1.

(l) *No previous debt forgiveness.* Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in § 1956.54 of this subpart.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21344, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997]

§§ 1956.58–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the

debtor may retain the security property, if any. Application will be made on Form RD 1956–1 by the debtor; or if the debtor is unable to act, by another party having legal authority to act for the debtor. Collection of a lump sum offer may be deferred until the debtor is advised that the offer is approved. Upon full payment of the approved compromise or adjustment amount, the Agency will release the debtor from liability by delivering the note(s) to the debtor stamped ''Satisfied by compromise or adjustment.''

(a) *FLP debts.* The debt or any extension thereof on which compromise or adjustment is requested does not have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Nonjudgment secured FLP debts may be compromised or adjusted in accordance with the following conditions:

(1) Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section, plus any additional amounts the Agency determines the debtor is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be retained in the debtor's file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.

(iii) Debtor's total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran's disability pensions will not be considered as sources of funds for making compromise and adjustment offers.

(iv) Amount of debtor's other debts.

(v) Amount of debtor's essential family living expenses, and farm or business operation expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor's family, their ages and health.

(viii) Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupied by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.

(b) *Housing debts (both Single-family and Multi-family).* Nonjudgment secured debts may be compromised or adjusted as follows:

(1) The debt is fully matured under the terms of the note or other instrument; or has been accelerated by written notice prior to the date of the settlement application.

(2) A compromise offer must at least equal the value of the security as determined by FmHA or its successor agency under Public Law 103–354 (less any prior liens) plus any additional amount FmHA or its successor agency under Public Law 103–354 determines the debtor is able to pay based on a current financial statement.

(3) An adjustment offer must meet the requirements of paragraph (b)(2) of this section, except the debt (or the amount offered) is to be scheduled for payment over the shortest period FmHA or its successor agency under Public Law 103–354 determines is feasible based on the debtor's financial resources, but not to exceed 5 years.

(c) *Unsecured debts.* Unsecured debts considered under this paragraph (c) are most frequently account balances remaining after the debtor has sold security property to another party/entity, the security has been liquidated through foreclosure, or FmHA or its successor agency under Public Law 103–

354 has accepted a deed in lieu of foreclosure and the borrower was not released from liability. An offer to compromise or adjust an unsecured debt must represent the maximum amount FmHA or its successor agency under Public Law 103–354 determines the debtor can pay based on a current financial statement and other information available to FmHA or its successor agency under Public Law 103–354. An adjustment offer is to be scheduled for payment over the shortest period FmHA or its successor agency under Public Law 103–354 determines is feasible, but not to exceed 5 years.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21345, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997]

§ 1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full but has refused to do so may be compromised or adjusted in the following situations on Form FmHA or its successor agency under Public Law 103–354 1956–1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount will not exceed $2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§ 1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met. Form FmHA or its successor agency under Public Law 103–354 1956–1 will show:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) *With application*. The debt or any extension thereof on Farmer Programs debts *do not* have to be due and payable

under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA or its successor agency under Public Law 103–354 may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA or its successor agency under Public Law 103–354 employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) *Without application*. Debts due the FmHA or its successor agency under Public Law 103–354 may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances:

(1) *Deceased debtors*. The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been affected but such assets have been disposed of or lost in a manner which OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors*. The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented in the appropriate space on Form FmHA or its successor agency under Public Law 103–354 1956–1 or Form FmHA or its successor agency under Public Law 103–354 1956–2 for housing loans.

(3) *Debtors discharged in bankruptcy*. If there is no security for the debt, debts discharged in bankruptcy shall be canceled by the use of Form FmHA or its successor agency under Public Law 103–354 1956–1 or Form FmHA or its successor agency under Public Law 103–354 1956–2, for housing loans, with attachments as below. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the ''Discharge of Debtor'' order(s) by the court for all obligors.

(ii) For debts identified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, a copy of the order completing the plan (a similar order),

and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in paragraph (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA or its successor agency under Public Law 103–354 1956–1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.71 Settling uncollectible recapture receivables.

The settlement of uncollectible recapture receivables will be fully documented on a debt settlement form and retained in the case file.

[58 FR 21345, Apr. 21, 1993]

§§ 1956.72–1956.74 [Reserved]

§1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA or its successor agency under Public Law 103–354 1956–1 or Form FmHA or its successor agency under Public Law 103–354 1956–2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA or its successor agency under Public Law 103–354 1956–1 or Form FmHA or its successor agency under Public Law 103–354 1956–2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is $2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit.

(3) Even though FmHA or its successor agency under Public Law 103–354 considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA or its successor agency under Public Law 103–354's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

(c) For debts identified as being part of an unsecured claim under a confirmed Chapter 11 plan, the chargeoff will be documented with a copy of the organization plan, a copy of the court order confirming the plan, an opinion by OGC that the order confirming the

plan has discharged the debtor(s) of liability on the unsecured part of the debt.

§§ 1956.76–1956.83 [Reserved]

§ 1956.84 Approval or rejection.

(a)–(d) [Reserved].

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to subpart B of part 1900 of this chapter. In cases where the adverse decision maker is the County Committee, the FmHA or its successor agency under Public Law 103–354 official will advise the debtor of appeal rights. If the debtor exercises his/her right to a meeting, the County Committee must meet with the debtor. If the meeting does not result in a resolution, the debtor may exercise his/her right to a hearing. If the hearing officer reverses the adverse County Committee decision, the case will be forwarded to the appropriate debt settlement approval official for consideration of approval.

[58 FR 21345, Apr. 21, 1993]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.* (1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in subpart B, C, and K of part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as ''Settlement in full'' or ''Payment in full,'' or in those exceptional instances when the debtor refuses to sign the Form FmHA or its successor agency under Public Law 103–354 1956–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.* (1) All payments evidenced by Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' on Form FmHA or its successor agency under Public Law 103–354 1944–9, ''Multiple Family Housing Payment Transmittal,'' bearing the legend ''Compromise Offer—FmHA or its successor agency under Public Law 103–354'' or ''Adjustment Offer—FmHA or its successor agency under Public Law 103–354,'' will be held in the Deposits FundAccount by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA or its successor agency under Public Law 103–354 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA or its successor agency under Public Law 103–354 1956–1 in approved cases will be retained in the Finance Office.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21345, Apr. 21, 1993]

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should also

promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. In instances in which the debtor is delinquent under the terms of the debt settlement and is likely to be financially unable to meet the terms of the debt settlement agreement, FmHA or its successor agency under Public Law 103–354 may cancel the existing agreement and process a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. This settlement will be processed in accordance with the procedure for the new agreement. An extension may be given by FmHA or its successor agency under Public Law 103–354 to extend for 90 days the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon recommendation of the County Committee (for FP loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable. When an adjustment agreement is cancelled, the debtor will be notified of the reasons in writing. The cancellation of an adjustment offer is appealable. If an agreement is cancelled, any payments received shall be retained as payments on the debt owed at the time of the adjustment offer.

[58 FR 21345, Apr. 21, 1993]

§ 1956.97 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of notes will be stamped ''Satisfied by Approved Compromise,'' ''Satisfied by Approved Cancellation,'' or ''Satisfied by Completed Adjustment Offer.'' In such cases, the security instrument(s) will be released of record according to State law.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursant to FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office). However, if the debtor requests the notes, they may be stamped ''Satisfied By Approved Cancellation'' and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) In case of a transfer of security with assumption for less than the debt, the promissory note will be attached to the assumption agreement covered by the note and kept in the transferee's file.

[56 FR 10147, Mar. 11, 1991. Redesignated and amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.98 [Reserved]

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA or its successor agency under Public Law 103–354 1956–1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0118. Public reporting burden for this collection of information is estimated to vary from *15* to *20* minutes per response, with an average of *20* minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Subpart C—Debt Settlement—Community and Business Programs

SOURCE: 53 FR 13100, Apr. 21, 1988, unless otherwise noted.

§ 1956.101 Purposes.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; direct Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans; and Indian Tribal Land Acquisition loans; and Section 306C WWD loans. Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR parts 101–105 as described in § 1956.147 of this subpart.

[62 FR 33511, June 19, 1997]

§ 1956.102 Application of policies.

(a) *General.* If a debt is eligible for settlement, the debt settlement authorities of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) should be explained and the privileges thereof extended to the debtor. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA or its successor agency under Public Law 103–354 personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart.

(b) *For hospitals and health care facilities only.* Loan servicing and debt restructuring options according to § 1956.143 of this subpart must be exhausted before the other settlement authorities of this subpart are applicable.

[53 FR 13100, Apr. 21, 1988, as amended at 59 FR 46160, Sept. 7, 1994]

§§ 1956.103–1956.104 [Reserved]

§ 1956.105 Definitions.

(a) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA or its successor agency under Public Law 103–354. The term ''settlement'' is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(b) *Compromise.* The satisfaction of a debt, including a release of liability, by the acceptance of a lump-sum payment of less than the total amount owed on the debt.

(c) *Adjustment.* The satisfaction of a debt, including a release of liability, when acceptance is conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments

under the adjustment agreement have been made.

(d) *Cancellation*. The final discharge of a debt with a release of liability.

(e) *Chargeoff*. To write off a debt and terminate all servicing activity *without* a release of liability. This is not a final discharge of the debt, but rather a decision upon the part of the agency to remove the debt from agency receivables.

(f) *Debtor*. The borrower of loan funds under any of the FmHA or its successor agency under Public Law 103–354 programs specified in § 1956.101 of this subpart.

(g) *Security*. All that serves as collateral for the FmHA or its successor agency under Public Law 103–354 loan(s), including, but not limited to, revenues, tax levies, municipal bonds, and real and chattel property.

(h) *Servicing official*. The FmHA or its successor agency under Public Law 103–354 official who is primarily responsible for servicing the account.

(i) *United States Attorney*. An attorney for the United States Department of Justice.

(j) *Independent Qualified Fee Appraiser*. An individual who is a designated member of the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, or an equivalent organization, requiring appraisal education, testing, and experience.

(k) *Indian Tribal Land Acquisition loans*. Loans which have been made under the Indian Land Acquisition Act to Indian tribes or tribal corporations recognized by the Secretary of the Interior, for the purchase of land within tribal reservations and Alaskan Communities. (25 U.S.C. 488)

[53 FR 13100, Apr. 21, 1988, as amended at 54 FR 47510, Nov. 15, 1989]

§§ 1956.106–1956.108 [Reserved]

§ 1956.109 General requirements for debt settlement.

(a) *Debt due and payable*. The debt or any extension thereof on which settlement is requested must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application for settlement, unless the debt is to be cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Disposition of security*. Ordinarily, all security will be disposed of prior to the date of application for settlement. There are exceptions:

(1) It may be necessary to abandon security through the debt settlement process. For example, a community may be rendered uninhabitable by a toxic or hazardous substance. In such cases, debt settlement may proceed provided the servicing official determines:

(i) That further collection efforts with respect to the security in question would be ineffective or uneconomical,

(ii) That it is in the best interests of the Government to proceed with debt settlement,

(iii) That the proposal otherwise meets the requirements appropriate to the type of settlement under consideration, and

(iv) The approval of the Administrator is obtained.

(2) A servicing action may have been carried out which resulted in a less than complete disposition of security. For example, the Government may have consented to a voluntary sale of a debtor's real and chattel property without reference to other security, which might include, but is not limited to: an additional lien on revenue, a third party pledge of security, or a pledge of personal liability. In such cases, debt settlement may proceed provided the requirements of § 1956.109(b)(1) of this subpart are met.

(3) Security can be retained under the compromise and adjustment offers as specified in § 1956.124 of this subpart.

(4) Settlement of a claim against an estate will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, dower and curtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(c) *Proceeds from the sale of security*. Proceeds from the sale of security must be applied on the debtor's account, taking into consideration the disposition requirements of any grant

agreement, prior to the date of application for settlement, except when security is retained as provided for in § 1956.109(b) of this subpart. Debtors will not be allowed to sell security and use the proceeds as part or all of the debt settlement offer.

(d) *County Committee review*. Proposed settlement actions will be reviewed by the County Committee except for the cancellation of debts discharged in bankruptcy under § 1956.130(b)(1) of this subpart or when a claim has been referred to a United States Attorney under § 1956.112(d) of this subpart. No settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee.

(e) *Assistance from Office of General Counsel (OGC)*. When necessary, State Directors will obtain advice from OGC in handling proposed debt settlement actions.

(f) *Format*. Form FmHA or its successor agency under Public Law 103–354 1956–1, ''Application for Settlement of Indebtedness,'' will be utilized for all settlement actions under this subpart.

§ 1956.110 Joint debtors.

Settlements may not be approved for one joint debtor unless approved for all debtors. Joint debtors includes all parties, individuals, and organizations, who are legally liable for payment of the debt.

(a) Individual settlement offers from joint debtors can be accepted and processed only as a joint offer. A separate Form FmHA or its successor agency under Public Law 103–354 1956–1 will be completed by each debtor unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application.

(b) If one of the joint debtors is deceased or has received a discharge of the debt in bankruptcy, or if the whereabouts of one of the debtors is unknown, or it is otherwise impossible or impractical to obtain the signature of the debtor, the application for settlement may be accepted without that debtor's signature if it contains adequate information on each of the debtors to justify settlement of the debt as to each of the debtors. The name of the debtor requesting settlement will be shown at the top of Form FmHA or its successor agency under Public Law 103–354 1956–1 followed by name and status of the other debtor. For example, ''John Doe, joint debtor with Jane Doe, deceased.''

(c) Joint debtors must be advised in writing that all debtors will remain liable for the balance of the debt until any payment(s) due under the joint offer have been made.

§ 1956.111 Debtors in bankruptcy.

FmHA or its successor agency under Public Law 103–354 personnel will process reorganization plans of debtors filing under Chapter 9, Chapter 11, or Chapter 13 as follows:

(a) Plans submitted by debtors under Chapters 9, 11, and 13 must be sent by the servicing official to the State Director who will recommend either acceptance or rejection of the plans and refer them to the United States Attorney through OGC. When the plan calls for the adjustment of a debt to FmHA or its successor agency under Public Law 103–354, the State Director will obtain the advice of the Administrator before providing OGC with a recommendation on acceptance or rejection of this plan.

(b) The United States Attorney will advise the State Director, through OGC, as to approval or rejection of the debtor's reorganization plan. The State Director will then notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan, including any adjustment of the debt.

§ 1956.112 Debts ineligible for settlement.

Debts will not be settled:

(a) If referral to the Office of Inspector General (OIG) and/or to the OGC is contemplated or pending because of suspected criminal violation, or

(b) If civil action to protect the interests of the Government is contemplated or pending, or

(c) If an investigation for suspected fiscal irregularity is contemplated or pending, or

(d) When a claim has been referred to or a judgment has been obtained by the United States Attorney and the debtor

requests settlement, the servicing official will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, and therefore, FmHA or its successor agency under Public Law 103–354 has no authority to agree to a settlement offer. If the debtor wishes to make a settlement offer, it must be submitted with any related payment directly to the United States Attorney for consideration.

§§ 1956.113–1956.117 [Reserved]

§ 1956.118 Approval authority.

District Directors cannot approve debt settlement actions. Therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(a) By the State Director when the outstanding balance of the indebtedness involved in the settlement is less then $50,000, including principal, interest, and other charges.

(b) By the Administrator or his designee when the outstanding balance of the indebtedness involved in the settlement is $50,000 or more, including principal, interest, and other charges.

§§ 1956.119–1956.123 [Reserved]

§ 1956.124 Compromise and adjustment.

Nonjudgment debts may be compromised or adjusted upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate.

(a) *General provisions.* Debts, regardless of the amount, may be compromised or adjusted subject to the following:

(1) The debt or any extension thereof on which compromise or adjustment is requested is due and payable under the terms of the note or other instrument, or because of acceleration by written notice, prior to the date of application for settlement.

(2) The period of time during which payments on adjustment offers are to be made cannot exceed five years without the approval of the Administrator.

(3) Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement.

(b) *Debtor's ability to pay.* In evaluating the debtor's settlement application, it is essential that reliable information be obtained in sufficient detail to assure that the offer accurately reflects the debtor's ability to pay. The debtor's income, expenses, and nonsecurity assets are critical factors in determining the type of settlement and the amount which the debtor can reasonably be expected to offer. Critical information should include the following:

(1) The debtor's total present income from all sources will be determined. In addition, careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. For individuals, public welfare assistance and pensions, including old age pensions and pensions received by veterans for pensionable disabilities will not be considered as sources of funds with which to make compromise and adjustment offers.

(2) The debtor's operation and maintenance expenses, and, in the case of individuals, probable living expenses.

(3) The priority of payments on debts to third parties.

(4) When the debtor is largely dependent on income from an occupation in which manual labor is required, age and health of the individual are vital factors in determining the ability to pay. The number in the debtor's family, their ages and condition of health, will also be weighed in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health of both individual and family are of less importance.

(5) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and, in the case of an individual,

to meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

(c) *Debtor unable to pay in full.* Debts may be compromised or adjusted and security property retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full, and

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount which the debtor is able to pay, and

(4) The total amount offered represents a reasonable determination of the debtor's ability to pay.

(d) *Debtor able to pay in full but refuses to do so.* If the debtor has the ability to pay in full but refuses to do so, debts may be compromised or adjusted and security property retained by the debtor under certain conditions:

(1) The OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, and the amount offered represents a reasonable settlement considering:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law, and

(ii) Inheritance prospects within 5 years, and

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years out of which there could be collected a substantially larger sum than the amount of the present offer, and

(iv) Uncertainty as to the price that the security or other property will bring at forced sale, *or*

(2) The OGC advises that there is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and the amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved, and

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors, and

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation, *or*

(3) When the cost of collecting the debt does not justify enforced collection of the full amount. In such cases, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed $600 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§§ 1956.125–1956.129 [Reserved]

§ 1956.130 Cancellation.

Nonjudgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(a) *With application by debtor.* Debts may be cancelled upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate. The following conditions apply:

(1) The servicing official furnishes a favorable recommendation concerning the cancellation, and

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so, and

(4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(b) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(1) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA or its successor agency under Public Law 103–354 1956–1 with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(2) *Impossible or impractical to obtain a debtor's signature.* Debts may be cancelled if it is impossible or impractical to obtain a signed application and the requirements of § 1956.130(a) (1), (2), and (3) *only* of this subpart are met. Form FmHA or its successor agency under Public Law 103–354 1956–1 will document:

(i) The sources of information obtained.

(ii) That a current effort was made to obtain the debtor's application and the date of such effort.

(iii) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

(3) *Deceased debtors (individuals only).* The following conditions must exist:

(i) There is no known security,

(ii) An administrator or executor has not been appointed to settle the debtor's estate but the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery, *or*

(iii) An administrator or executor has been appointed to settle the estate of the debtor, and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court, but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude an reasonable prospect of recovery by the Government.

(4) *Disappeared debtor (individuals only).* The following conditions must exist:

(i) The debtor has disappeared and cannot be found without undue expense. Reasonable efforts either in person or in writing will be made to locate the debtor. These efforts, including the names and dates of contacts, and the information furnished by each person, will be fully documented on Form FmHA or its successor agency under Public Law 103–354 1956–1,

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(iii) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

§§ 1956.131–1956.135 [Reserved]

§ 1956.136 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.112(d) of this subpart, judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.130(b)(1), (2), (3), or (4) of this subpart have been met, as appropriate, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(1) When the OGC advises in writing that the claim is legally without merit, or that evidence necessary to prove the claim in court cannout be produced.

(2) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(i) Is unable to pay any party of the debt and has no reasonable prospect of being able to do so, or

(ii) Is able to pay part or all of the debt but refuses to do so, and an opinion is received from OGC to the effect that the Government cannot enforce collection of a significant amount from assets or income.

(3) When the debtor is deceased (individuals only), disappeared (individuals only), or when it is impossible or impractical to obtain the debtor's signature, and the conditions of § 1956.136(b)(2) of this subpart are met.

§ 1956.137 Adjustment of unpaid principal—Indian Tribal Land Acquisition loans.

This section pertains exclusively to the reduction of unpaid principal on Indian Tribal Land Acquisition loans. (Pub. L. 101–82.)

(a) *Application by borrower.* Upon application by the borrower, the FmHA or its successor agency under Public Law 103–354 Administrator may adjust the unpaid principal balance only, on any loan or loans, to the current fair market value of the land purchased with the proceeds of the loans. A separate application will be made for each loan. To be eligible, each application must meet the following conditions:

(1) The current fair market value of the land has declined by at least 25 percent since the land was purchased by the borrower with FmHA or its successor agency under Public Law 103–354 loan funds. Current fair market value shall be determined through an appraisal by an independent qualified fee appraiser, as defined in § 1956.105(j) of this subpart and selected by mutual agreement between the borrower and FmHA or its successor agency under Public Law 103–354. The borrower will submit its selection of an appraiser, together with the appraiser's qualifications, in writing, to FmHA or its successor agency under Public Law 103–354 for acceptance or rejection. The cost of the appraisal shall be paid by the borrower.

(2) The land has been held by the borrower for at least 5 years.

(3) The Secretary of Interior or designee finds, and states in writing to FmHA or its successor agency under Public Law 103–354, that the borrower has insufficient income to both repay the loan or loans and provide normal tribal governmental services.

(b) *Review of application decision.* If an application is rejected, the borrower may request a review of this decision under subpart B of part 1900 of this chapter.

(c) *Future applications.* A borrower that had a loan adjusted under this section shall not submit an application for another adjustment on the same loan for a period of 5 years from the date the last reduction became effective.

(d) *Processing.* All requests for principal adjustment will be forwarded to the National Office with the following information:

(1) Form FmHA or its successor agency under Public Law 103–354 1956–1. Complete only parts I, II, VI, and VIII. Part VI, Debtors Offer and Certification, will be made in a separate attachment and contain the adjusted unpaid principal amount for which FmHA or its successor agency under Public Law 103–354 approval is requested. In part VI of the form, type ''see attached.''

(2) Letter from the Secretary of Interior or Designee. Reference to this letter should be made in part VIII of Form FmHA or its successor agency under Public Law 103–354 1956–1.

(3) For first time requests, the State Director's determination of the appraised value of the land when the loan (or loans) was made and the current fair market value appraisal as determined by an independent qualified fee appraiser.

(4) For subsequent requests, the current and previous fair market value appraisal as determined by an independent qualified fee appraiser.

(5) Draft of Form FmHA or its successor agency under Public Law 103–354 1951–33, ''Reamortization Request,'' if applicable. Upon concurrence by the National Office, the adjusted unpaid

principal and outstanding accrued interest may be reamortized at the original note rate for the balance of the existing term of the note and in accordance with the other applicable provisions of subpart E of part 1951 of this chapter. The approved original of Form FmHA or its successor agency under Public Law 103–354 1956–1 will be sent to the Finance Office together with a copy of Form FmHA or its successor agency under Public Law 103–354 1951–33 signed by the State Director.

[54 FR 47510, Nov. 15, 1989, as amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.138 Processing.

(a) *Approval*. When a debt settlement application is approved, the State Director will:

(1) Send the original approved Form FmHA or its successor agency under Public Law 103–354 1956–1 to the Finance Office.

(2) Notify debtors in writing of settlement approval, including the specific amount and terms of the offer that were accepted, for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(3) Not be required to notify debtors of settlement approval when debts are cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Requesting additional information*. When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the servicing official to obtain the additional information or make an effort to obtain a more acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer.

(c) *Rejection*. When a debt settlement application is rejected, the State Director will:

(1) Insert the reasons for rejection on the Form FmHA or its successor agency under Public Law 103–354 1956–1.

(2) Retain the original Form FmHA or its successor agency under Public Law 103–354 1956–1 in the State Office and return case files and copies of Form FmHA or its successor agency under Public Law 103–354 1956–1 to the servicing official.

(3) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the servicing official.

(4) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the servicing official.

(5) Notify the debtor in writing of the reasons for the rejection for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(d) *Appeal rights*. In accordance with Subpart B of Part 1900 of this chapter, the debtor will be given the right to appeal the rejection of any debt settlement offer made by the debtor under this subpart.

§ 1956.139 Collections.

(a) When the debtor offers a lump-sum payment in compromise or an initial payment on an adjustment offer, that payment will accompany the settlement application at the time the application is filed with the servicing official.

(b) Except as provided in paragraph (c) of this section, debt settlement payments will be deposited and transmitted as required in Subpart B of Part 1951 of this chapter.

(c) Checks or check transmittal letters containing restrictive notations such as ''Settlement in full'' or ''Payment in full,'' will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(d) All payments evidenced by Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' bearing the legend ''Compromise Offer—FmHA or its successor agency under Public Law 103–354'' or ''Adjustment Offer—FmHA or its successor agency under Public Law 103–354,'' will be held in the Deposits Fund Account by the Finance Office until notification is received from the

State Office of the approval or rejection of the offer.

(1) Upon receipt of an approved Form FmHA or its successor agency under Public Law 103–354 1956–1, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective revolving funds.

(2) Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the servicing official, the amount held in the Deposits Fund Account.

(e) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA or its successor agency under Public Law 103–354 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer.

(f) If an approved debt settlement agreement is later voided by the State Director in accordance with § 1956.142(e) of this subpart, any payments which have been received shall be retained as payments on the debt owed at the time the compromise or adjustment offer was approved.

§§ 1956.140–1956.141 [Reserved]

§ 1956.142 Delinquent adjustment agreements.

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor's plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to meet the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the servicing official. Upon receipt, the Finance Office will return the original Form FmHA or its successor agency under Public Law 103–354 1956–1 to the State Office.

§ 1956.143 Debt restructuring—hospitals and health care facilities.

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are nonprogram (NP) loans as defined in § 1951.203 (f) of subpart E of part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) *Definitions.* As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA or its successor agency under Public Law 103–354

including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA or its successor agency under Public Law 103–354 payments. That is, one full annual installment or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond their control and have acted in good faith by trying to fulfill the agreements with FmHA or its successor agency under Public Law 103–354 in connection with the delinquent loans.

Interest rate reduction. Reduction of the interest rate on the restructured loan to as low as the poverty line interest rate in effect on community and business programs loans.

Loan deferral. The temporary delay of principal and interest payments for up to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA or its successor agency under Public Law 103–354's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building but as a facility continuing to offer health care services which may, or may not, be similar to those offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA or its successor agency under Public Law 103–354 may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA or its successor agency under Public Law 103–354 will consider the following criteria for selection: past experience in health care facility analysis, a familiarity with the problems of rural health care facilities, a knowledge of the particular area currently served by the facility in question, and a willingness to work with both FmHA or its successor agency under Public Law 103–354 and the debtor in developing a final plan for restructuring.

Restructured loan. A revision of the debt instruments including any combination of the following: writing down of accumulated interest charges and principal, deferral, consolidation, and adjustment of the interest rates and terms, usually followed by reamortization.

(b) *Debtor notification*. All servicing actions permitted under subpart E of part 1951 of this chapter are to be exhausted prior to consideration for debt restructuring under this section. To this end, the servicing official must ensure that the casefile clearly documents that all servicing actions under subpart E of part 1951 of this chapter

have been exhausted and that the debtor is at least 1 full year's debt service behind schedule for a minimum of 180 days. The debtor then should be informed of the debt restructuring available under this section by using language similar to that provided in Guide 1 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) as follows:

(1) Any introductory paragraph;

(2) A paragraph concerning prior servicing attempts;

(3) A discussion of eligibility, as defined in this section, including the provision that the debtor acted in good faith in connection with their FmHA or its successor agency under Public Law 103–354 loan and that the delinquency was caused by circumstances beyond their control;

(4) Two paragraphs that explain the goal of the debt restructuring program;

(5) A paragraph stating that debt restructuring may include a combination of servicing actions listed in paragraph (a) of this section;

(6) Information that details what the debtor must do to apply for restructuring. A response must be received within 45 days of receipt of this letter to request consideration for debt restructuring and the request must include projected balance sheets, budgets, and cash-flow statements which include and clearly identify funding of the FmHA or its successor agency under Public Law 103–354 reserve account for the next 3 years;

(7) A discussion of FmHA or its successor agency under Public Law 103–354's analysis and calculation process; and

(8) A paragraph identifying the FmHA or its successor agency under Public Law 103–354 official who may be contacted for assistance.

(c) *State Director's restructuring determination*. Upon receipt of the delinquent debtor's request for debt restructuring consideration, the State Director will:

(1) Within 15 days of receipt of debtor's request, if an operations review is deemed necessary, send a memorandum to the Administrator asking for program authority to contract for the review in accordance with Exhibit D of FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 Office). The name of the debtor involved and the projected amount of funds anticipated to be spent for the contract should also be provided. It is anticipated that an operations review will be necessary in most cases and that the only exceptions would be for smaller health care facilities or facilities that have developed a proposed plan that is comprehensive and realistic. Upon receipt of the Administrator's program contracting approval authority, a contract is to be awarded to an organization qualified to perform an operations review as defined in paragraph (a) of this section. The operations review normally will be completed and delivered to FmHA or its successor agency under Public Law 103–354 within 60 days of the award date.

(2) Contract for an appraisal to be performed by an independent, qualified fee appraiser. Note: To the extent possible, the appraisal should be scheduled for completion no later than the completion date of the operations review.

(3) Complete an analysis of the operations review, appraisal, and other documented information, and make an eligibility determination.

(i) Eligibility determination. The State Director must conclude that the debtor is eligible for debt restructuring consideration. This conclusion will be clearly documented in the casefile based on a review of the following:

(A) The debtor acted in good faith with regard to the delinquent loan. The casefile must reflect the debtor's cooperation in exploring servicing alternatives. The casefile should contain no evidence of fraud, waste, or conversion by the debtor, and no evidence that the debtor violated the loan agreement or FmHA or its successor agency under Public Law 103–354 regulations.

(B) The delinquency was caused by circumstances beyond the control of the debtor. This determination will be based on the debtor's narrative on this issue, which is a required part of the application for debt restructuring, and a separate review of the debtor's casefile and operations.

(C) As part of the application for debt restructuring, the debtor submitted a

proposed operating plan that presents feasible alternatives for addressing the delinquency.

(ii) *Debtor determined eligible.* If the debtor is determined to be eligible for debt restructuring, a determination of a net recovery value and level of debt the facility will support will be made. It is anticipated that meetings with the debtor, the contractor who performed the operations review, and others, as appropriate, could be necessary to develop these values; although it should be emphasized throughout these meetings that any calculations and conclusions reached are preliminary in nature, pending final review by the Administrator. For debt restructuring calculations and computing a feasible cash-flow projection, the following order and combinations of loan servicing actions will be followed:

(A) Loan deferral for up to 6 months.

(B) Interest rate reduction to not less than the poverty line rate as determined by FmHA or its successor agency under Public Law 103–354 Instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103–354 Office). Interest rate reduction will be considered only in conjunction with an extension of the term of the loan to the remaining useful life of the facility or 40 years, whichever is less.

(C) Debt writedown. Other creditors of the debtor, representing a substantial portion of the total debt, are expected to participate in the development of a restructuring plan which includes debt writedown. Debt writedown participation by other creditors should be on a pro rata basis with the FmHA or its successor agency under Public Law 103–354 writedown. However, failure of these creditors to agree to participate in the plan shall not preclude the use of principal and interest writedown by FmHA or its successor agency under Public Law 103–354 if it is determined that this option results in the least cost to the Federal Government.

(iii) *Debtor determined ineligible.* If the State Director concludes that the debtor is not eligible for debt restructuring consideration for any of the reasons listed in paragraph (c)(3)(i) of this section, then the debtor will be notified by a letter that includes the following information:

(A) The basis for the determination;

(B) The next step in servicing the loan: possible acceleration if the delinquency is not cured; and

(C) The debtor may appeal this determination in accordance with subpart B of part 1900 of this chapter.

(iv) *State Director's recommendation.* Upon completion of the determination of net recovery value and restructured debt in accordance with paragraph (c)(3)(ii) of this section, and prior to formal presentation to the borrower, the State Director will forward a recommendation to the National Office with the following documentation:

(A) That all other servicing efforts have been exhausted as required in paragraph (b) of this section.

(B) Financial statements including balance sheets, income and expense, cash-flows for the most recent actual year, and projections for the next 3 years. The amount of FmHA or its successor agency under Public Law 103–354's restructured debt and reserve account requirements are to be clearly indicated on the projected statements. Also, operating statistics including number of beds, patient days of care, outpatient visits, occupancy percentage, etc., for the same periods of time must be included.

(C) Copies of the operations review, developed for the particular loan, and appraisal.

(D) Calculations of the net recovery value.

(E) Debt restructuring calculations including a listing of the various servicing combinations used in these calculations as contained in paragraph (c)(3)(ii) of this section. For example:

(*1*) Interest rate reduced from the applicant's current rate on all loans to the poverty line rate as determined by FmHA or its successor agency under Public Law 103–354 instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103–354 Office); and

(*2*) Extension of the terms from 25 to 30 years.

(F) Information concerning discussions with the debtor and their agreement or disagreement with the calculations and recommendations.

(G) If debt restructuring is proposed:

(*1*) A draft of Form FmHA or its successor agency under Public Law 103–354 1951–33, if applicable, and any other necessary comments or requirements that may be required by OGC and Bond Counsel in § 1951.223 (c)(3) and (4) of subpart E of part 1951 of this chapter.

(*2*) A draft of Form FmHA or its successor agency under Public Law 103–354 1956–1, if applicable. Complete only parts I, II, VI, and VIII. Part VI, ''Debtor's Offer and Certification,'' will be in a separate attachment and contain the adjusted unpaid principal amount for which FmHA or its successor agency under Public Law 103–354 approval is requested. In Part VI of the form, type ''see attached.''

(H) If the proposed restructured debt will not cash-flow or is less than the net recovery value, omit the items in paragraph (c)(3)(iv)(G) of this section.

(d) *National Office processing of State Director's request.*

(1) After reviewing the recommendation to either debt restructure or liquidate for the net recovery value, the Administrator, after concurring, modifying, or not concurring in the recommendation, will return the submission for further processing.

(2) If a debt writedown is used in the restructuring process, the amount will be included in the National Office transmittal memorandum. The draft Form FmHA or its successor agency under Public Law 103–354 1956–1 will not need to be finalized and returned to the Administrator for signature. The State Director's signature on the final copy will be sufficient. However, a copy of the National Office memorandum is to be attached to the form when completed.

(e) *Debtor notification of debt restructuring and net recovery value calculations.* The State Director will provide a copy of the basis for the debt restructuring or net recovery determination to the debtor.

(1) If the value of the restructured loan is equal to, or greater than, the recovery value, the debtor will be made an offer to accept the restructured debt by using language similar to that provided in Guide 2 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) and including the following paragraphs:

(i) An introductory paragraph indicating that FmHA or its successor agency under Public Law 103–354 has concluded its consideration of the debtor's request;

(ii) A paragraph indicating FmHA or its successor agency under Public Law 103–354's approval of the debt restructuring request and that acceptance must be received by FmHA or its successor agency under Public Law 103–354 within 45 days from receipt of this letter; and

(iii) That the debtor's acceptance will require the execution of a Shared Appreciation Agreement similar to Guide 4 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) and possible new debt instruments accompanied by Bond Counsel opinions.

(2) If the debt analysis calculations indicate that a restructured debt would be less than the net recovery value of the security, a letter using language similar to that provided in Guide 3 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office), will be sent to the debtor that includes the following paragraphs:

(i) An introductory paragraph indicating that FmHA or its successor agency under Public Law 103–354 has concluded its consideration of the debtor's request;

(ii) Paragraphs indicating that:

(A) The debtor may pay FmHA or its successor agency under Public Law 103–354 the net recovery value of the loan. The debtor will be given 30 days from receipt of this letter to inform FmHA or its successor agency under Public Law 103–354 of its intent, 90 days to finalize the payoff, and will be notified that an election to pay off FmHA or its successor agency under Public Law 103–354 would require the execution of a Net Recovery Buy Out Recapture Agreement, similar to that provided in Guide 5 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office); or

(B) If the debt is not paid off at the net recovery value, FmHA or its successor agency under Public Law 103–354 will proceed to liquidate the loan.

(f) *Debtor responses to debt restructuring and net recovery value calculations*. Responses from the debtor will be handled as follows:

(1) *Acceptance of FmHA or its successor agency under Public Law 103–354's restructured debt offer*. When a debtor accepts the offer for debt restructuring, processing will be in accordance with § 1951.223 (c) of subpart E of part 1951 of this chapter using the adjusted unpaid principal and outstanding accrued interest at the Administrator's approved interest rate and terms. The debtor will be required to execute a Shared Appreciation Agreement which will provide that, should the debtor sell or transfer title to the facility within the next 10 years, FmHA or its successor agency under Public Law 103–354 is entitled to a portion of any gain realized. This agreement will include language similar to that found in Guide 4 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office). The original of Form FmHA or its successor agency under Public Law 103–354 1956–1, with appropriate attachments signed by the State Director, and a copy of the Shared Appreciation Agreement will be sent to the Finance Office. Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package; and

(2) *Acceptance by debtor to pay off loan at the recovery value*. Processing of this transaction will be in accordance with § 1956.124 of this subpart. However, the account does not need to be accelerated. The debtor will be required to execute a Net Recovery Buy Out Recapture Agreement, similar to that found in Guide 5 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office). The original of Form FmHA or its successor agency under Public Law 103–354 1956–1, with appropriate attachments signed by the State Director, and a copy of the recorded Net Recovery Buy Out Recapture Agreement will be sent to the Finance Office. The executed Net Recovery Buy Out Recapture Agreement will be recorded in the county in which the facility is located. The Finance Office will credit the accounts of debtors who entered into Net Recovery Buy Out Recapture Agreements with the amount paid by the debtor (net recovery value). Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package.

(g) *Collection and processing of recapture*. (1) When FmHA or its successor agency under Public Law 103–354 becomes aware of the sale or transfer of title to the facility on which there is an effective Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) or a Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) outstanding and a determination is made that a recapture is appropriate, FmHA or its successor agency under Public Law 103–354 will notify the debtor of the following:

(i) Date and amount of recapture due; and

(ii) FmHA or its successor agency under Public Law 103–354 action to be taken if debtor does not respond within the designated timeframe with the amount of recapture due.

(2) When the recapture is received, the payment will be processed on Form FmHA or its successor agency under Public Law 103–354 451–2 as a miscellaneous collection in accordance with subpart B of part 1951 of this chapter. The Form FmHA or its successor agency under Public Law 103–354 451–2 along with a copy of the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office), as appropriate, will be forwarded to the Finance Office.

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form FmHA or its successor agency under Public Law 103–354 1965–8, ''Release from Personal Liability,'' modified as appropriate.

(h) *No recapture due*. If FmHA or its successor agency under Public Law 103–354 determines there is no recapture

due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103–354 Office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

[59 FR 46160, Sept. 7, 1994]

§ 1956.144 [Reserved]

§ 1956.145 Disposition of essential FmHA or its successor agency under Public Law 103–354 records.

FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office) identifies an ''essential FmHA or its successor agency under Public Law 103–354 record'' as the original of any document or record which provides evidence of indebtedness or obligation to FmHA or its successor agency under Public Law 103–354 and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential FmHA or its successor agency under Public Law 103–354 records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtors' legal representative. The appropriate legend, such as ''Satisfied by Approved Compromise,'' and the date of the final action will be stamped or typed on the original document. This same information plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor's case folder.

(b) Essential FmHA or its successor agency under Public Law 103–354 records evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office). However, if the debtor requests the document(s), they must be stamped ''Satisfied by Approved Cancellation'' and returned.

(c) Essential FmHA or its successor agency under Public Law 103–354 records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office).

[53 FR 13100, Apr. 21, 1988, as amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.146 [Reserved]

§ 1956.147 Debt settlement under the Federal Claims Collection Act.

The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing the Federal Claims Collection Act and have promulgated the Federal Claims Collection Act Joint Standards (FCCAJS) (4 CFR parts 101–105) to inform Government Agencies on how to settle debts and claims which the Agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of $20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ. Debt Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Industrial Development Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, Indian Tribal Land Acquisition Loans (to the extent settlement cannot be effected pursuant to § 1956.137), and 601 Energy Impact Assistance Grants are programs that must be settled under the FCCAJS.

(a) Debt settlement of the subject loans and claims falls in the following categories:

(1) Settlement of loans and claims may be approved by the Administrator when the outstanding balance of the

indebtedness involved in the settlement in $20,000 or less, exclusive of interest, penalties, and administrative costs. These loans and claims will be submitted to the National Office on Form FmHA or its successor agency under Public Law 103–354 1956–1, ''Application for Settlement of Indebtedness,'' for debt settlement. Subsequent to approval, Form FmHA or its successor agency under Public Law 103–354 1956–1 will be distributed in accordance with the Forms Manual Insert (FMI).

(2) Loans and claims with an outstanding balance of $200,000 or less inclusive of interest, penalties, and administrative costs, but with an outstanding balance greater than $20,000, exclusive of interest, penalties, and administrative costs, after approval by the State Director will be referred to your Regional Office of the General Counsel (OGC) for referral to the United States Attorney in whose judicial district the debtor can be found. The form to be used is the Claims Collection Litigation Report (CCLR). This form should be available through the U.S. Attorney. A memorandum from the State Director should be attached to the CCLR recommending acceptance of the debt settlement. If the State Director after reviewing the CCLR does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(3) Loans and claims with an outstanding balance over $200,000, inclusive of interest, penalties, and administrative costs, will be referred to the Administrator and will include the following:

(i) The case file(s).

(ii) A completed CCLR.

(iii) Copies of the notes, security agreements, and mortgages.

(iv) A current appraisal of any security owned by the debtor.

(v) A narrative which will include:

(A) Recommendation for the acceptance of the debt settlement.

(B) The type of loan involved, a short history of the loan, and why the debtor failed.

(C) Steps taken to collect the loan(s).

(D) An analysis of the debtor's future repayment ability. This should discuss if the debtor has any other assets or has concealed or improperly transferred assets, if known. If the debtor is an individual, this should include consideration of the debtor's present and potential income and inheritance prospects.

(E) Why acceptance of the debt settlement offer is in the best interest of the Government.

(4) If the Administrator concurs with the recommendation for the debt settlement, it will be referred by the FmHA or its successor agency under Public Law 103–354 National Office to OGC for referral to the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

(b) When a debtor has a Community Programs or Business and Industry loans(s) and defined in this subpart, these loan(s) will be debt settled under the authority of the Consolidated Farm and Rural Development Act. In such cases, the subject loans and claims should be listed under part II(B) on Form FmHA or its successor agency under Public Law 103–354 1956–1, as other debts owed FmHA or its successor agency under Public Law 103–354. Normally, all the security for the subject loans and claims should be disposed of prior to the submission for debt settlement.

(c) It is not necessary to obtain approval of the United States Attorney or the DOJ (as the case may be) in cases where FmHA or its successor agency under Public Law 103–354 decides not to settle a loan or claim.

[55 FR 30197, July 25, 1990, as amended at 59 FR 46162, Sept. 7, 1994]

§ 1956.148 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any

settlement actions approved by the Administrator under this section will be documented on Form FmHA or its successor agency under Public Law 103–354 1956–1 and returned to the State Office for submission to the Finance Office.

§ 1956.149 [Reserved]

§ 1956.150 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0124. Public reporting burden for this collection of information is estimated to vary from ½ hour to 30 hours per response with an average of 8.14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[59 FR 46162, Sept. 7, 1994]

PART 1957—ASSET SALES

Subpart A—Rural Housing Asset Sales

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AUTHORITY: Pub. L. 99–509, sec 2001(b)(1).

SOURCE: 54 FR 47958, Nov. 20, 1989, unless otherwise noted.

Subpart A—Rural Housing Asset Sales

§ 1957.1 General.

Pursuant to the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, the Farmers Home Administration or its successor agency under Public Law 103–354 sold certain of the portfolio of loans made under section 502 of the Housing Act of 1949 to the Rural Housing Trust, 1987–1. The sale was without recourse to FmHA or its successor agency under Public Law 103–354 except for certain provisions providing for FmHA or its successor agency under Public Law 103–354's payment of interest credit amounts and agreement to compensate the Rural Housing Trust 1987–1 for future cash flow changes due to revised borrowers rights as set forth in FmHA or its successor agency under Public Law 103–354 regulations. The sale documents to Rural Housing Trust 1987–1 recognize that the FmHA or its successor agency under Public Law 103–354 loans were assigned subject to rights provided to theseborrowers under documentation to recognize the rights of FmHA or its successor agency under Public Law 103–354 borrowers under regulations of FmHA or its successor agency under Public Law 103–354 as they may exist from time to time and to service the loans in accordance with then current FmHA or its successor agency under Public Law 103–354 regulations. In addition, as provided in § 1957.6 of this subpart, FmHA or its successor agency under Public Law 103–354 has retained review, but not hearing authority under the FmHA or its successor agency under Public Law 103–354 Appeal Procedure, 7 CFR part 1900, Subpart B. Failure of private servicers to comply with FmHA or its successor agency under Public Law 103–354 regulations in servicing loans sold to the Rural Housing Trust 1987–1 may be redressed in the review process under the Appeal Procedure.

§ 1957.2 Transfer with assumptions.

FmHA or its successor agency under Public Law 103–354 regulations governing transfers and assumptions will not apply to these loans. Individuals who what to purchase property securing a loan held by the Rural Housing Trust 1987–1, and who are eligible for an FmHA or its successor agency under Public Law 103–354 § 502 loan will be given the same priority by FmHA or its successor agency under Public Law 103–354 as a transferee of a § 502 loan if the property is then suitable for the

FmHA or its successor agency under Public Law 103–354 RH program and is located in an eligible area. The Master Servicer of the Rural Housing Trust, 1987–1, may permit an assumption if it is deemed by the Master Servicer to be in the financial interest of the Trust, but in such case the transferee would not be eligible for FmHA or its successor agency under Public Law 103–354 loan servicing benefits under FmHA or its successor agency under Public Law 103–354 regulations.

§ 1957.3 [Reserved]

§ 1957.4 Graduation.

Borrowers will not be required to graduate to other credit.

§ 1957.5 [Reserved]

§ 1957.6 Appeal reviews.

The Master Servicer, acting through its subservicer, will have the responsibility to conduct hearings under the appeal process. Final review of an adverse decision upheld under the appeal process will remain with FmHA or its successor agency under Public Law 103–354 and be conducted by the Agency's National Appeal Staff, Washington, DC, under the FmHA or its successor agency under Public Law 103–354 Appeal Procedures, 7 CFR part 1900, subpart B. This review is final and will conclude the appellant's administrative appeal process.

§§ 1957.7–1957.50 [Reserved]

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

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EXHIBIT F [RESERVED]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 50 FR 45783, Nov. 1, 1985, unless otherwise noted.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.1 Purpose.

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) chattel security, Economic Opportunity (EO) loan property, and note only loans. Security servicing for Nonprogram (NP) loans on farm property will be according to subpart J of part 1951 of this chapter.

[50 FR 45783, Nov. 1, 1985, as amended at 58 FR 52654, Oct. 12, 1993]

§ 1962.2 Policy.

Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives and protect FmHA or its successor agency under Public Law 103–354's financial interest. To accomplish these objectives, security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise satisfactorily meets the loan obligations including repayment.

§ 1962.3 Authorities and responsibilities.

(a) *Redelegation of authority*. Authority will be redelegated to the maximum extent possible consistent with program requirements and available resources. The State Director, District Director and County Supervisor are authorized to redelegate, in writing, any authority delegated to them in this subpart to any employee determined by them to be qualified.

(b) *Responsibilities*—(1) *FmHA or its successor agency under Public Law 103–354 personnel*. The State Director, District Director and County Supervisor are responsible for carrying out the policies and procedures in this subpart.

(2) *Borrower*. The borrower is responsible for repaying the loans, maintaining, protecting, and accounting to FmHA or its successor agency under Public Law 103–354 for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

(c) *Exception authority*. The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this auhority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(d) *Farms in more than one jurisdiction*. If the farm is situated in more than one State, County, or Parish, the loan will be serviced by the County Office serving the County in which the borrower's residence is located. If the borrower is a corporation, cooperative, partnership or joint operation is the borrower's residence is not on the farm, the loan will be serviced by the County Office serving the County in which the farm or a major portion of the farm is located.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13480, Apr. 21, 1986]

§ 1962.4 Definitions.

As used in this subpart, the following definitions apply:

Abandonment. Voluntary relinquishment by the borrower of control of security or EO property without providing for its care.

Acquired chattel property. Former security or EO property of which FmHA or its successor agency under Public Law 103–354 has become the owner (See § 1955.20 of *Subpart A of Part 1955* of this chapter).

Basic security. Consists of all equipment serving as security for FmHA or

its successor agency under Public Law 103–354 loans. It also consists of real estate and all foundation herds and flocks, including replacements, which serve as a basis for the farming operation outlined in the Farm and Home Plan or yearly budget which serve as security for FmHA or its successor agency under Public Law 103–354 loans. With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are basic security unless the borrower has replacements that will keep numbers and production up to planned levels. However, if a borrower plans to make a significant reduction in his basic livestock herd or flocks, the animals or birds that are sold in making this reduction will be considered basic security.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Chattel security. Chattel property which may consist of, but is not limited to, inventory; accounts; contract rights; general intangibles; crops; livestock; fish; farm, business, and recreational equipment; and supplies, and which is covered by financing statements and security agreements, chattel mortgages, and other security instruments.

Civil action. Court proceedings to protect FmHA or its successor agency under Public Law 103–354's financial interests such as obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure. Bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate and similar proceedings to settle and distribute estates of incompetents or of decendents under a will, or otherwise, and pay claims of creditors are not included.

Criminal action. Prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes. These include but are not limited to violations such as:

Unauthorized sale of security.

Purchase of security with intent to defraud and without payment of the purchase price to FmHA or its successor agency under Public Law 103–354;

Falsification of assets or liabilities in loan applications;

Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;

Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;

By scheme, trick, or other device, covering up or concealing misuse of funds or authorized dispositions of security or EO property or other illegal action; or

Any other false statements or representations relating to FmHA or its successor agency under Public Law 103–354 matters. To establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time the loan agreement or the check on the supervised bank account was signed, intended to sell the property in violation of the loan agreement. The Federal criminal statute of limitations bars institution of criminal action 5 years after the date the act was committed. Unauthorized disposition of even minor items by the borrower will be considered criminal violations.

Default. Failure of the borrower to observe the agreements with FmHA or its successor agency under Public Law 103–354 as contained in notes, security instruments, and similar or related instruments. Some examples of default or factors to consider in determining whether a borrower is in default are when a borrower:

Is delinquent, and the borrower's refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other operation, or other circumstances within the borrower's control.

Ceases to conduct farming or other operations for which the loan was made or to carry out approved changed operations.

Has disposed of security or EO property without FmHA or its successor agency under Public Law 103–354 approval, has not cared properly for such property, has not accounted properly for such property or the proceeds from its sale, or taken some action which resulted in bad faith or other violations in connection with the loan.

Has progressed to the point to be able to obtain credit from other sources, and has agreed in the note or other instrument to do so but refuses to comply with that agreement.

EO property. Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

EO property essential for minimum family living needs. Nonsecurity chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would not have such necessities. This includes livestock, poultry, or other animals used as food or to produce food for the family or to produce income for minimum essential family living needs; modest amounts of real property needed for family shelter or to produce food or income for minimum essential family living needs, and items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. Any such item of a value in excess of the minimum need may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the proceeds will be paid on the EO loan.

Farm income. Proceeds from the sale of chattel security which is normally sold annually during the regular course of business such as crops, feeder livestock and other farm products.

Farmer Program loans. These loans and Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Economic Emergency (EE), Emergency (EM), Economic Opportunity (EO) and Special Livestock (SL) loans and Rural Housing loans made for farm service buildings (RHF).

FmHA or its successor agency under Public Law 103–354. The United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354 and its predecessor administrative agencies.

Foreclosure sale. Act of selling security either under the ''Power of Sale'' in the security instrument or through court proceedings.

Liquidation. The act of selling security or EO property to close the loan when no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security or its value or to recover amounts owed to FmHA or its successor agency under Public Law 103–354; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

Normal income security. All security not considered basic security, including crops, livestock, poultry products, Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments, and other property covered by Farmers Home Administration or its successor agency under Public Law 103–354 liens that is sold in conjunction with the operation of a farm or other business, but shall not include any equipment (including fixtures in States that have adopted the Uniform Commercial Code), or foundation herd or flock. that is the basis of the farming or other operation, and is the basic security for a Farmers Home Administration or its successor agency under Public Law 103–354 farmer program loan.

Office of the General Counsel (OGC). The Regional Attorneys, Attorneys-in-Charge, and National Office staff of the Office of the General Counsel of the United States Department of Agriculture.

Purchase money security interest. Special type of security interest which, if properly perfected, takes priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or is obligated to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obtain rights in it. Such value

must be given not later than the time the debtor acquires the collateral or obtains rights in it.

Repossessed property. Security or EO property in FmHA or its successor agency under Public Law 103–354's custody, but still owned by the borrower.

Security. Also means ''Chattel security'' when appropriate.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13481, Apr. 21, 1986; 53 FR 35783, Sept. 14, 1988]

§ 1962.5 [Reserved]

§ 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by Agency lien*. (1) When additional chattel property not presently covered by an Agency lien is available and needed to protect the Government's interest, the County Supervisor will obtain one or more of the following:

(i) A lien on such property.

(ii) An assignment of the proceeds from the sale of agricultural products when such products are not covered by the lien instruments.

(iii) An assignment of other income, including FSA Farm Programs (formerly ASCS) payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect the Government's interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) [Reserved]

(c) *Assignments of upland cotton, rice, wheat and feed grain payments*. Borrowers may assign FSA Farm Programs (formerly ASCS) payments under upland cotton, rice, wheat and feed grain programs.

(1) *Obtaining assignments*. Assignments will be obtained as follows:

(i) Only when it appears necessary to collect operating-type loans.

(ii) Only for the crop year for which operating-type loans are made, and

(iii) For only the amount anticipated for payments as indicated on Form FmHA 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security,'' of the applicable upland cotton, rice, wheat and feed grain programs.

(2) *Selecting counties*. The County Supervisor then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them no later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form ASCS–36, ''Assignments of Payment,'' which will be obtained from FSA Farm Programs.

(3) *Releasing assignments and handling checks*. (i) The County Supervisor will inform FSA Farm Programs that releasing its assignment whenever a borrower pays the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made only to the Agency, and the proceeds used as indicated on Form FmHA 1962–1.

[61 FR 35929, July 9, 1996]

§ 1962.7 Securing unpaid balances on unsecured loans.

The County Supervisor will take a lien on a borrower's chattel property in accordance with § 1962.6 of this subpart if it is necessary to rely on such property for the collection of the borrower's unsecured indebtedness, or if it will assist in accomplishing loan objectives.

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Additional liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect FmHA or its successor agency under Public Law 103–354 interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such

mortgage will not prevent making an FmHA or its successor agency under Public Law 103–354 real estate loan, if needed, later.

(a)–(b) [Reserved]

[50 FR 45783, Nov. 1, 1985, as amended at 53 FR 35783, Sept. 14, 1988; 56 FR 15824, Apr. 18, 1991; 61 FR 35930, July 9, 1996]

§§ 1962.9–1962.12 [Reserved]

§ 1962.13 Notification to potential purchasers.

(a) In States without a Central Filing System (CFS), all Farm Credit Programs borrowers prior to loan closing or prior to any servicing actions which require taking a lien on farm products, such as crops or livestock, must provide the names and addresses of potential purchasers. A written notice will be sent by the Agency, certified mail, return receipt requested, to these potential purchasers to protect the Government's security interest.

(1) The name and address of the debtor.

(2) The name and address of any secured party.

(3) The Social Security number or tax ID number of the debtor.

(4) A description of the farm products given as security by the debtor, including the amount of such products where applicable, the crop year, the county in which the products are located, and a reasonable description of the farm products.

(5) Any payment obligation imposed on the potential purchaser by the secured party as a condition for waiver or release of lien. The original or a copy of the written notice also must be sent to the purchaser within 1 year before the sale of the farm products. The written notice will lapse on either the expiration period of the Financing Statement or the transmission of a letter signed by the County Supervisor and showing that the statement has lapsed or the borrower has performed all obligations to the Agency.

(b) Lists of borrowers whose chattels or crops are subject to an Agency lien may be made available, upon request, to business firms in a trade area, such as sale barns and warehouses, that buy chattels or crops or sell them for a commission. These lists will exclude those borrowers whose only crops for sale require FSA Farm Programs (formerly ASCS) marketing cards. The list is furnished only as a convenience and may be incomplete or inaccurate as of any particular date.

(1)–(2) [Reserved]

[61 FR 35930, July 9, 1996, as amended at 62 FR 10157, Mar. 5, 1997]

§ 1962.14 Account and security information in UCC cases.

Within 2 weeks after receipt of a written request from the borrower, the Agency must inform the borrower of the security and the total unpaid balance of the the Agency indebtedness covered by the Financing Statement.

(a) If the Agency fails to provide the information, it may be liable for any loss caused the borrower and, in some States, other parties, and also may lose some of its security rights. The UCC provides that the borrower is entitled to such information once every 6 months without charge, and the the Agency may charge up to $10 for each additional statement. However, the Agency provides them without charge.

(b) Although the UCC only requires the Agency to give information pursuant to the borrower's written request, the Agency will also answer oral requests. Furthermore, the UCC does not prohibit giving this information to others who have a proper need for it, such as a bank or another creditor contemplating advancing additional credit to the borrower.

[50 FR 45783, Nov. 1, 1985, as amended at 54 FR 47960, Nov. 20, 1989; 61 FR 35930, July 9, 1996]

§ 1962.15 [Reserved]

§ 1962.16 Accounting by County Supervisor.

The Agency will maintain a current record of each borrower's security. Whenever an inspection is performed, the borrower must advise the Agency of any changes in the security and will complete and sign Form FmHA 1962–1 in accordance with § 1924.56 if it has not been previously completed for the year.

(a) *Agency responsibilities*. Chattel security will be inspected annually except in cases where the Agency official has justified in assessment or analysis

review that no undue risk exists. An FO borrower who has been current with the Agency and who has provided chattels as additional security is an example of a case where an inspection may not be needed. All inspections will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less then 1 full crop year. The Agency official will discuss the provisions of §§1962.17 and 1962.18 and assist the borrower in completing the form. If a borrower does not plan to dispose of any chattel security, the form should be completed to show this and should be signed. When the Agency official has other contacts with the borrower, the official should also check for dispositions and acquisitions of security. Changes will be recorded on the form, dated and initialed by the borrower and the agency official. The purpose of all inspections is to:

(1) Verify that the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

(b) *Dispositions*. The County Supervisor will record all dispositions of chattel security on Form FmHA or its successor agency under Public Law 103–354 1962–1, and on the file copy of the security agreement or chattel mortgage. The original security instrument must not be altered. Additional acquired chattel security should be entered on the file copy of the security agreement or chattel mortgage and must be described on subsequent security instruments.

(c) *Unapproved dispositions*. Unapproved dispositions of security will be handled in accordance with §§1962.18 and 1962.49 of this subpart.

[50 FR 45783, Nov. 1, 1985, as amended at 58 FR 46075, Sept. 1, 1993; 61 FR 35930, July 9, 1996]

§1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) *General*. (1) The borrower must account for all security. When the borrower sells security, the property and proceeds remain subject to the Agency's lien until the lien is released. All checks, drafts, or money orders which the borrower receives for the sale of collateral listed on Form FmHA 1962–1 (available in any Agency office) must be payable to both the borrower and the Agency unless all Agency loan installments for the period of the form have been paid including any past-due installments. If the borrower disposes of collateral or uses the proceeds in a way not listed on Form FmHA 1962–1, the borrower will have violated the loan agreement, and the Government will not release its security interest in the collateral. Releases of sales proceeds will be terminated when the borrower's accounts are accelerated.

(2) Section 1924.56 requires that there must always be a current Form FmHA 1962–1 in the file of a borrower with a loan secured by chattels. If a borrower asks the Agency to release proceeds from the sale of chattels and there is a current Form FmHA 1962–1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given attachment 1 of exhibit A of subpart S of part 1951 of this chapter, a written explanation of the reasons for the denial, and the opportunity for an appeal in accordance with 7 CFR part 780. Immediately upon determining that the borrower does not have a current Form FmHA 1962–1 in the file, the County Supervisor will immediately contact the borrower to develop one.

(3) If the borrower requests a change(s) to Form FmHA 1962–1, and the County Supervisor can approve the change(s), the borrower and the County Supervisor will initial and date each change in accordance with item (6) in the Forms Manual Insert (FMI) for Form FmHA 1962–1. The form will be marked ''Revised'' and the borrower will be notified in writing confirming that the change(s) has been approved.

(b) *Use of Form FmHA 1962–1*. (1) County Supervisors are authorized to approve or disapprove dispositions of Agency chattel security in accordance with this subpart. The County Supervisor, with the assistance of the borrower, will complete Form FmHA 1962–1 in accordance with the FMI (available in any Agency office) to show how, when, and to whom the borrower will

sell, exchange, or consume security and use sale proceeds (include milk sale proceeds). Government payments, crop insurance and insurance proceeds derived from the loss of security will also be accounted for on Form FmHA 1962–1. This includes, for example, sale proceeds on hand and crops in storage. Only the proceeds from the sale of normal income security can be used to pay essential family and farm operation expenses. Proceeds from the sale of basic security will not be used for essential family living and farm operatingexpenses. In addition to payment of prior liens, basic security can only be released for the purposes listed in paragraphs (b)(2)(iv) through (b)(2)(vii). When proceeds from the disposition of normal income security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition. Any disposition of basic or normal income security must be recorded on Form FmHA 1962–1. However, the borrower is responsible for providing the County Supervisor with the necessary information to update the Farm and Home Plan and Form FmHA 1962–1.

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to the Agency can be used as follows:

(i) The Form FmHA 1962–1 must provide for releases of normal income security so that the borrower can pay essential family living and farm operating expenses. However, proceeds from the sale of basic security will not be used to pay essential family living or farm operating expenses.

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses:

Household operating
Food, including lunches
Clothing and personal care
Health and medical expenses, including medical insurance
House repair and sanitation
School, church, recreation
Personal insurance
Transportation
Furniture
Hired labor
Machinery repair
Farm building and fence repair
Interest on loans and credit or purchase agreement
Rent on equipment, land, and buildings
Feed for animals
Seed
Fertilizer
Pesticides, herbicides, and spray materials
Farm supplies not included above
Livestock expenses, including medical supplies, artificial insemination, and veterinarian bills
Machinery hire
Fuel and oil
Personal property tax
Real estate taxes
Water charges
Property and crop insurance
Auto and truck expenses
Utilities payments
Payments on contracts or loans secured by farmland, necessary farm equipment, livestock, or other chattels
Essential farm machinery. An item of essential farm machinery which is beyond repair may be replaced when the County Supervisor determines that replacement is a better choice than alternatives such as the lease of a similar piece of machinery or the hiring of the service.

(iii) All of the items in paragraph (b)(2)(ii) of this section may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation, what is typical for that type of operation in the area administered by the County Supervisor, and what would be an efficient method of production considering the borrower's resources. County Supervisors will refer to exhibit E of this subpart for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released. When the borrower and County Supervisor cannot agree that an expense is essential, the County Supervisor will notify the borrower, in writing, of why the requested release was denied, including why it is not basic, crucial or indispensable to the family and/or the farming operation and will give the borrower an opportunity to appeal in accordance

with subpart B of part 1900 of this chapter and paragraphs (a)(2) and (b)(5) of this section.

(iv) Proceeds can be applied to the Agency debt.

(v) Proceeds can be used to purchase property better suited to the borrower's need if the Agency will acquire a lien on the new property. The new property, together with any proceeds applied to the the Agency indebtedness, will have a value to the Agency at least equal to the value of the lien formerly held by the Agency on the old security.

(vi) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with an Agency loan or an Agency loan cannot be made in time to prevent the borrower and Agency from suffering a substantial loss.

(vii) Property can be exchanged, with prior Agency approval and in accordance with paragraph (b)(5) of this section, for property which is better suited to the borrower's needs if the Agency will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(viii) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that the Agency obtains a lien (or assignment) on the livestock and livestock products at least equal to the lien on the crops.

(3) The borrower must maintain records of dispositions of property and the actual use of proceeds and must make these records available to the Agency at the end of the period covered by the Form FmHA 1962–1, or when requested by the Agency. The County Supervisor will complete the ''Actual'' columns on that form, indicating approval or disapproval, making sure that the dispositions of property and uses of proceeds were as agreed upon. If they were not, the County Supervisor will take the actions required by § 1962.18 of this subpart. On the form, the County Supervisor will note approval or disapproval of each disposition.

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received as shown on Form FmHA 1962–1, the borrower will immediately notify the County Supervisor. If the borrower sells security to a purchaser not listed on the Form FmHA 1962–1, the borrower must immediately notify the County Supervisor of what property has been sold and of the name and business address of the purchaser. Such notification may be by telephone to the County Office, by letter, by visit to the County Office, or any other method the borrower chooses.

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962–1 or wants to dispose of chattel security in a way not listed in the ''How'' section or wants to use proceeds in a way not listed in the ''Use of Proceeds'' section on Form FmHA 1962–1, the borrower must obtain the Agency consent before the disposition or before the proceeds are used. The Agency *must* give consent for the release of normal income security if the change is necessary for the borrower to meet essential family living and farm operating expenses. The Agency *must* also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor *must* revise the Form FmHA 1962–1 contained in the borrower's case file, initial and date the change, and mark the form ''Revised.'' The County Supervisor will then either write to the borrower and send a copy of the ''Revised'' form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change (examples of major changes are: Feeder pig to sow

operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962–1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see §1924.56 of subpart B of part 1924 of this chapter.

(c) *Release of liens.* (1) Liens will be released by the County Supervisor when security is sold, exchanged or consumed, provided the conditions set out on Form FmHA 1962–1 and in this subpart are met.

(2) Junior Agency liens on chattels and crops serving as security for Agency loans can be released when such property has no present or prospective security value or enforcement of the Agency lien would be ineffectual or uneconomical. The following information will be documented in the running case record:

(i) The present market value of the chattels or crops, as determined by the County Supervisor, on which the Agency has a valueless junior lien.

(ii) The names of the prior lienholders, amount secured by each prior lien, and the present market value of any property which serves as security for the amount. The value of all property which serves as security for amounts owed to prior lienholders must be considered to determine whether the junior Agency lien has any present or prospective value.

(3) Liens obtained through a mutual mistake can be released. The reasons for the release must be documented in the running case record.

(4) Liens can be released when there is no evidence of an existing indebtedness secured by the lien in the records of the Agency, County, State, or Finance Office.

(5) Liens on separate items of chattels can be released to another creditor for any authorized Farm Credit Programs loan purpose when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining Agency debt.

(d) *Processing the release of chattel security.* (1) If the borrower or an interested third party requests a release of specific items which must be recorded under the UCC or chattel mortgage laws, Form FmHA 462–12, ''Statements of Continuation, Partial Release, Assignments, etc.,'' Form FmHA 460–1, ''Partial Release,'' or other Forms approved by OGC and required by State statute will be used. Care must be used to be sure that only specific items are released; for example, if a borrower requests a release of five cows, make sure that not all the cattle are released from the Agency lien. When specific items are listed on the security agreement, the County Supervisor should record the disposition on the *work copy* of the security agreement and on Form FmHA 1962–1.

(2) Assignments and consent to payment of proceeds will be processed under subpart A of part 1941 of this chapter and recorded on Form FmHA 1962–1.

(i) When it is necessary to temporarily amend Form FmHA 441–18, ''Consent to Payment of Proceeds From Sale of Farm Products,'' or Form FmHA 441–25, ''Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest,'' Form FmHA 462–9, ''Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products,'' will be used. All amendments of assignment agreements will be made on forms approved by OGC. The State Director will issue a State Supplement with the advice of OGC and prior approval of the National Office on the use of other forms. The original form after completion will be forwarded directly to the person or firm making the payment against which the assignment is effective, and a copy will be kept in the borrower's case file. All amendments of assignment agreements will be approved and recorded on Form FmHA 1962–1. Conditions of this section must be met. The County Supervisor will see that payments are made in accordance with the original consent when the amendment period expires. Normally, a temporary amendment will not exceed a six month period.

(ii) When the Agency is not expecting payment from the proceeds of a product on which it has a lien but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows:

The FmHA has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on the debt owned to this agency. Therefore, until further notice, it will not be necessary for you to make payment to the Agency for such product.

(e) *Releases of liens on wool and mohair marketed by consignment*—(1) *Conditions*. Liens on wool and mohair may be released when the security is marketed by consignment, provided all the following conditions are met:

(i) The producer assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs.

(ii) The producer assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair.

(iii) The producer and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the producer and the Agency.

(2) *Authority*. The County Supervisor may execute releases of the Government's lien on wool and mohair on Form FmHA 462–4, ''Assignment, Acceptance, and Release.'' Since Form FmHA 462–4 is not a binding agreement until executed by all parties in interest, including the producer, the broker and the Government, the County Supervisor may execute it before other parties sign it.

(f) *Notice of termination of security interest to purchasers of farm products* under consents or assignments upon payment in full. County Supervisors will notify purchasers of farm products as soon as the Agency has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of proceeds from the sale of the farm products. When Form FmHA 441–18 is in effect under the UCC, the notice to the purchaser will be made on Form FmHA 460–8, ''Notice of Termination of Security Interest in Farm Products.'' When assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by State Supplements.

(g) *Release of Agency interest in insurance policies*. When an Agency lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13481, Apr. 21, 1986; 52 FR 32121, Aug. 26, 1987; 53 FR 35784, Sept. 14, 1988; 56 FR 15824, Apr. 18, 1991; 57 FR 18680, Apr. 30, 1992; 57 FR 60085, Dec. 18, 1992; 58 FR 46075, Sept. 1, 1993; 61 FR 35930, 35931, July 9, 1996]

§ 1962.18 Unapproved disposition of chattel security.

(a) *General*. When the County Supervisor learns that a borrower has made a disposition of chattel security in a manner not provided for on Form FmHA or its successor agency under Public Law 103–354 1962.1 or becomes aware of the misuse of proceeds by a borrower, corrective action must be taken to protect the Government's interest.

(b) *Notice to borrowers*. When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide Letter 1962–A–5.

(1) If the borrower makes restitution or provides suffficient information to enable the County Supervisor to post-approve the transaction on Form FmHA or its successor agency under Public Law 103–354 1962–1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in 1962.17(b) of this subpart. Only one such transgression can be allowed in any period covered by the Form FmHA or its successor agency under Public Law 103–354 431–2, or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103–

354, between annual security inspections, whichever is appropriate, and this must be made clear to the borrower.

(2) If the borrower does not make restitution, if the County Supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or a misuse of proceeds after settling the first offense as provided in paragraphs (a) and (b) of this section, the County Supervisor will proceed in accordance with § 1962.49 of this subpart.

[54 FR 14791, Apr. 13, 1989]

§ 1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and FmHA or its successor agency under Public Law 103–354 (see Exhibit A of this subpart). The memorandum sets forth the procedure to follow when producers sell or pledge to CCC as loan collateral under the Price Support Program, commodities on which FmHA or its successor agency under Public Law 103–354 holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to FmHA or its successor agency under Public Law 103–354 to apply against the producer's indebtedness to FmHA or its successor agency under Public Law 103–354. In addition to the procedures outlined in Exhibit A, the following apply:

(a) *County Office action.* (1) Claims will not be filed with CCC until it is determined that the amount involved cannot be collected from the borrower. Therefore, after preliminary notice is given of this fact to CCC by the State Director, the County Supervisor will make immediate demand on the borrower for the amount of the CCC loan or the portion of it which should have been applied to the borrower's account. If payment is made, the State Director will be notified.

(i) If payment is not made, the County Supervisor will determine whether or not the case should be liquidated in accordance with § 1962.40 of this subpart. Any liquidation action will be taken immediately. If the borrower has no property from which recovery can be made through liquidation or, if after liquidation, an unpaid balance remains on the indebtedness secured by the commodity pledged or sold to CCC, the County Supervisor will make a full report to the State Director on Form FmHA or its successor agency under Public Law 103–354 455–1, ''Request for Legal Action,'' with a recommendation that a claim be filed againt CCC. However, if the indebtedness is paid through liquidation action, the State Director will be notified by memorandum.

(ii) If the facts do not warrant liquidation action, the State Director will be notified, and a recommendation will be made that no claim be filed against CCC.

(2) On receiving information from the State Director that CCC has called the borrower's loan, the County Supervisor will act to protect FmHA or its successor agency under Public Law 103–354's interest with respect to the commodity if CCC is repaid.

(b) *State Office action.* (1) The State Director, on receipt of reports and recommendations from the County Supervisor, will:

(i) If in agreement with the County Supervisor's recommendation not to file a claim against CCC or if notice is received that the indebtedness has been paid, forward notice to CCC.

(ii) If in agreement with the County Supervisor's recommendation to file a claim against CCC, refer the case to OGC with a statement of facts.

(iii) If OGC determines that FmHA or its successor agency under Public Law 103–354 holds a prior lien on the commodity and the amount due on its loan is not collectible from the borrower, send CCC a copy of the OGC memorandum with a complete statement of facts supporting the claim through the applicable ASCS office or notify CCC if the OGC memorandum does not support FmHA or its successor agency under Public Law 103–354's claim.

(2) The State Director will notify the County Supervisor promptly on receiving information from CCC that the borrower's loan is being called.

(3) If collection cannot be made from the borrower or other party (see paragraph 5 of Exhibit A of this Subpart), the State Director will give CCC the reasons, FmHA or its successor agency under Public Law 103–354 will then be

paid by CCC through the applicable ASCS office.

§§ 1962.20–1952.25 [Reserved]

§ 1962.26 Correcting errors in security instruments.

The County Supervisor may use Form FMHA 462–12, to correct minor errors in a financing statement when the errors are not serious (i.e., a slightly misspelled name). OGC will be asked to determine whether or not such errors are in fact minor. The County Supervisor may also use Form FmHA or its successor agency under Public Law 103–354 462–12 to add chattel property to the financing statement (i.e., a new type or item of chattel or crops on land not previously described).

§ 1962.27 Termination or satisfaction of chattel security instruments.

(a) *Conditions.* The County Supervisor may terminate financing statements and satisfy chattel mortgages, chattel deeds of trust, assignments, severence agreements and other security instruments when:

(1) Payment in full of all debts secured by collateral covered by the security instruments has been received; or

(2) All security has been liquidated or released and the proceeds properly accounted for, including collection or settlement of all claims against third party converters of security, even though the secured debts are not paid in full. This includes collection-only and debt settlement cases; or

(3) The U.S. Attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that action be taken to satisfy or terminate such instruments; or

(4) FmHA or its successor agency under Public Law 103–354 has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower non FmHA or its successor agency under Public Law 103–354 has an interest in the crops because the borrower no longer occupies or farms the premises described in the lien instrument. Such action will only relate to the crops.

(b) *Form of payment.* (1) Security instruments may be satisfied or the financing statements may be terminated on receipt of final payment in currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days after the date of the final payment. However, in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (See subsection (c) of this section for the reason for the 10-day requirement.)

(c) *Filing or recording termination statements.* Financing statements will be terminated by use of Form FmHA or its successor agency under Public Law 103–354 462–12 if provided by a State supplement. (1) Under UCC provisions if FmHA or its successor agency under Public Law 103–354 fails to give a termination statement to the borrower within 10 days after written demand, it will be liable to the borrower for $100 and, in addition, for any loss caused to the borrower by such failure unless otherwise provided by a State supplement. In the absence of demand for a termination statement by the borrower, a termination statement will be delivered to the borrower when the notes have been paid in full.

(2) However, if FmHA or its successor agency under Public Law 103–354 has been meeting the borrower's annual operating credit needs in the past and expects to do so the next year, the financing statements need not be terminated in the absence of such demand unless a loan for the succeeding year will not be made or earlier termination is required by a State supplement.

(d) *Filing or recording satisfactions.* Satisfactions of chattel mortgages and similar instruments will be made on Form FmHA or its successor agency

under Public Law 103–354 460–4, ''Satisfaction,'' or other form approved by the State Director. The original of the satisfaction form will be delivered to the borrower for recording or filing and the copy will be retained in the borrower's case file. However, if the State supplement based on State law requires recording or filing by the mortgagee, a second copy will be prepared for the borrower and the original will be recorded or filed by the County Supervisor. When State statutes provide that satisfactions may be accomplished by marginal entry on the records of the recording office, or when Form FmHA or its successor agency under Public Law 103–354 460–4 is not legally sufficient because special circumstances require some other form of satisfaction, County Supervisors are authorized to make such satisfactions according to Statesupplements. In such cases, Form FmHA or its successor agency under Public Law 103–354 460–4 will not be prepared but a notation of the satisfaction will be made on the copy of Form FmHA or its successor agency under Public Law 103–354 451–1, ''Acknowledgment of Cash Payment,'' or Form FmHA or its successor agency under Public Law 103–354 456–3, ''Journal Voucher for Write-Off or Judgment,'' which will be retained in the borrower's case folder.

(e) *Satisfaction or termination of lien when old loans cannot be identified.* When a request is received for the satisfaction of a crop or chattel lien, or for the termination of a financing statement and the status of the account secured by the lien cannot be ascertained from County Office records, the County Supervisor will prepare a letter to the Finance Office reflecting all the pertinent information available in the County Office regarding the account. The letter will request the Finance Office to tell the County Supervisor whether the borrower is still indebted to FmHA or its successor agency under Public Law 103–354 and, if so, the status of the account. If the Finance Office reports to the County Supervisor that the account has been paid in full or otherwise satisfied or that there is no record of an indebtedness in the name of the borrower, the County Supervisor is authorized to issue a satisfaction of the security instruments on Form FmHA or its successor agency under Public Law 103–354 460–4 or other approved form or to effect the satisfaction by marginal release, or a termination on Form FmHA or its successor agency under Public Law 103–354 462–12 as appropriate.

§ 1962.28 [Reserved]

§ 1962.29 Payment of fees and insurance premiums.

(a) *Fees.* (1) Security instruments. Borrowers must pay statutory fees for filing or recording financing statements or other security instruments (including Form FmHA or its successor agency under Public Law 103–354 462–12, or other renewal statements) and any notary fees for executing these instruments. They also must pay costs of obtaining lien search reports needed in properly servicing security as outlined in this subpart. Whenever possible, borrowers should pay these fees directly to the officials giving the service. When cash is accepted by FmHA or its successor agency under Public Law 103–354 employees to pay these fees, Form FmHA or its successor agency under Public Law 103–354 440–12, ''Acknowledgment of Payment for Recording, Lien Search and Releasing Fees,'' will be executed. If the borrower cannot pay the fees, or if there are fees referred to in paragraphs (a) (2) and (3) of this section that must be paid by FmHA or its successor agency under Public Law 103–354, the County Supervisor may pay them as a petty purchase or as the bill of a creditor of FmHA or its successor agency under Public Law 103–354 in accordance with FmHA or its successor agency under Public Law 103–354 Instructions 2024–E, copies of which are available in any FmHA or its successor agency under Public Law 103–354 office.

(2) Satisfactions. The borrower must pay fees for filing or recording satisfactions or termination statements unless a State supplement based on State law requires FmHA or its successor agency under Public Law 103–354 to pay them.

(3) Notary fees. FmHA or its successor agency under Public Law 103–354 will pay fees for notary service for executing releases, subordinations, and related documents for and on behalf of

FmHA or its successor agency under Public Law 103–354 if the service cannot be obtained without cost.

(b) *Insurance premiums.* County Supervisors are authorized to voucher for the payment of bills for insurance premiums on chattel security, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 Office). Bills may be paid when:

(1) A borrower cannot pay the premiums from the borrower's own resources at the time due;

(2) Anticipated crop income does not materialize which would normally be released for the payment of crop insurance.

(3) It is not pratical to process a loan for that purpose;

(4) It is necessary to protect FmHA or its successor agency under Public Law 103–354's interests; and

(5) The amount advanced can be charged to the borrower under the provisions of the security instrument.

[50 FR 45783, Nov. 1, 1985, as amended at 53 FR 35785, Sept. 14, 1988; 56 FR 15825, Apr. 18, 1991; 57 FR 36592, Aug. 14, 1992]

§ 1962.30 Subordination and waiver of liens on chattel security.

(a) *Purposes.* Subject to the limitations set out in paragraph (b) of this section, the Agency chattel liens may be subordinated to a lien of another creditor in either of the following situations:

(1) The prior lien will soon mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced. The relative lien position of the Agency must be maintained; and

(2) The subordination will permit another creditor to refinance other debt or lend for an authorized direct loan purpose.

(b) *Conditions.* Agency chattel liens may be subordinated to a lien of another creditor if all of the following conditions are met:

(1) If the lien is on basic chattel security, the amount of subordination is necessary to provide the lender with the security it requires to make the loan;

(2) Approval of a subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time;

(3) Only one subordination to one creditor may be outstanding at any one time in connection with the same security;

(4) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. ''Borrower'' for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. ''Controlled substance'' is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. Applicants must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(5) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(6) The borrower can document the ability to repay the total amount due under the subordination and pay all other debt payments scheduled for the subject operating cycle; and

(7) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination.

(c) *Subordination to make a guaranteed loan.* In addition to the requirements of this section, subordinations on chattel security to make a guaranteed loan will be approved in accordance with § 1980.108 of subpart B of part 1980 of this chapter.

(d) *Forms.* Subordinations will be requested and executed on Agency forms available in any Agency office or on any other form approved by the Agency.

(e) *Rescheduling of existing Agency debts*. The Agency may consent to rescheduling of an existing Agency debt when a subordination is granted to the debt of another lender. The rescheduling will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the conditions of subpart S of part 1951 of this chapter are met.

(f) *Appraisal*. The Agency will prepare a chattel appraisal report when the existing appraisal report is more than 2 years old or is inadequate to make the determination in this section. The Agency may use an appraisal submitted by the borrower if it is substantially similar to Form RD 440–21, ''Appraisal of Chattel Property,'' and prepared by a licensed appraiser.

[63 FR 20297, Apr. 24, 1998]

§§ 1962.31–1962.33 [Reserved]

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1965 of this chapter. The transferor (borrower) must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter as soon as the borrower contacts the County Supervisor inquiring about a transfer. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941of this chapter and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of ''controlled substance'') prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services,'' that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

(a) *Transfer to eligibles*. Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

(1) The transferee assumes the total outstanding balance of the FmHA or its successor agency under Public Law 103–354 debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA or its successor agency under Public Law 103–354 460–9, ''Assumption Agreement (Same Terms-Eligible Transferee),'' will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA or its successor agency under Public Law 103–354 1965–13, ''Assumption Agreement (Farmer Programs Loans).'' The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest

is not paid by the time the transfer takes place, it must be added tothe principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA or its successor agency under Public Law 103–354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the type assistance involved.

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under paragraph (b) of this section. However, when one or more of the borrowers or jointly obligated partners or joint operators withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers, partners, or joint operators may be made as an eligible transferee.

(4) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(b) *Transfer to ineligibles.* Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

(1) It is in the Agency's financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the Agency debt, or an amount equal to the present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) Agency debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1965–13. The Farm Credit Programs NP interest rate for chattel property set forth in a National Office issuance, in effect at the time of loan approval, will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing Agency lien. In the absence of an existing Agency lien, new lien instruments will be executed.

(4) The transferee can repay the Agency in accordance with the assumption agreement and can legally enter into the contract.

(5) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(6) The transferee has never been liable for a previous Farm Loan Programs (FLP) loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

(c) *Effect of signature.* In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) *Release of transferor from liability.* The borrower and any cosigner may be released from personal liability to Agency when all the chattel security or EO property is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. However, no such release will be granted to any borrower who was liable for any direct FLP loan which was reduced or terminated in a manner that resulted in a loss to the Government. The appropriate official is authorized to approve releases from liability in accordance with §1962.34(h) of this subpart. When there will be no release from liability, the transferor and co-signer of a Farm Credit Programs loan must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any Agency office).

(e) *Agency actions.* (1) *Transfer to eligible applicant.* The Agency will determine the transferee's eligibility for the type of loan to be assumed.

(2) *Release from liability*. If the total outstanding debt is not assumed, the Agency must make the following determinations before it releases the transferor from personal liability:

(i) The transferor and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer,

(ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability, and

(iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4139, Feb. 3, 1986; 51 FR 6734, Feb. 26, 1986; 51 FR 13482, Apr. 21, 1986; 51 FR 40786, Nov. 10, 1986; 51 FR 45439, Dec. 18, 1986; 53 FR 7338, Mar. 8, 1988; 53 FR 10358, Mar. 31, 1988; 53 FR 17688, May 18, 1988; 53 FR 35785, Sept. 14, 1988; 56 FR 3396, Jan. 30, 1991; 56 FR 12646, Mar. 27, 1991; 56 FR 15825, Apr. 18, 1991; 58 FR 52654, Oct. 12, 1993; 60 FR 28321, May 31, 1995; 61 FR 35931, July 9, 1996; 62 FR 10157, Mar. 5, 1997]

§§ 1962.35–1962.39 [Reserved]

§ 1962.40 Liquidation.

(a) *Voluntary liquidation*—(1) *General*. When a borrower contacts the agency and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, the agency will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

(i) Selling the security under § 1962.41 of this subpart,

(ii) Transferring the security under § 1962.34 of this subpart,

(iii) Conveying the security to the agency under Subpart A of Part 1955 of this chapter, or

(iv) Refinancing the debt with another lender.

The provisions of these regulations will be explained to the borrower.

(2) *Lien search*. The County Supervisor will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sales proceeds. Normally, lien searches should be obtained from the same source as is used when making a loan. If obtaining the searches from third party sources causes undue delay which interferes with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, the agency will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(b) *Involuntary liquidation*—(1) *General*. When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter. When liquidation is begun, it is the agency policy to liquidate all security and EO property, except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for

minimum family living needs will not exceed $600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) *Farm Loan Programs loan cases.* In Farm Loan Programs loan cases, borrowers who are 90 days past due (60 days delinquent) on their payments must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a preliminary application within 60 days, the County Supervisor will send attachments 9 and 10 or 9–A and 10–A, as appropriate, of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachments 4, 6, 6–A, 10, or 10–A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the borrower's account will be accelerated in accordance with § 1955.15(d)(2) of subpart A of part 1955 of this chapter and paragraphs (b)(2) (i) and (ii) of this section. The County Supervisor will then attempt to repossess the security in accordance with § 1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with § 1962.49 of this subpart. Unmatured installments will be accelerated as follows:

(i) The District Director will accelerate all unmatured installments by using exhibits D, E, or E–1 of subpart A of part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

(ii) Exhibits D, E, or E–1 of subpart A of part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.

(3) *Lien search.* The County Supervisor will follow the directions set out in paragraph (a)(2) of this section.

(c) *Multiple loans and loans secured by both real estate and chattels.* Follow the provisions of § 1965.26(c) of subpart A of part 1965 of this chapter for liquidating these loans.

(d) *Assignment of direct loans.* When liquidation of a direct loan is approved, the State Director will be asked by the official who approved the liquidation to immediately obtain an assignment of the loan to if the promissory note is not held in the County Office. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be started and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceedings with respect to the insured loan claim, unless essential to protect Government's interests and OGC recommends such action. However, other steps need not be held up pending assignment. If any problems are encountered in obtaining the assignment, OGC may be contacted for advice.

(e) *Protective advances.* (1) After attachments 1 and 2 or 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter have been sent and if security is in danger of loss or deterioration, the State Director will protect Government's interest and approve protective advances in payment of:

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of the Agency under § 1962.44(a) of this subpart.

(ii) Premiums on insurance essential to protect FmHA or its successor agency under Public Law 103–354's interest, and

(iii) Other costs including transportation necessary to protect or preserve the security.

(2) However, such advances may not be made unless the amount advanced becomes a part of the debt secured by the Agency's lien, or is for expenses of administration of estates or for litigation. If a case is in the hands of the U.S. Attorney, such advances may not be made without the U.S. Attorney's concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. Marshal or

other similar official such as a local sheriff. However, if the official seizes the property and delivers it to the Agency for sale by the Agency, costs incurred by the Agency after delivery to the Agency will be paid.

(3) The County Supervisor will submit a report on the need for such advances to the State Director, including:

(i) Borrower's County Office case file;

(ii) Current lien search report;

(iii) Statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and

(iv) A recommendation as to whether or not the advance should be approved.

(4) [Reserved]

(f) When a borrower's security property is liquidated voluntarily or involuntarily and there is an unpaid balance on the account, the County Supervisor will meet with the borrower within 30 days to assist the borrower in developing a debt settlement offer in accordance with subpart B of part 1956 of this chapter.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4139, Feb. 3, 1986; 53 FR 35785, Sept. 14, 1988; 56 FR 15825, Apr. 18, 1991; 57 FR 36592, Aug. 14, 1992; 57 FR 60085, Dec. 18, 1992; 61 FR 35931, July 9, 1996; 62 FR 10157, Mar. 5, 1997]

§ 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent exhibit A and attachments 1 and 2 or 1, 3 and 4 of subpart S of part 1951 of this chapter will be processed in accordance with paragraph (a)(1) of § 1962.40 of this subpart before any sale occurs.

(a) *Public sale.* A borrower may voluntarily liquidate chattels by selling the property at auction in the borrower's own name. RD 455–3, ''Agreement for Sale by Borrower (Chattels and/or Real Estate)'', will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds before execution by the County Supervisor. When EO property is involved delete from the Agency lien wherever it appears on the forms. No Agency official is authorized to bid at such sales. The County Supervisor will arrange to promptly receive the proceeds of the sale due the Agency for application on the borrower's indebtedness.

(b) *Private sale.* The borrower may sell chattel security or EO property at a private sale if:

(1)(i) The borrower has ready purchasers and can sell *all* of the property for its present market value; or

(ii) The property is perishable; or

(iii) The property is of a type customarily sold on a recognized market; or

(iv) The property consists of items of small value or a limited number of items which do not justify public sale.

(2) Form FmHA or its successor agency under Public Law 103–354 1962–1 may be used to approve liquidation of such security. The County Supervisor will document in the running case record the reasons that a public sale was not justified.

(3) Form FmHA or its successor agency under Public Law 103–354 455–3 is completed before the sale.

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to the agency by signing Form RD 455–4, ''Agreement for Voluntary Liquidation of Chattel Security.'' This form authorizes the agency to sell the security at either public or private sale. If the agency hires a caretaker, services should be obtained by use of Form AD–838, ''Purchase Order.''

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962–1.

(e) *Unpaid debt.* If the sale results in less than full payment of the debt, the servicing official will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to the agency when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan accounts. If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the committee, and be further processed and

approved in accordance with § 1962.34(h) of this subpart:

In our opinion (name of borrower and any co-signer) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the convenants incident to the loan to the best of his or her ability. (Name of borrower and any cosigner) has not been liable for a previous Farm Loan Programs (FLP) loan which was reduced or terminated in a manner that resulted in a loss to the Government. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form RD 1965–8, ''Release From Personal Liability'' will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The account will then be considered for debt settlement.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13482, Apr. 21, 1986; 53 FR 35785, Sept. 14, 1988; 56 FR 15825, Apr. 18, 1991; 57 FR 60085, Dec. 18, 1992; 62 FR 10157, Mar. 5, 1997]

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) *Repossession*. Except as provided in paragraph (d) of this section, prior to any repossession of agency security a borrower and all cosigners on the note must receive exhibit A and attachments 1 and 2, or 1, 3 and 4 of subpart S of part 1951 of this chapter and the application forms. The appropriate procedures of subpart S of part 1951 of this chapter must be followed and any appeal must be concluded. The County Supervisor will take possession of security or EO property when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, and if the prior lienholder does not intend to enforce the lien. See § 1955.20 of subpart A of part 1955 of this chapter.

(1) *Conditions*. The County Supervisor will take possession under any of the following conditions:

(i) When RD 455–4 has been executed. For EO property this form will be revised by placing a period after ''interest'' in the first sentence beginning ''The Debtor'' and deleting the remainder of that clause; deleting the words ''collateral covered by the security instruments'' in the second part of the sentence and inserting instead ''property covered by the debtor's loan agreement which is referred to as the collateral.''

(ii) When the borrower has abandoned the property.

(iii) When peaceable possession can be obtained, but the borrower has not executed RD 455–4.

(iv) When the property is delivered to the agency as a result of court action.

(v) When Form RD 455–5, ''Agreement of Secured Parties to Sale of SecurityProperty,'' is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to the agency on forms prepared or approved by OGC. When prior liens are paid, the payment will be made in accordance with RD Instruction 2024–A (available in any agency office) and charged to the borrower's account.

(vi) When arrangements cannot be made with the borrower or a member of the borrower's family to sell EO property in accordance with the loan agreement.

(2) *Recording*. A list, dated and signed by the servicing official, of all security or EO property repossessed except for those items on Form RD 455–4, will be maintained in the borrower's case file. Whenever the servicing official is transferred to another position or leaves the agency or there is a change in jurisdiction, the District Director will give the succeeding servicing official in writing, the names of such borrowers and a list of the property repossessed in the custody of the servicing official and caretakers, its location, and the names and addresses of the caretakers.

(b) *Care*. The County Supervisor will arrange for the custody and care of repossessed property as follows:

(1) *Livestock.* Care and feeding of livestock will be obtained by contract pursuant to subpart B of part 1955 of this chapter. The value of animal products (such as milk) may constitute all or part of the contractor's quotation, and if this is desired, such a statement should be included in the solicitation. Possession of the livestock will be turned over to the contractor only after the contract is awarded using Form AD–838, ''Purchase Order.'' If a contractor's services are needed for a longer period than is authorized in paragraph (c)(4)(i) of this section, the State Director may authorize the County Supervisor to continue obtaining the necessary services for the time needed.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.* Property will be stored and cared for pending sale. Storage and necessary services may be obtained by contract using Form FmHA or its successor agency under Public Law 103–354 AD–838. Use of property by the contractor is not authorized.

(3) *Crops.* Form FmHA or its successor agency under Public Law 103–354 AD–838 will be used for obtaining services for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. Where a loanlord is involved, written consent of the landlord should be obtained. If landlord consent cannot be obtained, where applicable, the circumstances should be reported to the State Director for advice.

(c) *Sale.* Repossessed property may be sold by FmHA or its successor agency under Public Law 103–354 at public or private sale for cash under Form FmHA or its successor agency under Public Law 103–354 455–4, ''Agreement for Voluntary Liquidation of Chattel Security,'' Form FmHA or its successor agency under Public Law 103–354 1955-41, ''Notice of Sale,'' the power of sale in security agreements under the UCC, or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form FmHA or its successor agency under Public Law 103–354 455–11, ''Bill of Sale 'B' (Sale by Private Party).''

(1) *Tests and inspections of livestock.* If required by State law as a condition of sale, livestock will be tested or inspected before sale. A State supplement will be issued for those States.

(2) *Public sales.* Such sales will be made to the highest bidder. They may be held on the borrower's farm or other premises, at public sale barns, pavilions, or at other advantageous sales locations. No FmHA or its successor agency under Public Law 103–354 employee will bid on or acquire property at public sales except on behalf of FmHA or its successor agency under Public Law 103–354 in accordance with § 1955.20 of subpart A of part 1955 of this chapter. The County Supervisor will attend all public sales of repossessed property.

(3) *Private sales.* FmHA or its successor agency under Public Law 103–354 will sell perishable property such as fresh fruits and vegetables for the best price obtainable. FmHA or its successor agency under Public Law 103–354 will sell staple crops such as when, rye, oats, corn, cotton, and tobacco for a price in line with current market quotations for products of similar grade, type, or other recognized classification. Chattel property sold under Form FmHA or its successor agency under Public Law 103–354 455–4, other than perishable property and staple crops, will not be sold for less than the minimum price in the agreement. FmHA or its successor agency under Public Law 103–354 will sell other property, including that sold when the borrower executes Form FmHA or its successor agency under Public Law 103–354 455–11, for its present market value.

(4) *Selling period.* Repossessed property will be sold as soon as possible. However, when notice is required by paragraph (c)(5) of this section, the sale will not be held until the notice period has expired.

(i) The sale will be made within 60 days, unless a shorter period is indicated by a State supplement because of State law. Crops will be sold when the maximum return can be realized but not later than 60 days after harvesting, or the normal marketing time for such

crops. The State Director may extend the sale time within State law limits.

(ii) These requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for FmHA or its successor agency under Public Law 103–354 real state loans and will be sold or transferred with the real estate. However, a State Supplement will be issued for any State having a time limit within which such items must be sold along with or as a part of the real estate.

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA or its successor agency under Public Law 103–354 1955–41, ''Notice of Sale,'' may be used for public or private sales.

(A) Notice of the borrower or lienholder is not required when the property is sold under Form FmHA or its successor agency under Public Law 103–354 455–4 because the parties are placed on notice when they execute the form. When the sale involves only collateral which is perishable, will decline quickly in value, or is a type customarily sold on a recognized market, notice is not required but may be given if time permits to maintain good public relations.

(B) Notice only to lienholder is required when repossessed property is sold at private sale and the borrower executes Form FmHA or its successor agency under Public Law 103–354 455–11.

(C) If the property is to be sold under a chattel mortgage, the manner of notice will be set forth in a State supplement or on an individual case basis.

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA or its successor agency under Public Law 103–354 1955–41 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation ''Hold in suspense 30 days because of Federal Tax Lien.'' OGC will advise the Finance Office about disposing of the funds.

(6) *Advertising.* (i) Private sales and sales at established public auctions will be advertised by FmHA or its successor agency under Public Law 103–354 only if required by a State supplement based on State law.

(ii) Other public sales, whether under power of sale in the lien instrument or under Form FmHA or its successor agency under Public Law 103–354 455–4, will be widely publicized to assure large attendance and a fair sale by one or more of the following methods customarily used in the area.

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA or its successor agency under Public Law 103–354 1955–41, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

(B) Advertising in newspapers or spot advertisting on local radio or TV stations may be used depending on the amount of property to be sold and the cost in relation to the value of the property, the customs in the area, and State law requirements. When newspaper advertising is required, a State supplement will indicate the types of newspapers to be used, the number and times of insertions of the advertisement, and the form of notice of sale. All advertising must contain non-discrimination clauses.

(7) *Payment of costs and prior lienholders.* If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this subpart or to pay lienholders, such costs or prior liens will be paid in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State Supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are legally chargeable to the borrower, they may be paid as provided in this subpart, and charged to an account set up for the officials or other persons found responsible for them.

(8) *Bill of sale or transfer of title.* If a purchaser requests a written conveyance of repossessed property sold by FmHA or its successor agency under Public Law 103–354 at public or private sale, the County Supervisior will execute and deliver to the purchaser Form FmHA or its successor agency under Public Law 103–354 455–12, ''Bill of Sale 'C' (Sale Through Government as Liquidating Agent),'' or other necessary instruments to convey all the rights, title, and interests of the borrower and FmHA or its successor agency under Public Law 103–354. A State supplement will be issued as necessary for conveying title to motor vehicles and boats.

(d) *Risk of injury.* If a farmer program loan borrower has abandoned security *and* the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section. Then the County Supervisor will send the borrower and all cosigners on the note attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until all appeal rights have been given and any appeal has been concluded. When the appeal process is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of any appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, as determined by the County Supervisor. However, an independent third party (not an FmHA or its successor agency under Public Law 103–354 employee) must determine that livestock is in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13482, Apr. 21, 1986; 53 FR 35786, Sept. 14, 1988; 56 FR 15825, Apr. 18, 1991; 57 FR 36592, Aug. 14, 1992; 62 FR 10158, Mar. 5, 1997]

§ 1962.43 [Reserved]

§ 1962.44 Distribution of liquidation sale proceeds.

This section applies to proceeds of nonjudicial liquidation sales conducted under the power of sale in lien instruments or under Form FmHA or its successor agency under Public Law 103–354 455–4, Form FmHA or its successor agency under Public Law 103–354 455–3, or Form FmHA or its successor agency under Public Law 103–354 462–2.

(a) [Reserved]

(b) *Order of payment.* Sales proceeds will be distributed in the following order of priority.

(1) To pay expenses of sale including advertising, lien searches, tests and inspection of livestock, and transportation, custody, care, storage, harvesting, marketing, and other expenses chargeable to the borrower, including reimbursement of amounts already paid by the Agency and charged to the borrower's account. Bills can be paid, after liquidation has been approved, for essential repairs and parts for machinery and equipment to place it in reasonable condition for sale, provided written agreements from any holders of liens which are prior to those of the Agency state that such bills may be paid from the sales proceeds ahead of their liens.

(i) However, any such expenses incurred by the U.S. Marshal or other similar official such as a local sheriff may not be paid from sale proceeds turned over to the Agency.

(ii) On the other hand, if the U.S. Marshal or other similar official such as a local sheriff has taken possession of the property and delivered it to the Agency for sale, such costs incurred by the Agency after delivery of the property to it may be paid from the proceeds of the sale.

(2) To pay liens which are prior to the Agency liens provided that:

(i) State and local tax liens on security or EO property which are prior to the liens of the Agency will be paid only when demand is made by tax collecting officials before distributing the sale proceeds. The sale proceeds will not be used to pay real estate, income, or other taxes which are not a lien against the security, or to pay substantial amounts of personal property taxes on nonsecurity personal property.

(ii) If action is threatened or taken by the sheriff or other official to collect taxes not authorized in suparagraph (b)(2)(i) of this section to be paid out of the security or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible, disinterested party an amount equal to the tax claim, pending determination of priority rights. When the sale is postponed, or an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(iii) If the Agency subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the the Agency lien was subordinated did not obtain a lien. If there are other third party liens on the property, however, the lien-holders must agree to the use of the sale proceeds to pay such creditor first.

(3) To pay rent for the current crop year from the sale proceeds of other than basic security or EO property. However, there must be no liens junior to the Agency other than the landlord's lien, if any, and the borrower must consent in writing to the payment.

(4) To pay debts owed the Agency which are secured by liens on the property sold.

(5) To pay liens junior to those of the Agency in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens already have been paid. Junior liens will not be paid unless, on request, the lienholder gives proof of the existence and the amount of his or her lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year if the borrower consents in writing to payment and if such rent has not already been paid as provided in paragraph (b) (2), (3), or (5) of this section.

(8) To pay on any other the Agency debts, either unsecured or secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the remainder of such sale proceeds by the borrower for other purposes, provided the other the Agency debts are adequately secured, or the borrower arranges to pay the other debts from income or other sources and these payments can be depended upon.

(9) To pay the remainder to the borrower.

(c) [Reserved]

[50 FR 45783, Nov. 1, 1985, as amended at 61 FR 35931, July 9, 1996]

§ 1962.45 Reporting sales.

Form FmHA or its successor agency under Public Law 103–354 1955–3, ''Advice of Property Acquired,'' will be prepared and distributed according to the FMI when property is acquired by FmHA or its successor agency under Public Law 103–354.

§ 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to the Agency, the County Supervisor will prepare Form FmHA 455–17, ''Report on Deceased Borrower,'' to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Subpart B of Part 1956 of

this chapter. If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Reporting.* The borrower's case files including Form 455–17 will be forwarded promptly to the State Director for use in deciding the action to take if any of the following conditions exist (When it is necessary to send an incomplete Form FmHA 455–17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form FmHA 455–17 or in a memorandum.):

(1) Probate or other administration proceedings have been started or are contemplated.

(2) The debts owed to the Agency are inadequately secured and the state has other assets from which collection could be made.

(3) The Agency's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to the Agency which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by, another party.

(5) The County Supervisor recommends, but does not have authority to approve liquidation.

(6) The County Supervisor wants advice on servicing the case.

(b) *Probate or administration proceedings.* Generally, probate or administration proceedings are started by relatives or heirs of the deceased or by other creditors. Ordinarily, the Agency will not start these proceedings because of the problems of designating an administrator or other similar official, posting bond, and paying costs. If probate or administration proceedings are started by other parties or at the Agency's request, and any security is to be liquidated by the Agency instead of by the administrator or executor or other similar official, it will be liquidated in accordance with the advice of OGC. The State Director may request OGC to recommend that the U.S. Attorney bring probate or administration proceedings when it appears that:

(1) Such proceedings will not be started by other parties;

(2) The Agency's interests could best be protected by filing a proof of claim in such proceedings, and

(3) Public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond.

(c) *Filing proof of claim.* When a proof of claim is to be filed, it will be prepared on a form approved by OGC, executed by the State Director, and transmitted to OGC. It will be filed by OGC or by an the Agency official as directed by OGC or it will be referred by OGC to the U.S. Attorney for filing if representation of the Agency by counsel may be required. If a judgment claim is involved, the notification to the U.S. Attorney will be the same as for judgment claims in bankruptcy. If a direct loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed when probate or administration proceedings are started, unless:

(1) After considering liens and priority rights of the Agency and other parties, costs of administration, and charges against the estate, the Agency cannot reach the assets in the estate except for the Agency's own security and the Agency will liquidate the security by foreclosure or otherwise if necessary to collect its claim, or

(2) Continuation with an individual or transfer to and assumption by another party is approved, and either the debt owed to the Agency is fully secured, or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security, or

(3) The debt owed to the Agency by the estate is settled under Subpart B of Part 1956 of this chapter, well ahead of the deadline for filing proof of claim.

(d) *Priority of claims.* (1) Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it.

These claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower or real or personal property. However, tax, judgment, attachment, garnishment, laborer's, mechanic's, materialmen's, landlord's statutory liens, and other noncontractual lien claims may or may not be secured claims. Therefore, if any noncontractual claims are allowed as secured claims and the the Agency claim is not paid in full, the advice of OGC will be obtained as to whether they constitute secured claims and as to their relative priorities.

(2) Unsecured claims will be handled as follows:

(i) The remaining assets of the estate, including any value of security for more than the amount of the secured claims against it, are to be applied first to payment of administration costs and charges against the estate and second to unsecured debts of the deceased.

(ii) If the total of the remaining assets in the estate being administered is not enough to pay all administration costs, charges against the estate, and unsecured debts of the deceased, the Government's unsecured claims against the remaining assets will have priority over all other unsecured claims, except the costs of administration and charges against the estate. Under such circumstances unsecured claims are payable in the following order of priority:

(A) Costs of administration and charges against the estate unless under State law they are payable after the Government's unsecured claims. Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and curtesy rights.

(B) The Government's unsecured claims.

(3) A State supplement will be issued as needed taking into consideration 31 U.S.C. §3713 lien waivers and subordinations, and notice and other statutory provisions which affect lien priorities.

(e) *Withdrawal of claim.* It may not be necessary to withdraw a claim when it is paid in full by someone other than the estate or when compromised. However, when it is necessary to permit closing of an estate, compromise of a claim, or for other justifiable reasons, the State Director will recommend to OGC that the claim be withdrawn on receipt of cash or security, or both, of a value at least equal to the amount that could be recovered under the claim against the estate. When the Agency keeps existing security, arrangements must be made to assure that withdrawal of the claim will not affect the Agency's rights under the existing notes or security instruments with respect to the retained security. In some cases, with OGC's advice, the claim may be properly handled without filing a formal petition for withdrawal of the claim. However, if the claim has been referred to the U.S. Attorney, or if a formal withdrawal of the claim is necessary, the matter will be referred by OGC to the U.S. Attorney.

(f) *Liquidation of security.* When the County Supervisor determines that the account of a deceased borrower is in monetary or nonmonetary default, and liquidation is necessary because no survivor or third party has applied to assume the borrower's the Agency loan, chattel security and real estate security will be liquidated promptly in accordance with this subpart and subpart A of part 1965 of this chapter. Before liquidation, the notices required by subpart S of part 1951 of this chapter will be sent to the executor of the estate and/or other appropriate person(s) or entity(ies) as advised by OGC. If a suvivor(s) or heir(s) who will continue with the borrower's operation applies for servicing, the Agency will determine whether these individuals meet the requirements of paragraph (g) of this section. If a third party who will not continue with the borrower's operation applies for servicing, the requirements of §1962.34 of this subpart, or §1965.47 of subpart A of part 1965 of this chapter, as applicable, must be met. To qualify for servicing, the eligibility and feasibilityrequirements in §1951.909 of subpart S of part 1951 of this chapter must also be met. However, the borrower's estate is not eligible for servicing. After the provisions of subpart S of part 1951 of this chapter have been complied with, and the opportunity to

appeal has expired, the State Director will request OGC to effect collection if the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to the Agency and other assets are available in the estate or in the hands of heirs.

(g) *Continuation of secured debt and transfer or security.* When a surviving member of a deceased borrower's family or other person is interested in continuing the loan and taking over the security for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of the borrower's death, continuation may be approved subject to the following:

(1) Any individual who is liable for the indebtedness of the deceased borrower may continue with the loan provided that individual can comply with the obligations of the notes or other evidence of debt and chattel or real estate security instruments and so long as liquidation is not necessary to protect the interest of the Agency. When an individual who is liable for the indebtedness is to continue with the account, Form 450–10, ''Advice of Borrower's Change of Address or Name,'' will be sent to the Finance Office to change the account to that individual's name. A new case number will be assigned or, if the continuing individual already has a case number, that number will be used regardless of whether that individual assumed all or a portion of the amount of the debt owed by the estate of the deceased.

(2) When a surviving member of a deceased borrower's family, a relative or other individual who is not liable for the indebtedness desires to continue with the farming or other operations and the loan, the State Director may approve the transfer of chattel or real estate security or both to the individual and the assumption of the debt secured by such property without regard to whether the transferee is eligible for the type of loan being assumed, subject to the following conditions:

(i) The transferee will continue the farming or other operations for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of death.

(ii) The amount to be assumed and the repayment rates and terms will be the same as provided in §1962.34(a) of this Subpart.

(iii) The State Director determines that the continuation will not adversely affect repayment of the loan.

(iv) The transferee has never been liable for a previous Farm Loan Programs direct farm loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

(3) In determining whether to continue with individuals, whether they are already liable or assume the indebtedness, all pertinent factors will be considered including whether:

(i) Probate or administration proceedings have been or will be started and, with OGC's advice, whether the filing of a claim on the debt owed to the Agency in such proceedings is necessary to protect the Agency's interests.

(ii) Arrangements can be made with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security to the continuing individual and to avoid liquidating the assets so that the individual can continue with the loan on a feasible basis.

(4) If continuation is approved, all reasonable and practical steps, short of foreclosure or other litigation, will be taken to vest title to the security in the joint debtor or transferee.

(5) The deceased borrower's estate may be released from liability for the the Agency indebtedness if title to the security is vested in the joint debtor or transferee, and:

(i) The full amount of the debt is assumed, or

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property, and the County Committee recommends release of liability.

(h) *Special servicing of deceased EO borrower cases.* If the EO loan is secured, all paragraphs in this section

will be followed. If the EO loan is unsecured, paragraphs (a), (b), (c), (d), and (e) of this section will be followed along with the following requirements.

(1) An individual who is liable for the indebtedness of the deceased borrower and wishes to continue with the EO debt and the EO property, may do so in accordance with paragraph (g)(1) of this section.

(2) A surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative, or other individual who is not liable for the EO debt who desires to continue with the farming or other operation may do so in accordance with paragraph (g)(2) of this section. This individual must execute a loan agreement in addition to the assumption agreement and secure the EO debt with a lien on the remaining EO property when title to the property is vested in the individual and the County Supervisor determines that security is necessary to protect the interests of the deceased borrower's family or the Agency.

(3) If no individual listed in paragraphs (h) (1) and (2) of this section wishes to continue, but a member of the borrower's family turns over to the Agency the EO property in which the estate has an interest and which is not essential for minimum family living needs, the County Supervisor will take possession of EO property and sell it in accordance with §1962.42 of this Subpart. If this cannot be done, or if real property is involved, the case will be referred to OGC. If the property is sold, notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4140, Feb. 3, 1986; 51 FR 45439, Dec. 18, 1986; 56 FR 15826, Apr. 18, 1991; 61 FR 35931, July 9, 1996; 62 FR 10158, Mar. 5, 1997]

§1962.47 Bankruptcy and insolvency.

(a) *Borrower files bankruptcy*. When the Agency becomes aware that a Farm Loan Programs borrower has filed for protection under Title 11 of the United States Code (bankruptcy), the borrower and the borrower's attorney, if any, will be notified in writing of the borrower's remaining servicing options.

(1) If the borrower wishes to apply for servicing options remaining, the borrower, or the borrower's attorney on behalf of the borrower, must sign and return the appropriate response form, or similar written request for servicing, and any forms or information as requested by the Agency, within 60 days from the date the borrower or the borrower's attorney received the notification, or the time remaining from a previous notification that was suspended when the borrower filed bankruptcy, whichever is greater.

(2) The Agency will consider a request for servicing options to be an acknowledgment that the Agency will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions.

(3) The Agency's processing of any request for servicing may include consideration of primary and preservation loan servicing options, notification of the Agency's decision on the request or application for servicing, mediation, and holding of any meetings or appeals requested by the borrower.

(4) If court approval is required for the borrower to exercise these servicing rights, it will be the borrower or the borrower's attorney's responsibility to obtain that approval.

(5) If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and 7 CFR part 1951, subpart S, as appropriate.

(6) In chapter 7 cases, the Agency will not provide primary loan servicing to a borrower discharged in bankruptcy unless the borrower reaffirms the entire Agency debt. If the chapter 7 debtor obtains the permission of the court and reaffirms the debt, the loan servicing application will be processed in accordance with 7 CFR part 1951, subpart S. If the borrower reaffirms the Agency debt in order to be considered for restructuring but is later denied restructuring, the borrower may revoke the reaffirmation subject to the provisions

of the Bankruptcy Code. No reaffirmation is necessary for any discharged chapter 7 borrower to be eligible for preservation loan servicing in accordance with 7 CFR part 1951, subpart S.

(b) *Borrower defaults on plan or bankruptcy is dismissed*—(1) *90 days past due on a reorganization plan while still under court jurisdiction.*

(i) If allowed by the Bankruptcy Code or court, the borrower and the borrower's attorney, if any, will be notified of any remaining servicing options under 7 CFR part 1951, subpart S, that were not exhausted prior to filing bankruptcy or during the bankruptcy proceedings according to paragraph (a) of this section.

(ii) No notices will be sent if the account was previously accelerated, such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code, or the case has been referred to the Department of Justice.

(iii) If a borrower operating under a confirmed bankruptcy plan desires to apply for loan servicing and qualifies for servicing under 7 CFR part 1951, subpart S, the borrower must also comply with Bankruptcy Code rules and requirements concerning modification of the plan.

(2) *Bankruptcy is dismissed without a confirmed plan.* If the borrower's bankruptcy is dismissed without a confirmed plan, and the borrower is in default on Farm Loan Programs loans, the borrower's account will be liquidated after all remaining servicing options under 7 CFR part 1951, subpart S are exhausted. The borrower will be notified of any servicing options remaining according to 7 CFR part 1951, subpart S. Notwithstanding the previous sentence, no notices will be sent if the account was previously accelerated, the Agency is advised that such an act is inconsistent with the confirmed bankruptcy plan or the Bankruptcy Code, or the account has been referred to the Department of Justice.

(3) *Bankruptcy is dismissed after a confirmed reorganization plan.* If a bankruptcy is dismissed after a reorganization plan was confirmed, the account will be serviced as follows:

(i) If the borrower has substantially complied with the plan, but later defaults for reasons beyond the borrower's control, (see 7 CFR 1951.909(c)), the borrower will be notified of loan servicing in accordance with 7 CFR 1951.907. No notices will be sent if the account was previously accelerated; such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code; or the case has been referred to the Department of Justice.

(ii) If the borrower failed to make one full payment under the plan, or did not comply with the plan for reasons not beyond the borrower's control, the borrower will be serviced according to paragraph (b)(2) of this section.

(c) *Servicing of bankruptcy loans after the case is closed.* In chapter 11, 12, or 13 cases after the case is closed and the discharge order is issued by the court, if the borrower becomes delinquent after performing as agreed under the plan, the borrower will be sent a notice explaining the loan servicing options available under 7 CFR part 1951, subpart S. The borrower's attorney of record will be sent a courtesy copy if the bankruptcy has not been closed for at least 2 years. No notices will be sent if the account has been accelerated, such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code, or the account has been referred to the Department of Justice.

(d) *Liquidation.* The account will be liquidated after obtaining any necessary relief, if required, from the automatic stay. In chapter 7 cases after discharge, the account can be liquidated if the debt has not been reaffirmed and the property is no longer part of the estate. Liquidation can proceed prior to discharge if allowed by the court.

(1) If the borrower or borrower's attorney was not previously notified of any remaining servicing options available under 7 CFR part 1951, subpart S before or during the course of the bankruptcy proceedings, the borrower and the borrower's attorney will be sent the notices referenced in paragraph (c) of this section prior to liquidating any security property.

(2) If the borrower or the borrower's attorney had been previously notified

of loan servicing options remaining, the account will be liquidated.

[63 FR 29341, May 29, 1998]

§ 1962.48 [Reserved]

§ 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce FmHA or its successor agency under Public Law 103–354 rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled under this section.

(a) *Criminal action.* When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA or its successor agency under Public Law 103–354 staff must coordinate with OIG in advance regarding any administrative action on the matter/borrower other than routine servicing actions on existing loans. Cases requiring further action by OGC will be handled in accordance with paragraph (c) of this section.

(b) *Civil action.* Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect FmHA or its successor agency under Public Law 103–354's property/financial interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the action necessary to report the information required by Part II of Form FmHA or its successor agency under Public Law 103–354 455–22, ''Information for Litigation.'' This is because delay in submitting cases in emergency situations may affect the financial interests of FmHA or its successor agency under Public Law 103–354 and collection efforts may adversely affect the criminal investigation and/or criminal prosecution.

(1) Civil action will be recommended when one or more of the following conditions exists:

(i) There is a need to repossess security or EO property or to foreclose a lien and such action cannot be accomplished by other means authorized in this subpart.

(ii) There is a need for filing claims against third parties because of a conversion of security or other action.

(iii) Payment due on debts are not made in accordance with the borrower's ability to pay, and the borrower has assets or income from which collection can be made.

(iv) The borrower has progressed to the point that credit can be obtained from other sources, has agreed in the note or other instrument to do so, but refuses to comply with that agreement.

(v) FmHA or its successor agency under Public Law 103–354 or its security becomes involved in court action through foreclosure by a third-party lienholder or through some other action.

(vi) Other conditions exist which indicate that court action may be necessary to protect FmHA or its successor agency under Public Law 103–354's interests.

(2) Claims of less than $600 principal will not be referred to OGC for court action unless:

(i) A statement of facts is submitted as to the exact manner in which the interest of FmHA or its successor agency under Public Law 103–354, other than recovery of the amount involved, would be adversely affected if suit were not filed; and

(ii) Collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. A State supplement will be issued to set forth such

exemptions or a summary of those exemptions with respect to property to which FmHA or its successor agency under Public Law 103–354 normally would look for payment such as real estate, livestock, equipment, and income.

(3) When a borrower has not properly accounted for the proceeds of the sale of security, it is the general policy to look first to the borrower for restitution rather than to third-party purchasers. In line with this policy the remaining chattel security on which FmHA or its successor agency under Public Law 103–354 holds a first lien usually will be liquidated before demand is made, or civil action to recover from third-party purchasers.

(i) When the County Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full value of the security purchased by a converter, a demand (see Guide Letter 1962–A–1, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office) will be sent to the purchaser at the same time that Exhibit D or E of Subpart A of Part 1955 of this chapter, is sent to the borrower.

(ii) When the County Supervisor determines that it is likely that action will have to be taken to collect from third-party pruchasers, the County Supervisor will notify such purchasers by letter (see Guide Letter 1962–A–2, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office) that FmHA or its successor agency under Public Law 103–354 security has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers, FmHA or its successor agency under Public Law 103–354 will do so unless the case already has been referred to OGC or the U.S. Attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, the third-party purchaser will be informed by the County Supervisor that FmHA or its successor agency under Public Law 103–354 will take no adverse action (see Guide Letter 1962–A–3, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office). Ordinarily, it will not be necessary to inform the third-party purchaser of OGC's decision when OGC determines that the facts support the claim against the third-party purchaser but no substantial part of the claim can be collected. If OGC makes such a determination and the third-party purchaser asks what determination has been made, the County Supervisor will say that no further action is to be taken on the claim ''at this time.''

(iv) In addition, unless personal contacts with the third-party purchaser, or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a follow-up letter (see Guide Letter 1962–A–4, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office) will be sent by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional follow-up letter will be sent to the third-party purchaser by OGC after the case has been referred to that office.

(c) *Handling civil and criminal cases.* All cases in which court actions to effect collection or to enforce the rights of FmHA or its successor agency under Public Law 103–354 are recommended, will be forwarded to OGC by the State Director in accordance with paragraph (c)(3) of this section.

(1) *County Office actions.* Forms FmHA or its successor agency under Public Law 103–354 455–1, ''Request for Legal Action,'' and FmHA or its successor agency under Public Law 103–354 455–22 will be prepared. Form FmHA or its successor agency under Public Law 103–354 455–2, ''Evidence of Conversion,'' will be prepared for each unauthorized disposal. The original and two copies of

Forms FmHA or its successor agency under Public Law 103–354 455–1 and FmHA or its successor agency under Public Law 103–354 455–22 and, wh=n applicable, FmHA or its successor agency under Public Law 103–354 455–2 together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA or its successor agency under Public Law 103–354 455–1. Appropriate recommendations regarding civil actions will be made on Forms FmHA or its successor agency under Public Law 103–354 455–1 and FmHA or its successor agency under Public Law 103–354 455–22 against the borrower or others. When a case is referred to the State Office the County Supervisor will keep that office informed of any future developments in the case. If Attachments l, 2 and other appropriate attachments to Exhibit A of Subpart S of Part 1951 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions.* Exhibits D, E, or E–1 of subpart A of part 1955 of this chapter will be prepared and sent after any appeal is concluded.

(3) *State Office actions.* (i) upon receipt of Form FmHA or its successor agency under Public Law 103–354 455–1 and, when applicable, Form FmHA or its successor agency under Public Law 103–354 455–2, the State Director will analyze each form to determine if all of the necessary information is documented and, if not, whether an appropriate effort was made to obtain the information. If all the necessary information is not documented, the State Director will return the case and request the County Supervisor to obtain the information to complete Forms FmHA or its successor agency under Public Law 103–354 455–1 and 455–2. The State Director may assign any qualified FmHA or its successor agency under Public Law 103–354 employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if FmHA or its successor agency under Public Law 103–354 employees are unable to obtain the additional information, the case will be returned to the State Office with an explanation of why the information is unavailable.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC for civil action, if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form FmHA or its successor agency under Public Law 103–354 455–1 the basis for the determination not to refer the case and instructions for follow-up servicing action. The State Director will not recommend a third-party conversion claim to the OGC if more than one year has run from the date of the annual accounting following the disposition of security, unless the Administrator or delegate determines a longer period of time should be applied either because of compelling circumstances such as the case has been referred to and accepted by OIG for criminal or civil investigation. The period of time during which a suit may be filed is set by federal statute and is not changed by this section. Demands on third-party purchasers will be made in accordance with paragraph (b) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil aspects of the case on Form FmHA or its successor agency under Public Law 103–354 455–1.

(A) When cases are referred to OGC, the County Office case file, Form FmHA or its successor agency under Public Law 103–354 455–1, and, when appropriate, Form FmHA or its successor agency under Public Law 103–354 455–2 will be transmitted. In addition, when the institution of civil court proceedings by FmHA or its successor agency under Public Law 103–354 is recommended, the notes, financing statements, security agreements, loan agreements, other legal instruments and copies thereof, as required by OGC, and Form FmHA or its successor agency under Public Law 103–354 451–11, ''Statement of Account,'' and Form FmHA or its successor agency under Public Law 103–354 455–22 will be submitted to OGC. The State Director,

with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for civil court or other action will be obtained from the Finance Office, or County Office, by the State Director. When the time required for obtaining the above material or documents may jeopardize FmHA or its successor agency under Public Law 103–354's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or (at the State Director's direction) to the U.S. Attorney.

(d) *Actions on cases referred to OGC.* When a civil case is referred to OGC, the State Director will notify the County Supervisor of the referral and will return the County Office case file when it is no longer needed. The State Director will also prepare and distribute Form FmHA or its successor agency under Public Law 103–354 1951–6 according to the FMI. The FmHA or its successor agency under Public Law 103–354 field office will process the descriptive code via the FmHA or its successor agency under Public Law 103–354 field office terminal system. This will flag the borrower's account indicating court action is pending (CAP). After notice of the referral is received by the County Supervisor, no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when a borrower voluntarily proposes to make a payment on an account, the County Supervisor will accept the collection unless notice has been received that the case has been referred to the U.S. Attorney for civil action. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect a case which has been referred to OGC.

(e) *Actions on cases referred to the U.S. Attorney and on judgement cases* (*including third-party judgements*). OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the U.S. Attorney or is otherwise closed. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Form FmHA or its successor agency under Public Law 103–354 1951–9, Annual ''Statement of Loan Account,'' to such borrowers. OGC will also notify the State Director when a judgement (including third-party) is obtained.

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will establish a judgment account by completing Form FmHA or its successor agency under Public Law 103–354 1962–20, ''Notice of Judgment,'' in accordance with the FMI. The FmHA or its successor agency under Public Law 103–354 field office will process the judgment or the third party judgment via the FmHA or its successor agency under Public Law 103–354 field office terminal.

(2) After notice has been received that a case has been referred to the U.S. Attorney or a judgment has been obtained and has not been returned to FmHA or its successor agency under Public Law 103–354 5by the U.S. Attorney, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. Attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the FmHA or its successor agency under Public Law 103–354 security interest or any pending court action to enforce collection. If information is obtained indicating that such debtors have assets or income not previously reported by the County Supervisor to the State Director from which collection of such judgment accounts can be obtained, the facts will be reported to the State Director. The State Director immediately will notify OGC of any developments which might have a bearing on

cases referred to the U.S. Attorney, including such judgment cases.

(i) If the debtor proposes to make a payment, FmHA or its successor agency under Public Law 103–354 employees will not accept such payment but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. Attorney. In such case, the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor through OGC to the appropriate U.S. Attorney. Likewise, collections received by the District Director or the State Office will be forwarded through OGC to the appropriate U.S. Attorney. Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money orders. Form FmHA or its successor agency under Public Law 103–354 451–1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to FmHA or its successor agency under Public Law 103–354, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgment debtor to do so.

(ii) Any payments received from such debtor by FmHA or its successor agency under Public Law 103–354 will be handled by issuing Form FmHA or its successor agency under Public Law 103–354 451–1 and converting and transmitting such payments as provided in Subpart B of Part 1951 of this chapter. The U.S. Attorney will be informed through OGC of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with Subpart B of Part 1956 of this chapter.

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 45439, Dec. 18, 1986; 53 FR 35787, Sept. 14, 1988; 54 FR 42799, Oct. 18, 1989; 55 FR 35296, Aug. 29, 1990; 57 FR 60085, Dec. 18, 1992]

§ 1962.50 [Reserved]

EXHIBITS TO SUBPART A

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN COMMODITY CREDIT CORPORATION AND FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

IT IS HEREBY AGREED by and between the Farmers Home Administration or its successor agency under Public Law 103–354 (hereinafter referred to as ''FHA'') and the Commodity Credit Corporation (hereinafter referred to as ''CCC'') that the following procedure will be observed in those cases where producers sell to CCC or pledge to CCC as

loan collateral under the Price Support Program, agricultural commodities such as, but not limited to, cotton, tobacco, peanuts, rice, soybeans, grains, on which FHA holds a prior lien and the proceeds from such sales or loans are not remitted to FHA for application against the loan(s) secured by such lien:

1. When an FHA County Supervisor learns that an FHA borrower has obtained a loan from CCC on a commodity or sold a commodity to CCC under such circumstances, he shall immediately notify his State Director. The State Director, immediately upon receipt of the notice, shall furnish CCC (see Appendix 1) with the name and address of such borrower, the county of his location at the time the commodity was placed under loan or sold, and the amount of the FHA loan secured by the lien.

2. When CCC receives such a notice from FHA, CCC shall take steps to prevent the making of any further loans on or purchases of the commodity of the borrower. If the CCC loan is still outstanding and CCC calls the loan, CCC shall notify the FHA State director of the demand.

3. If the CCC loan is repaid, whether prior to or after the receipt by CCC of the notice from FHA, the FHA State Director shall be notified immediately, at which time CCC will have discharged its responsibility under this agreement.

4. FHA shall, in each case in which the CCC loan is not repaid or the commodity has been sold to CCC, endeavor to collect from the borrower the amount due on the FHA loan. Such collection efforts shall include the making of demand on the borrower and the following of FHA's normal administrative policies with respect to the collection of debts, but shall not include the making of demand for payment upon the area peanut producer cooperative marketing associations through which CCC makes price support available to producers. If collection efforts are not successful, the FHA County Supervisor shall make a complete report on the matter to his State Director. If the State Director determines that the amount due on the FHA lien is not collectable by administrative action, he shall refer the matter to the appropriate local office of the General Counsel, with a full statement of the facts, for a determination of the validity of the FHA lien. If it is determined by the General Counsel's Office that FHA holds a valid prior lien on the commodity, the State Director shall furnish CCC with a copy of such determination, together with all other pertinent information, and shall request payment to FHA of the lesser of (1) the amount due on its loan, or (2) the value of the commodity at the time the CCC loan or purchase was made (based on the market value of the commodity on the local market nearest to the place where the commodity was stored). The information to be furnished CCC shall include (a) the principal balance plus interest due FHA on the date of the request, (b) the amount due on the FHA loan at the time the CCC loan or purchase was made, and (c) the amount of the CCC loan or purchase proceeds, if any, applied by the producer against the FHA loan. FHA shall continue to make collection efforts and shall notify CCC of any amount collected from the producer or any other party.

5. Upon receipt of evidence, including a copy of the determination of the Office of the General Counsel, from the State Director of FHA that the proceeds from the CCC loan or purchase have not been received by FHA from the borrower, and that collection cannot be made by FHA, CCC will if the CCC loan has not been repaid or if CCC has purchased the commodity, pay FHA the amount specified in paragraph 4 above or deliver the commodity (or warehouse receipts representing the commodity) to FHA: *Provided,* That if CCC has any information indicating that collection may be made by FHA from the borrower or any other party, it may notify FHA and delay payment pending additional collection efforts by FHA.

6. It is the desire of both FHA and CCC that claims to be processed under this agreement receive prompt attention by both parties and be disposed of as soon as possible. Instructions for the implementation of these procedures at the field office level will be developed and issued by the Washington offices of FHA and CCC.

7. Any question with regard to the handling of any claim hereunder shall be reported by the applicable ASCS office to ASCS in Washington and by the FHA State Director to the National Office of FHA.

This Memorandum of Understanding supersedes the agreement entered into between FmHA or its successor agency under Public Law 103–354 and CCC on November 5, 1951.

Entered into as of this 29th day of May, 1973.

FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354,

FRANK B. ELLIOTT,
Acting Administrator.

COMMODITY CREDIT CORPORATION,

KENNETH E. FRICK,
Executive-Vice President.

APPENDIX 1—FURNISHING NOTICE OR INFORMATION TO COMMODITY CREDIT CORPORATION

Commodity	Direct to
Cotton	Prairie Village, Kansas, ASCS Commodity Office.
Tobacco	Applicable tobacco association.
Peanuts	Applicable peanut association.
All other commodities	Applicable State ASCS office.

[44 FR 4437, Jan. 22, 1979]

EXHIBIT B—MEMORANDUM OF UNDERSTANDING AND BLANKET COMMODITY LIEN WAIVER

The Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA or its successor agency under Public Law 103–354 and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA or its successor agency under Public Law 103–354 and CCC in and without undue inconvenience to producers and FmHA or its successor agency under Public Law 103–354 and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA or its successor agency under Public Law 103–354 State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA or its successor agency under Public Law 103–354 holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA or its successor agency under Public Law 103–354 will try to furnish a complete and current list of the names of such producers; however, FmHA or its successor agency under Public Law 103–354's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (Iess fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA or its successor agency under Public Law 103–354 and the producer if (a) his name is on the Iist furnished by FmHA or its successor agency under Public Law 103–354, or (b) he names FmHA or its successor agency under Public Law 103–354 as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA or its successor agency under Public Law 103–354 shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word ''subordinated'' means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA or its successor agency under Public Law 103–354 and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FmHA or its successor agency under Public Law 103–354 in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Dated: July 20, 1980.

RAY V. FITZZERALD,
Executive Vice President. CCC.

Dated: July 14, 1980.

GORDON CAVANAUGH,
Administrator, FmHA or its successor agency under Public Law 103–354.

[53 FR 35787, Sept. 14, 1988]

EXHIBIT C—MEMORANDUM OF UNDERSTANDING BETWEEN FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 AND COMMODITY CREDIT CORPORATION

Rotation of Grain Crops

Under the Commodity Credit Corporation (CCC) Farmer-Owned Grain Reserve Program, a producer may request to rotate or exchange new crop grain for the original crop grain that is in the Farmer-Owned Grain Reserve Program and already encumbered by CCC. The Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) may have subordinated their first lien position to CCC on the original grain placed in reserve and/or may have a first lien on the new crop. FmHA or its successor agency under Public Law 103–354 and CCC desire to devise a mechanism whereby the CCC can relinquish its first lien position on the original grain reserve crop to FmHA or its successor agency under Public Law 103–354 and in turn the FmHA or its successor agency under Public Law 103–354 can relinquish its first lien position to CCC on the replacement grain reserve crop.

Now, therefore, it is agreed as follows:

(1) Upon receipt of a memorandum from an Agricultural Stabilization and Conservation Service (ASCS) County Executive Director or other designated county office official requesting the rotation of a grain reserve crop for a producer borrower(s), the FmHA or its successor agency under Public Law 103–354 County Supervisor and the ASCS county office official will jointly indicate approval or rejection of the request on the bottom of the original and a copy of the memorandum (Approval Memorandum) as follows:

''We hereby agree to and authorize the rotation of the subject producer's grain crops in accordance with the provisions of the Memorandum of Understanding between Farmers Home Administration or its successor agency under Public Law 103–354 and Commodity Credit Corporation dated_____.''

FmHA or its successor agency under Public Law 103–354 _____

ASCS _____

In the memorandum, ASCS will include the name(s) of the producer(s) desiring to rotate the grain crops, the approximate number of bushels being rotated, the type of crop, years' crop being rotated and the location of the original grain reserve crop (approximate land and facility description).

(2) Upon execution of the Approval Memorandum by both ASCS and FmHA or its successor agency under Public Law 103–354, the security interest of FmHA or its successor agency under Public Law 103–354 in the new crop grain shall be subordinated to the security interest of CCC in such grain and the security interest of CCC in the original crop grain shall be subordinated to the security interest of FmHA or its successor agency under Public Law 103–354 in such grain. At that point in time it will be the responsibility of each agency and the borrower to account for their respective interests in the grain crops and/or proceeds from the sale of the grain. The crop rotation and subordination of liens will only involve the amount of grain that has been specifically provided for in the memorandum from ASCS.

(3) If there is an intervening third party lien and it is impossible for FmHA or its successor agency under Public Law 103–354 or CCC to have a first lien on their respective grain crops, the request of the producer to rotate crops will not be granted.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days written notice to the other party.

[44 FR 4437, Jan. 22, 1979]

EXHIBITS D AND D–1 [RESERVED]

EXHIBIT E—RELEASING SECURITY SALES PROCEEDS AND DETERMINING ''ESSENTIAL'' FAMILY LIVING AND FARM OPERATING EXPENSES

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA or its successor agency under Public Law 103–354 should release to pay for particular items within these broad categories. For example, FmHA or its successor agency under Public Law 103–354 has to release for transportation expenses, but should FmHA or its successor agency under Public Law 103–354 release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA or its successor agency under Public Law 103–354 1962–1 can be completed to show that FmHA or its successor agency under Public Law 103–354 plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA or its successor agency under Public Law 103–354 1962–1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for FmHA or its successor agency under Public Law 103–354 to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires FmHA or its successor agency under Public Law 103–354 to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA or its successor agency under Public Law 103–354 should release for operating expenses and whether a particular farm operating expense is ''essential.'' As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are ''basic, crucial or indispensable.'' Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103–354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F [RESERVED]

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note–Only Cases

SOURCE: 51 FR 4140, Feb. 3, 1986, unless otherwise noted.

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests, and certain note-only cases for Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Farmer Program (FP) loans. Security servicing for borrowers who have *both* FmHA or its successor agency under Public Law 103–354 FP and Single Family Housing (SFH) loans, (excluding Technical Assistance Grants and Site loans), will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this chapter. Security servicing for Nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. For borrowers who have both a FP and NP loan, security servicing will be in accordance with the applicable FP regulations and subpart J of part 1951 of this chapter. This subpart does not apply to FmHA or its successor agency under Public Law 103–354 guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or Indian Tribal Land Acquisition loans.

[58 FR 52654, Oct. 12, 1993]

§ 1965.2 General policies.

(a) The terms ''nonprogram (NP)'' and ''ineligible'' may be used interchangeably throughout this subpart but are identical in their meaning.

(b) FmHA or its successor agency under Public Law 103–354 will service real estate security in a manner that best accomplishes the loan objectives and protects the Government's financial interest. To accomplish this, FmHA or its successor agency under Public Law 103–354 will service the real estate security in accordance with the security instruments and related agreements, including any authorized modifications and the provisions of this subpart.

(c) The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance, program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(d) If the farm is situated in more than one State, county or parish, the loan will be serviced by the County Office servicing the county in which the borrower's residence is located. If the borrower is a corporaton, cooperative, partnership or joint operation or if the

borrower's residence is not on the farm, the loan will be serviced by the County Office servicing the county in which the farm or a major portion of the farm is located.

[51 FR 13482, Apr. 21, 1986, as amended at 58 FR 52654, Oct. 12, 1993]

§ 1965.3 Borrower's responsibilities.

Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes in accordance with subpart A of part 1925 of this chapter, providing adequate property insurance in accordance with subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1), maintaining, protecting, and accounting to the FmHA or its successor agency under Public Law 103–354 for all real estate security, and complying with other loan requirements.

[51 FR 4140, Feb. 3, 1986, as amended at 57 FR 36592, Aug. 14, 1992]

§ 1965.4 FmHA or its successor agency under Public Law 103–354's responsibility.

The County Supervisor, District Director or other servicing official is responsible for informing borrowers of their responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and servicing the account and security in accordance with this subpart. When a borrower fails to maintain, protect, or account for the security, as required by the loan documents, or makes unauthorized disposition or use of any security, FmHA or its successor agency under Public Law 103–354 will institute prompt action to protect FmHA or its successor agency under Public Law 103–354's interest. The County Supervisor, District Director or other servicing official will obtain any needed legal advice from the Office of the General Counsel (OGC) through the State Director. Once a case has been referred to the OGC for legal action, no further action will be taken by the County Supervisor, District Director or other servicing official without prior clearance from OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC. All FmHA or its successor agency under Public Law 103–354 employees will document actions taken to service a loan in the running case record in the borrower's FmHA or its successor agency under Public Law 103–354 file(s). When a servicing action affects a borrower's account (e.g., a foreclosure action is pending), the appropriate FmHA or its successor agency under Public Law 103–354 servicing official will notify the Finance Office.

§ 1965.5 Servicing certain insured Farm Ownership (FO) loans.

(a) *Servicing actions.* When an insured FO mortgage running to the lender as mortgagee is not held by the FmHA or its successor agency under Public Law 103–354 under trust assignment, or declaration of trust, or in the insurance fund (called insured FO mortgage held by the lender in this subpart) and a written subordination or partial release or other servicing document is requested, the document will be executed by the holder on a form prepared or approved by OGC. In those cases, execution of the document will constitute consent.

(b) *Execution of documents.* The County Supervisor is authorized to execute on behalf of the Government, all necessary forms, statisfactions, releases, and other documents required to complete any transactions in this subpart after the transaction has been approved by the appropriate approving official. The documents will be executed on behalf of the United States in the following form:

(1) ''United States of America,'' when the mortgage names the United States as mortgagee, or when a mortgage running to the lender is not under a trust or declaration of trust and the note is held by the insurance fund.

(2) ''United States of America, for Itself and as Trustee,'' when an FO mortgage is held by the FmHA or its successor agency under Public Law 103–354 under a trust assignment or declaration of trust, regardless of whether the note is held by a lender or by the insurance fund.

§ 1965.6 Consent of lienholders.

When this subpart requires the consent of other lienholders, consent will be obtained and furnished in writing to the FmHA or its successor agency under Public Law 103–354 by the borrower before the FmHA or its successor agency under Public Law 103–354 enters into a transaction which affects its security or its lien. This consent will, unless otherwise provided in a State Supplement, include an agreement as to the disposition of any funds involved in the transaction.

§ 1965.7 Definitions.

As used in this subpart, the following definitions apply:

(a) *Borrower*. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership, or joint operation is the borrower.

(b) *County Supervisor* also includes Assistant County Supervisor who has written delegated authority to carry out purposes of this subpart.

(c) *District Director* also includes Assistant District Director who has written delegated authority to carry out purposes of this subpart.

(d) *FmHA or its successor agency under Public Law 103–354 loans, FmHA or its successor agency under Public Law 103–354 accounts, FmHA or its successor agency under Public Law 103–354 interests, FmHA or its successor agency under Public Law 103–354 security, FmHA or its successor agency under Public Law 103–354 debts* and similar terms apply to indebtedness owed to, or insured by, the United States of America acting through the FmHA or its successor agency under Public Law 103–354, and to related security instruments.

(e) *Farmer Program loan* includes only Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), Softwood Timber (ST) and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

(f) *Foreclosure sale*. The act of selling security either under the ''Power of Sale'' in the security instrument or through court proceedings.

(g) *Leasehold*. A right to use farm property for a specific period of time under conditions provided for a lease agreement.

(h) *Mortgage*. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term ''mortgage'' also refers to any security interest in chattel property.

(i) *Non-Program (NP) Loan*. An NP loan results when credits are extended to ineligible applicants and/or transferees in connection with loan assumptions and sale of inventory properties.

(j) *Note* includes any note, bond, assumption agreement or other evidence of indebtedness.

(k) *Security*. Property of any kind subject to a real or personal property lien including, among other things, appurtenant rights of development, leasehold, grazing or other use privileges.

(l) *Servicing action* includes, among other things, the cash sale or transfer of real estate and chattel property and the assumption of loans.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26138, July 13, 1987; 53 FR 35794, Sept. 14, 1988]

§§ 1965.8–1965.10 [Reserved]

§ 1965.11 Preservation of security and protection of liens.

(a) *Inspection of security*. The County Supervisor will inspect farm real estate security a minimum of one time every 3 years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property. Security on non-farm tracts will be inspected when:

(1) Liquidation action is likely to be taken;

(2) The property has been abandoned;

(3) Necessary to protect the interest of the Government; or

(4) Requested by the borrower.

(b) *Action by FmHA or its successor agency under Public Law 103–354 for account of borrower*. When necessary to protect the interest of the Government, actions will be taken by FmHA

or its successor agency under Public Law 103–354 for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the State Director.

(1) *Abandoned and Custodial Property.* Determinations of abandonment will be made according to §1955.55 of Subpart B of Part 1955 of this chapter. Services for the management, care, and maintenance of custodial property will be obtained according to §1955.55 of Subpart B of Part 1955 of this chapter. Custodial property may be leased according to the provisions of §1955.66(a)(1) of Subpart B of Part 1955 of this chapter.

(2) *Maintenance.* Complete information concerning the borrower's failure to adequately maintain the security will be documented in the case file. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with subpart A of part 1925 of this chapter.

(4) *Insurance.* For FmHA or its successor agency under Public Law 103–354 loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, and in accordance with Subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1), and when appropriate, Subpart B of Part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.2).

(c) *Actions by third parties which affect security*—(1) *General provisions.* When third parties bring suit or take any other action which could affect property servicing as security, borrowers are expected to protect their own interests in the property. A few examples of actions by third parties are: condemnation proceedings, foreclosure, trespass suits, and actions to quiet title.

(i) *County Supervisor's responsibility.* When the County Supervisor learns about a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) if another lienholder is foreclosing, and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. Then the County Supervisor will send the following documents to the State Director: the County Office case file, complete with information concerning the action; recommendations for FmHA or its successor agency under Public Law 103–354 servicing action; a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property and any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. The payment of other liens by FmHA or its successor agency under Public Law 103–354 will be authorized by the State Director only to protect the Government's interest, not for the protection of the borrower's interest or the interest of any third party. When foreclosure by another creditor or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or guaranteed loan, or approving a subordination to permit another lender to make a loan, provided:

(A) The requirements for the primary servicing program(s), a subsequent loan, guaranteed loan or subordination are met, and such assistance is necessary to enable the borrower to retain the property, and

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of the primary servicing programs, a subsequent loan, guaranteed loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) *Sale by a prior lien foreclosure.* When FmHA or its successor agency under Public Law 103–354 learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness and the estimated cost of a foreclosure sale. An insured note which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before a foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(i) *Decision to pay off the prior lien.* When, under State law, it is necessary prior to foreclosure to acquire the prior lienholder's rights to protect the Government's junior lien interest, title evidence will be obtained. Information clearly supporting the need to acquire the prior lienholder's rights must be documented and made a part of the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the foreclosure sale, and

(B) After acquisition of the prior lien and completion of any appeals in favor of FmHA or its successor agency under Public Law 103–354, the account will be accelerated and liquidated in accordance with §1965.26(b) of this subpart. No exception will be made to this provision.

(ii) *Decision not to pay off the prior lien.* If FmHA or its successor agency under Public Law 103–354 decides not to pay off the prior lien, one of the following actions will be taken.

(A) *Making a bid.* Bidding will be completed in accordance with §1955.15(f) (6) and (7) of subpart A of part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA or its successor agency under Public Law 103–354 enters a bid, actions will be taken in accordance with §§1955.15(g) and 1955.18 of subpart A of part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA or its successor agency under Public Law 103–354, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with §1955.18 (f) of subpart A of part 1955 of this chapter.

(iii) *Acquisition of property by exercise of Government redemption rights.* If the Government for any reason did not protect its interest at the time of the foreclosure sale and if the Government has any redemption rights, the State Director will determine whether to redeem the property in accordance with §1955.13 of subpart A of part 1955 of this chapter.

(3) *Foreclosure sale subject to FmHA or its successor agency under Public Law 103–354 mortgage.* When FmHA or its successor agency under Public Law 103–354 learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower attachments 1 and 3 and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart. If the borrower contacts FmHA or its successor agency under

Public Law 103–354 and wants to apply for servicing relief, the request will be processed in accordance with subpart S of part 1951 of this chapter. If the junior lienholder forecloses and the property is sold subject to the FmHA or its successor agency under Public Law 103–354 mortgage, following the resolution of any appeal in favor of FmHA or its successor agency under Public Law 103–354, the borrower's account will be accelerated and liquidated in accordance with the applicable portion of § 1955.15 of subpart A of part 1955 of this chapter.

(d) *Divorce actions.* See § 1965.27 (b)(5)(iii) of this subpart for directions on servicing security after divorce. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1965.27(b)(13) of this subpart.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35794, Sept. 14, 1988; 56 FR 15829 Apr. 18, 1991; 57 FR 20741, May 15, 1992; 57 FR 36592, Aug. 14, 1992; 58 FR 38928, July 21, 1993]

§ 1965.12 Subordination of an Agency mortgage.

(a) *Conditions.* A subordination may be granted if all of the following conditions are met:

(1) The subordination is to refinance debt or for an authorized direct loan purpose;

(2) The Agency debt cannot be refinanced without a subordination;

(3) The borrower can document the ability to repay the total amount due under subordination and pay all other debt payments scheduled for the subject operating cycle;

(4) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(5) Any planned development is performed in a manner directed by the creditor and agreed to by the Agency and reasonably attains the objectives of subpart A of part 1924 of this chapter;

(6) Funds to be used to develop or to acquire land will be deposited in a supervised bank account that is subject to signature by the Agency and the borrower, or in a similar arrangement, to ensure that funds will be spent for the planned purposes;

(7) In cases of land purchase or exchange of property, the Agency will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate;

(8) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. ''Borrower'' for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. ''Controlled substance'' is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(9) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination;

(10) The subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time; and

(11) Only one subordination to one creditor may be outstanding at any one time in connection with the same security.

(b) *Subordination on real estate owned by an entity member.* Notwithstanding the provisions of paragraph (a) of this section, when the borrower is an entity and the Agency has taken real estate as additional security on property owned by an entity member, a subordination for any authorized Farm Loan Programs loan purpose may be approved when it is needed for the entity member to finance a separate operation. The subordination, however, may be approved only if it does not cause the unpaid principal and accrued interest balance of the Agency loan to

exceed the value of the loan security or otherwise adversely affect the security.

(c) *Request for subordination.* A borrower must complete an application provided by the Agency to receive consideration for a subordination.

(d) *Notice of foreclosure.* The lienholder requesting the subordination will agree to give notice of foreclosure as required by the Agency.

(e) *Appraisal.* The Agency will prepare a current appraisal report in accordance with § 761.7 of this title when property is to be purchased or exchanged, or when the existing appraisal report is more than 1 year old or is inadequate to make the determination required in this section. The Agency may use the appraisal report prepared for another lender if it complies with the requirements of § 761.7 of this title.

(f) *Reamortizing existing Agency debts.* The Agency may consent to a reamortization of an existing Agency debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the conditions of subpart S of part 1951 of this chapter are met.

(g) *Subordination to make a guaranteed loan.* In addition to the requirements of this section, subordinations of liens on real estate security to make a guaranteed loan will be approved in accordance with § 1980.108 of this chapter.

[63 FR 20297, Apr. 24, 1998, as amended at 64 FR 62569, Nov. 17, 1999]

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. If a FP loan is being deferred and reamortized as an ST loan, partial releases are authorized as provided in Subpart S of Part 1951 of this chapter. However, there is no authority for FmHA or its successor agency under Public Law 103–354 employees to consent to partial release or sale, exchange or other disposition of a portion of the security for an existing ST loan.

(a) *Provisions of FmHA or its successor agency under Public Law 103–354 mortgages.* In all FmHA or its successor agency under Public Law 103–354 mortgages except SFH loan mortgages prepared before October 1, 1950, and a few OL, EM, Special Livestock (SL), and Water Facilities (WF) loan mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it without the prior written consent of the mortgagee. Furthermore, in the case of the few SFH, OL, EM, SL, and WF loan mortgages not requiring FmHA or its successor agency under Public Law 103–354 consent, any property, or any part of it or interest in it, which is subject to the FmHA or its successor agency under Public Law 103–354 mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA or its successor agency under Public Law 103–354 mortgages theborrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes. The sale of timber (other than harvests for thinning purposes approved by FmHA or its successor agency under Public Law 103–354 on a farm plan), mining products, removal of gravel, oil, gas, coal, or other minerals by unit or lump sum payments will be considered as disposition of a portion of the security, *except:* For Farmer Program loans approved after December 23, 1985, the sale of such products, other than timber, will be considered a disposition of a portion of the security *only* if the rights to the products were specifically included as a part of the appraisal value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA or its successor agency under Public Law 103–354 has no lien on the rights to oil, gas or other minerals located under the real estate. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will

be assigned to FmHA or its successor agency under Public Law 103–354 and will be used to repair the damage or used as authorized in § 1965.13(f) of this subpart. This section explains how and under what circumstances FmHA or its successor agency under Public Law 103–354 will grant partial releases, and give its consent to certain transactions affecting the security. Subordinations, transfers, consents to junior liens, leases and severance agreements are discussed individually in other sections of this subpart. Releases granted in connection with a final payment on real estate will be handled in accordance with subpart D of part 1951 of this chapter.

(b) *Conditions of FmHA or its successor agency under Public Law 103–354 consent.* A State Supplement will be developed, with guidance of OGC, and issued to provide guidance for handling of easements or rights-of-way in connection with the development, extension, construction or modification of community based programs, such as rural water districts, drainage, and irrigation districts, without requiring monetary consideration or detailed appraisals. Otherwise, FmHA or its successor agency under Public Law 103–354 may consent to certain transactions affecting the security (for example, a sale or an exchange of security or granting a right-of-way across security) and/or grant a partial release if:

(1) The transaction will further the objectives for which the FmHA or its successor agency under Public Law 103–354 loan or loans were made;

(2) The proposed use of the funds including the payment of reasonable costs and expenses incident to the transaction will improve the borrower's ability to repay the FmHA or its successor agency under Public Law 103–354 loan(s) or is necessary to place the borrower's operation on a sound basis;

(3) The consideration is adequate for the security being disposed of or the rights granted (see paragraph (c) of this section);

(4) Orderly repayment of the FmHA or its successor agency under Public Law 103–354 indebtedness will not be impaired (does not apply in condemnation cases after final judgment or award which is not appealed);

(5) The transaction will not interfere with successful operation of any farming or other enterprise providing the borrower with repayment ability (does not apply in condemntation cases after final judgment or award which is not appealed);

(6) The market value of the remaining security is adequate to secure the unpaid balance of the FmHA or its successor agency under Public Law 103–354 debts, or if the market value of the security before the transaction was inadequate to fully secure the FmHA or its successor agency under Public Law 103–354 debts, the FmHA or its successor agency under Public Law 103–354's security interest is not adversely affected;

(7) The requirements of § 1965.6 of this subpart are met; and

(8) The borrower cannot graduate to other credit.

(c) *Exchange of property.* When an exchange of property serving as security for an FmHA or its successor agency under Public Law 103–354 loan results in a balance owing to the FmHA or its successor agency under Public Law 103–354 borrower, the provisions of this section applicable to a sale of a portion of the security will apply as to disposition of proceeds. When property is exchanged, the property acquired by the FmHA or its successor agency under Public Law 103–354 borrower must meet requirements of the program objectives, purposes and limitations outlined in this subpart relating to the type of loan involved as well as respective requirements for appraisal, title clearance and security. Requests for exchange of property which cannot be approved under this section may be submitted to the National Office for consideration, provided the request meets conditions in § 1965.35 of this subpart.

(d) *Appraisals.* When the official authorized to approve the transaction is uncertain whether the proposed consideration is adequate, or for any other reason considers an appraisal necessary to complete Form FmHA or its successor agency under Public Law 103–354 465–1, or when the transaction involves

more than $10,000, a new appraisal report will be obtained in accordance with § 761.7 of this title. However, a new appraisal report need not be obtained if there is an appraisal report not over 1 year old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released. When a new appraisal is not required, the appraiser will indicate the estimate of values and the basis for it in the comments section of the existing appraisal report. The notation will be initialed and dated. When a new appraisal report is required, it will be completed to show the present market value of the property being retained. The rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate securing the loans. Also, the present market value of the property being released will be shown under the comments section of the same appraisal report. Information regarding sales of comparable properties used in arriving at the present market value of the property being released will be shown in the comments section or on an attached sheet.

(1) *Stationary units.* If timber or minerals, including sand, gravel, and stone which appear to be worth more than $2,000 are to be sold on the basis of the timber stand or the mineral deposit rather than the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA or its successor agency under Public Law 103–354 employee to provide advice on the quality or value of the timber or minerals, and the manner in which they should be sold. Generally, assistance can be obtained from State or Federal employees who are located in the area, such as U.S. Department of Agriculture Forest Service employees.

(2) *Units removed.* When timber or minerals including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert the date, and initial a notation on the existing appraisal report instead of making a new appraisal report. The notation should show (i) the unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area; and (ii) the manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(e) *Authority of the County Supervisor and District Director*—(1) *General.* County Supervisors and District Directors may approve transactions for purposes authorized in this subpart when the FmHA or its successor agency under Public Law 103–354 indebtedness after the transaction does not exceed their approval authority for the type of loan or a combination of types of loans as outlined in exhibit C of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 Office). When more than one type of loan is involved in the transaction, the loan approval authority of County Supervisors and District Directors will be the highest combination amount authorized in exhibit C of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A for any of the loan types involved. State Directors are authorized to approve any transaction, consistent with this subpart, which exceeds the approval authority of County Supervisors and District Directors.

(2) *Forest products.* County Supervisors and District Directors can approve most applications for consent or release involving the harvest or sale of forest products. In the case of 3 percent loans for forestry purposes, applications for consent or release will be forwarded to the State Director for approval if:

(i) The harvest or sale is not in accordance with strict provisions of the initially approval forestry plan,

(ii) Future repayments on the 3 percent advance are scheduled on any basis other than equal annual installments,

(iii) There is a lien on the forest land prior to the lien of the FmHA or its successor agency under Public Law 103–354, or

(iv) There is a delinquency on any FmHA or its successor agency under Public Law 103–354 real estate loan.

(3) *Terms of a sale.* County Supervisors and District Directors may approve sales made on the following terms.

(i) Sale of a portion of the security for its market value on the following terms:

(A) For SFH loans, refer to §1965.110 of subpart C of part 1965 of this chapter.

(B) For all other loans, not less than 10 percent (of the purchase price) down and payments not to exceed ten annual installments of principal plus interest at not less than the current rate being charged on regular FO loans plus 1 percent or the rate on the borrower's note(s), whichever is greater. Payments may be in equal or unequal installments with a balloon final installment. For farmer program loans approved after December 23, 1985, the sale of mining products gravel, oil, gas, coal, or other minerals will be considered a sale of security *only* if the rights to such products were specifically included as a part of the appraised value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA or its successor agency under Public Law 103–354 has no lien on the rights to such products located under the real estate.

(ii) In each case it must be determined that:

(A) The government's security rights, including the right to foreclose on either the portion being sold or retained, are not impaired,

(B) The down payment and any subsequent payments are applied to the FmHA or its successor agency under Public Law 103–354 debt(s), prior lien(s), or otherwise used as authorized in this section under paragraph (f) of this section, and

(C) If applicable, the requirements of subpart G of part 1940 of this chapter must be met.

(iii) In each case the following conditions must be met:

(A) Any amount to be paid FmHA or its successor agency under Public Law 103–354 from the down payment and subsequent payments must be assigned to FmHA or its successor agency under Public Law 103–354,

(B) The property sold will not be released prior to either full payment of the borrower's account or receipt of full amount of sale proceeds with proper application or release of the proceeds, and

(C) The borrower must agree in writing that the sale proceeds will not affect the borrower's primary and continued obligation for making payments under terms of the note or any other agreements approved by FmHA or its successor agency under Public Law 103–354.

(f) *Use of proceeds.* County Supervisors or District Directors may approve transactions if the proceeds will be used in one of the following ways.

(1) Proceeds may be applied on liens in order of priority. Written consent of any prior or junior lienholder will be obtained by the borrower and delivered to the FmHA or its successor agency under Public Law 103–354 if any proceeds are not to be applied in accordance with lien priorities.

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay for personal funds or cannot have the purchaser pay. The costs may, for example include real estate taxes which must be paid to consummate the transaction; cost of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, real estate broker's commissions and judgment liens. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the cost. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of

the charge will be based on the statement of actual cost furnished by the payee.

(3) Proceeds may be used for development of land owned by the borrower or for enlargement, if development or enlargement is necessary to improve the borrower's debt-payment ability and to place the borrower's operation on a sound basis, or to otherwise further the objectives of the loan. The use of proceeds for these purposes will not conflict with the loan purposes, restrictions or requirements of the type loan(s) involved. Any proposed development work will be in accordance with subpart A of part 1924 of this chapter. Funds to be used for development or enlargement will be handled under subpart A of part 1902 of this chapter.

(4) When FmHA or its successor agency under Public Law 103–354 loans secured by a lien on real estate will be adequately secured after a transaction affecting the real estate takes place, proceeds may, with the consent of the State Director and other lienholders on the real estate, be used as follows:

(i) Applied to delinquent or unmatured FmHA or its successor agency under Public Law 103–354 loan installments when the borrower is otherwise unable to meet the installments.

(ii) For other than SFH loans, applied on debts owed creditors other than FSA Farm Credit Programs to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.56 of subpart B of part 1924 of this chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with subpart A of part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with § 1924.56 of subpart B of part 1924 of this chapter.

(iii) Develop land not owned by the borrower which is essential to the borrower's operation in an amount not to exceed $10,000, provided: the improvements are needed to improve the borrower's repayment ability and the borrower has tenure arrangements which justify the use of the proceeds on the land not owned by the borrower. Development work performed will be in accordance with subpart A of part 1924 of this chapter. Funds will be handled under subpart A of part 1902 of this chapter.

(5) When liquidation action is pending in accordance with § 1965.26 of this subpart, the County Supervisor or District Director is authorized to approve transactions only when all the proceeds (other than costs authorized in paragraph (f)(2) of this section) will be applied to the liens against the security in the order of their priority.

(g) *Authority of the State Director*. The State Director is authorized to approve transactions that exceed the approval authority granted in paragraph (e) of this section to the County Supervisor and District Director, or that involve an easement or right-of-way granted or conveyed without monetary compensation or for a token consideration. When approving these transactions, the State Director must determine that the requirements of paragraph (b) of this section are met.

(h) *Processing*. FmHA or its successor agency under Public Law 103–354's consent will be given by approving a completed Form FmHA or its successor agency under Public Law 103–354 465–1 if the transaction meets the conditions of paragraph (b) of this section. Also, when requested, FmHA or its successor agency under Public Law 103–354 will give a written partial release on Form FmHA or its successor agency under Public Law 103–354 460–1, ''Partial Release,'' or other form approved by OGC. A formal release may not be delivered for 15 days after the payment is received unless payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available. When an insured FO mortgage is held by the lender, the holder's consent will be obtained only if a written partial release or other

written servicing document is requested by the borrower. When the approval of a transaction by the State Director is required, or when the County Supervisor or District Director desires advice in connection with approval of a transaction, the borrower's case folder, Form FmHA or its successor agency under Public Law 103–354 465–1, and any other information pertinent to the transaction will be sent to the State Office.

(i) *Liquidation.* If FmHA or its successor agency under Public Law 103–354 is unable to approve a partial sale, the partial sale cannot be used as the basis for liquidation in the following circumstances:

(1) The spouse or children of the borrower become the owner of the property.

(2) The sale results from a divorce or legal separation and the spouse of the borrower becomes the owner of the property.

(3) An intervivos trust becomes the owner of the property so long as the borrower is a beneficiary of the trust and there is no change in occupancy of the property.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26139, July 13, 1987; 53 FR 35795, Sept. 14, 1988; 56 FR 10154, Mar. 11, 1991; 57 FR 775, Jan. 9, 1992; 58 FR 44752, Aug. 25, 1993; 58 FR 52654, Oct. 12, 1993; 61 FR 35931, July 9, 1996; 64 FR 62569, Nov. 17, 1999]

§ 1965.14 Subordination of FmHA or its successor agency under Public Law 103–354 real estate mortgages to easements to the U.S. Fish and Wildlife Service, (formerly the Bureau of Sport Fisheries and Wildlife).

Exhibit A (available in any FmHA or its successor agency under Public Law 103–354 office) of this subpart, ''Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife (now the U.S. Fish and Wildlife Service) and the Farmers Home Administration or its successor agency under Public Law 103–354,'' outlines the procedure to follow in processing a subordination of an FmHA or its successor agency under Public Law 103–354 mortgage on wetlands on which the Bureau of Sport Fisheries and Wildlife requests an easement for waterfowl habitats. The County Supervisor will handle the request in accordance with the steps outlined in Exhibit A and applicable processing portions of § 1965.12 of this subpart.

§ 1965.15 Subordination of FmHA or its successor agency under Public Law 103–354's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installment of either farm storage or drying equipment or both and requires that any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA or its successor agency under Public Law 103–354 borrower and requests a subordination of the FmHA or its successor agency under Public Law 103–354 real estate lien, the request will be handled on an individual case basis under § 1965.12 of this subpart. A borrower's request for the FmHA or its successor agency under Public Law 103–354's consent to a severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled under § 1965.19 of this subpart.

§ 1965.16 Consent to junior liens.

As a general policy, FmHA or its successor agency under Public Law 103–354 borrowers will be discouraged from giving other creditors junior liens on real estate securing an FmHA or its successor agency under Public Law 103–354 loan. (For Sections 502 and 504 loans, see § 1965.111 of Subpart C of Part 1965 of this chapter).

(a) *Processing request.* When consent to a junior lien is requested by a borrower, the County Supervisor may consent by executing Form FmHA or its successor agency under Public Law 103–354 465–1 or other form approved by OGC for use in the state provided:

(1) The terms of the junior lien debt are such that repayment is not likely to jeopardize payment of the FmHA or its successor agency under Public Law 103–354 loan;

(2) Operating plans made with the junior lienholder are consistent with plans made with FmHA or its successor agency under Public Law 103–354;

(3) Total debt against the security will not exceed its market value; and

(4) The junior lienholder agrees in writing not to foreclose the mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of written notice to FmHA or its successor agency under Public Law 103–354.

(b) *Consent not requested or granted.* When a junior lien is placed on any property without FmHA or its successor agency under Public Law 103–354 consent and consent cannot be granted under this section, FmHA or its successor agency under Public Law 103–354 may continue with the loan as long as the borrower pays FmHA or its successor agency under Public Law 103–354 loans as agreed, maintains the security, and meets all other conditions of the loan. The existence of a junior lien cannot be treated as a default. The County Supervisor will continue to service the loan to protect the Government's security interest.

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA or its successor agency under Public Law 103–354 should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with § 1965.26(d) of this subpart.

(b) *Liquidation.* No action to initiate liquidation based on the lease will be taken unless the borrower:

(1) Enters into a lease for a term of more than 3 years; or

(2) Enters into a lease for any term containing an option to purchase.

(c) *Mineral leases.* When a borrower requests consent to lease the mineral rights to security, the County Supervisor may consent provided the proposed use of the leased rights will not result in the Government's security interest being adversely affected. If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met. A borrower does not need FmHA or its successor agency under Public Law 103–354's consent to lease the mineral rights securing a Farmer Program loan approved after December 23, 1985, unless the oil, gas or other minerals were included on FmHA or its successor agency under Public Law 103–354's real estate appraisal. If FmHA or its successor agency under Public Law 103–354 consent is needed and consent is given, lease payments can be used for prospective payments on FmHA or its successor agency under Public Law 103–354 loans. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA or its successor agency under Public Law 103–354 and will be used to repair the damage or used as authorized in § 1965.13(f) of this Subpart. Form FmHA or its successor agency under Public Law 103–354 465–1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on the Government security. Assignment of income will be taken by use of Form FmHA or its successor agency under Public Law 103–354 443–16, ''Assignment of Income from Real Estate Security,'' or other form approved

by OGC which is necessary to comply with State law.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35795, Sept. 14, 1988; 58 FR 52654, Oct. 12, 1993]

§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.

(a) *General*. Agriculture Stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) Sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA or its successor agency under Public Law 103–354's policy to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA or its successor agency under Public Law 103–354 personnel should familiarize themselves with the States ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA or its successor agency under Public Law 103–354 policies and servicing of security.

(b) *Authorization*. County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA or its successor agency under Public Law 103–354 465–1. County Supervisors are also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided by ASCS for those cases in which a transfer is approved.

(c) *Transfer by sale*. Crop allotments enhance the value of a farm mortgaged to the FmHA or its successor agency under Public Law 103–354 and constitute security for the FmHA or its successor agency under Public Law 103–354 loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA or its successor agency under Public Law 103–354 inquires about the sale of any of the allotted acres or requests the FmHA or its successor agency under Public Law 103–354 to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1965.13 of this subpart. The sale proceeds may be used as authorized in § 1965.13(f) of this subpart.

(d) *Transfer of allotment by lease*. The County Supervisor has the authority to approve a lease of all or a portion of an allotment for a 1 year period, provided the lease or its terms will not adversely affect the repayment of the loan; leasing is not an alternative to or means of delaying liquidation; and the lease and use of proceeds will further the objectives of the loan. If a 1 year lease is approved, the lease proceeds may be used as farm income as outlined in § 1962.17(b) of Subpart A of Part 1962 of this chapter. Leases for a period of more than 1 year will be granted only with the concurrence of the District Director. When a lease is for more than 1 year, an assignment of the rental proceeds should be obtained.

(e) *Transfer of allotment by owner to other land owned or controlled by the owner*. A transfer by an owner to other land owned or controlled by the owner is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgage approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions in paragraph (d) of this section to assure that the crop allotment on the security is not adversely affected.

§ 1965.19 Severance agreement.

Form FmHA or its successor agency under Public Law 103–354 440–26, ''Consent and Subordination Agreement,'' will be completed when a borrower requests FmHA or its successor agency under Public Law 103–354's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA or its successor agency under Public Law 103–354

debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA or its successor agency under Public Law 103–354 consent by executing Form FmHA or its successor agency under Public Law 103–354 440–26 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are in the best interest of the Government and the borrower.

(b) The transaction will not adversely affect FmHA or its successor agency under Public Law 103–354's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design; and is otherwise in line with FmHA or its successor agency under Public Law 103–354 financing policies. OGC will be requested to approve any severance agreement submitted by a borrower that is of a type not previously approved for use in the State and, when necessary, to issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1965.20 [Reserved]

§ 1965.21 Assignment and release of Soil Conservation or similar program payments.

The County Supervisor may take an assignment on income to be received under USDA Programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing. The assignments of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and when payments due on all FmHA or its successor agency under Public Law 103–354 loans have been made from other income or the assigned income is needed for family living and farm operating expenses. This income will *not* be shown on Form FmHA or its successor agency under Public Law 103–354 1962–1, ''Agreement for the Use of Proceeds/ Release of Chattel Security.'' The receipt of these proceeds and their planned use will be clearly identified on the current farm pan.

§ 1965.22 Deceased borrower.

Deceased borrower cases will be handled under § 1962.46 of subpart A of part 1962 of this chapter.

§ 1965.23 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled under § 1962.47 of subpart A of part 1962 of this chapter. For SFH loans, refer to subpart C of part 1965 of this chapter.

§ 1965.24 Servicing note-only cases.

Each loan made on a note-only basis without real estate security will be serviced in a manner consistent with the best interests of the FmHA or its successor agency under Public Law 103–354.

(a) Sale of real property on which improvements were made with note-only FmHA or its successor agency under Public Law 103–354 funds. Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA or its successor agency under Public Law 103–354's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Subpart B of Part 1956 of this chapter, if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale and if appropriate, enter a bid on behalf of the Government under Subpart A of Part 1955 of this chapter.

(b) Assumption of note-only when real property securing another FmHA or its successor agency under Public Law 103–354 loan is involved. When a borrower has an FmHA or its successor agency under Public Law 103–354 loan secured by real estate and another

FmHA or its successor agency under Public Law 103–354 loan evidenced only by a note and the real estate is to be transferred and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must also be assumed.

[51 FR 4140, Feb. 3, 1986, as amended at 51 FR 45439, Dec. 18, 1986]

§ 1965.25 Release of FmHA or its successor agency under Public Law 103–354 mortgage without monetary consideration in certain cases.

(a) *Additional real estate security owned by an entity member(s).* Real estate owned by a member(s) of an entity-borrower, which was taken as additional security for a loan secured by real estate, may be released if it is needed for the entity member(s) to finance a separate operation and the remaining real estate adequately secures the entity loan(s). A release will not be considered if a subordination can be approved for the same purpose. The County Supervisor will document in the case file why a subordination is not feasible.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the facts of the situation, may be released from the mortgage by the State Director. The release is contingent on a determination of the State Director, with the advice of the OGC, that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA or its successor agency under Public Law 103–354 mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the mortgage in the records of the FmHA or its successor agency under Public Law 103–354 County, State, and Finance Offices.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA or its successor agency under Public Law 103–354 mortgages or other liens when the mortgages or liens have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with an SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a Farmer Program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA or its successor agency under Public Law 103–354 employee authorized to appraise under § 761.7 of this title.

(2) *Lienholders.* The names of the holders of prior liens on the property, the amount secured by each lien which is prior to the FmHA or its successor agency under Public Law 103–354, the amount of taxes or assessments, and other items which might constitute a prior claim. This information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for review.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35795, Sept. 14, 1988; 56 FR 15830, Apr. 18, 1991; 57 FR 18681, Apr. 30, 1992; 58 FR 44752, Aug. 25, 1993; 64 FR 62569, Nov. 17, 1999]

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation*—(1) *General.* When a borrower contacts FmHA or its successor agency under Public Law 103–354 and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, and 3, and 4 and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, FmHA or its successor agency under Public Law 103–354 will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail

in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

(i) Selling the security under paragraph (f) of this section.

(ii) Transferring the security under § 1965.27 of this subpart.

(iii) Conveying all security to FmHA or its successor agency under Public Law 103–354 as outlined in subpart A of part 1955 of this chapter.

(iv) Refinancing the Farm Loan Programs debt with another lender. The servicing official will explain the provisions of these regulations to the borrower.

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized agency employee in accordance with § 761.7 of this title and placed in the borrower's case file. If a qualified agency appraiser is not available, the State Executive Director may contract for an appraisal in accordance with RD Instruction 2024–A (available in any agency office).

(b) *Involuntary liquidation*—(1) *General.* When the servicing official, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(2) *Farm Loan Programs loan cases.* In Farm Loan Programs loan cases, borrowers who are 90 days past due (60 days delinquent) on their payments, must receive Exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The servicing official will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action, including termination of releases of sales proceeds, is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a complete application within 60 days, the servicing official will send attachments 9 and 10 or 9–A and 10–A of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, 6–A, 10, or 10–A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the servicing official will submit the case to the District Director in accordance with the provisions of § 1955.15 of subpart A of part 1955 of this chapter.

(3) [Reserved]

(4) Acceleration of account. When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of § 1955.15 of subpart A of part 1955 of this chapter.

(c) *Multiple loans and loans secured by both real estate and chattels.*

(1) When a borrower is indebted to the agency for more than one type of FLP loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FLP loans secured by real estate and chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of the other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with § 1965.27 of this subpart.

(2) SFH loans on nonfarm tracts should not be routinely liquidated because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless the appropriate provisions of subpart G of part 1951 of this chapter have been met, including the offering of payment assistance and/or moratorium, if eligible. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be

given to continuing with the SFH loan after the other security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) Provided the County Committee agrees to the compromise or adjustment offer in accordance with § 1956.57(f) of subpart B of part 1956 of this chapter, the borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will make a cash payment equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt.

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will make a cash payment of any amount he/she is able to pay, and the lien to secure the FP debt will be released as a valueless lien.

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(2)(iv)(A) of this section, the County Supervisor will have the borrower execute an Equity Recapture Agreement similar to exhibit D of this subpart, (available in any RHS office), pledging to pay to RHS an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office in accordance with the Automated Data Processing Systems (ADPS) Manual when an Equity Recapture Agreement is executed. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's RHS County Office file. The borrower's file will be retained in the RHS County Office until the equity is paid pursuant to the Agreement. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it, or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled as appropriate. An equity receivable account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the County Office will remit collection under the Agreement, in the same manner as an SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form RHS 451–2, ''Schedule of Remittance:'' Equity Receivable Payment.

(v) In some States FmHA or its successor agency under Public Law 103–354 is prohibited by State law from foreclosing the SFH loan when the nonfarm security is merely additional security for the farmer program loan(s). In this case, the Farmer Program real estate mortgage on the SFH property cannot be released and the Farmer Program debt cannot be settled unless the conditions set forth in paragraph (c)(2)(i), (iii), and (iv) of this section are complied with.

(3) RHS SFH loans on farm tracts must be considered for payment assistance and/or moratorium at the time servicing options are being considered for the FLP loan(s) prior to acceleration. The RHS county office file will be documented to show that payment assistance and moratorium were considered. When the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to a borrower who also has an RHS loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary for RHS to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the RHS loan accounts. The RHS accounts will be accelerated at the same time the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to

the borrower. If it is later determined that the FLP loan(s) is to receive additional servicing in lieu of liquidation, the RHS loan will be reinstated simultaneously with the FLP servicing actions and may be reamortized in accordance with §1951.315 of subpart G of part 1951 of this chapter.

(d) *Operation of the security*. A borrower with farmer program loan(s) who without FmHA or its successor agency under Public Law 103–354 consent does not operate the farm or recreational facility is violating agreements with FmHA or its successor agency under Public Law 103–354. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farming operation, i.e., management (Example: sharing in day-to-day activities and management decisions as well as the costs and returns of the operation), and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of time, not to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of §1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with §1955.15(d)(2) of subpart A of part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with §1965.26(e) of this subpart.

(e) *Accelerated repayment agreement*. When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

(1) Authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest,

(2) The borrower can reasonably be expected to meet the accelerated payments, and

(3) The borrower will continue to comply with other requirements of the loans and security instruments.

(4) When an understanding is reached with the borrower, Form FmHA or its successor agency under Public Law 103–354 1965–11, ''Accelerated Repayment Agreement,'' will be prepared and executed in accordance with the Forms Manual Insert (FMI) for each note accelerated. Accounts rescheduled under Form FmHA or its successor agency under Public Law 103–354 1965–11 will be reclassified as NP loans. The balance of the debt will be scheduled for repayment in annual or monthly amortized installments. If the borrower has monthly income, monthly payments will be scheduled. If annual payments are scheduled, the first installment may be less than an equal amortized installment if it is due less than a full year after the date the agreement is executed and the borrower will not be

able to pay the first full amortized installment. If the borrower fails to meet any installment when due as provided in the agreement, foreclosure action will be initiated. Rates and terms authorized are:

(i) For real estate purpose loans secured by real estate when the remaining repayment period exceeds 10 years, the term generally will not exceed 10 years. In justified cases, the term may be up to 15 years. In no case may the term exceed the final due date of the note. An amortization factor for 20 to 25 years may be used, with a balloon installment due on the final due date. The interest rate will be that in effect for regular FO loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(ii) For loans for operating purposes secured by real estate when the remaining repayment period exceeds 2 years, the term may not exceed 5 years and in no case may the term exceed the final due date of the note. The interest rate will be that in effect for regular OL loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(iii) For loans for either real estate or operating purposes when the remaining repayment period is less than 10 years or 2 years, respectively, the State Director may authorize a shorter term. For loans made for a combination of loan purposes, the State Director may authorize an accelerated repayment term of up to 10 years, not to exceed the final due date of the note. The interest rate will be as specified in (e)(4)(i) or (ii) of this section.

(f) *Cash sales.* This paragraph applies to a sale of *all* real estate security. Before any cash sale, farmer program borrowers must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and release the Government's liens, provided:

(1) A substantial recovery can be made on the FmHA or its successor agency under Public Law 103–354 secured indebtedness based on the recent appraisal report required by paragraph (a)(2) of this section.

(2) All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1965.13(f)(2) of this subpart.

(3) Any applicable requirements of subpart G of part 1940 of this chapter must be met.

(4) The agency's liens against the security property are not released until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) When the debt is not paid in full and a deficiency judgment is not to be obtained, a release of liability of the borrower can be processed:

(i) The County Committee has recommended release of liability by determining that the borrower(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration their assets and income at the time of the sale; and that the borrower and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and by recommending that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction. This action will be documented by checking the appropriate block on Form FmHA or its successor agency under Public Law 103–354 440–2, ''County Committee Certification or Recommendation,'' as specified in the Forms Manual Insert.

(ii) When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest, and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Executive Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any agency office).

(iii) The borrower has never been liable for any direct FLP loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The servicing official will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter. (available in any agency office).

(g) *Account balances.* When security property is sold for an amount not less than the market value or an assumption of an amount equal to the market value is approved, the account balance will be handled as follows:

(1) When the seller or transferor (and cosigner, if any) is not released from liability, the account balance after the assumption is processed, or cash proceeds are applied, will be settled according to subpart B of part 1956 of this chapter or reclassified to collection only.

(2) When the transferor will be released of liability Form FmHA or its successor agency under Public Law 103–354 1965–8 ''Release from Personal Liability'' will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(3) In the case of a sale outside the program for less than the debt owed, Form FmHA or its successor agency under Public Law 103–354 1965–8 will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

[51 FR 4140, Feb. 3, 1986, as amended at 51 FR 13482, Apr. 21, 1986; 51 FR 45440, Dec. 18, 1986; 53 FR 35795, Sept. 14, 1988; 56 FR 6954, Feb. 21, 1991; 56 FR 12646, Mar. 27, 1991; 56 FR 15830, Apr. 18, 1991; 58 FR 44752, Aug. 25, 1993; 58 FR 52654, Oct. 12, 1993; 60 FR 28321, May 31, 1995; 60 FR 55122, 55147, Oct. 27, 1995; 62 FR 10158, Mar. 5, 1997; 64 FR 62569, Nov. 17, 1999]

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the Agency to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farm Loan Programs (FLP) loan borrowers must be sent attachment 1 of exhibit A of subpart S of part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FLP accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and § 1965.13 or § 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FLP loan(s) in full. Transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. When real estate security, including water, access development or other rights is to be sold and the mortgage requires the Agency's consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart or will be handled in accordance with § 1965.27 (g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any agency office, for the definition of ''controlled substance'') prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and

the four succeeding crop years. Transferee applicants will attest on 410–1, ''Application for Services,'' that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(a) *Authority*. County Supervisors, District Directors, and State Directors are authorized to approve initial and subsequent transfers of real estate security to eligible or ineligible transferees, to approve assumptions in accordance with the respective loan approval authorities in exhibit C of FmHA or its successor agency under Public Law 103–354 Instruction 1901–A (available in any FmHA or its successor agency under Public Law 103–354 office). When a transfer is not within the County Supervisor or District Director's approval authority, the docket and the transferor's case file will be sent to the District Director, State Director, or the Administrator as appropriate, for approval or disapproval.

(b) *General policies*. The following general policies will be applicable when an FmHA or its successor agency under Public Law 103–354 borrower transfers, or proposes to transfer, real estate which is security for an FmHA or its successor agency under Public Law 103–354 loan(s). The loan account(s) will be assumed by use of Form FmHA or its successor agency under Public Law 103–354 1965–13, ''Assumption Agreement for Farmer Program Loans,'' Form FmHA or its successor agency under Public Law 103–354 460–9, ''Assumption Agreement (Same Terms—Eligible Transferee),'' or Form FmHA or its successor agency under Public Law 103–354 1965–15, ''Assumption Agreement (Single Family Housing Loans),'' for SFH Loans.

(1) *Agreement*. Form FmHA or its successor agency under Public Law 103–354 465–5, ''Transfer of Real Estate Security,'' will be completed to reflect the agreement between the transferor and the transferees. This agreement will not be completed for farmer program loan borrowers until the borrower has received attachment 1 of exhibit A of subpart S of part 1951 of this chapter.

(2) *Assignment*. If an insured loan is involved, the Finance Office will have the note assigned to the insurance fund when the assumption agreement changes the terms of the note.

(3) *Amount assumed*. All transfers will be based on present market value. When the total secured FmHA or its successor agency under Public Law 103–354 debt(s) exceeds the present market value, the transferee will assume an amount of principal and interest equal to the present market value as determined under §1965.26 (a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume the total FmHA or its successor agency under Public Law 103–354 secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA or its successor agency under Public Law 103–354 1965–13 and the accrued interest will be computed from Form FmHA or its successor agency under Public Law 103–354 451–26, ''Transaction Record,'' or obtained from the monthly payment account Status Report. Balances may be confirmed through the field office terminal system. The transferee will be informed of the amount of the principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA or its successor agency under Public Law 103–354 debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under subpart S of part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) *Payment of costs*. The payment of customary incidental costs appropriate to transfer of real estate will be the responsibility of the transferor and

transferee. Costs may, for example, include real estate taxes, title examination, title insurance, abstracts, surveys, reasonable attorney's fees, real estate brokers fees and junior liens. State Directors may, in individual cases, approve the payment of transferor's costs by the transferee which are reasonable in amount and which the transferor cannot pay from personal funds provided:

(i) Cash equity due the transferor (if any) is applied first to payment of costs and the transferor will not be receiving any cash payment above costs.

(ii) Payment of any junior liens by the transferee does not exceed $5,000.

(iii) Real estate commission does not exceed the customary rate for the type of property for the area.

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA or its successor agency under Public Law 103–354 designated closing agent for disbursing at closing of the transfer.

(v) The payment of the costs by the transferee is advantageous to the government. The probability of foreclosure, voluntary conveyance, maintenance and disposal of the security will be considered in making the determination.

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA or its successor agency under Public Law 103–354 loan servicing regulations. Form FmHA or its successor agency under Public Law 103–354 1965–13 will be processed via the FmHA or its successor agency under Public Law 103–354 field office terminal system. Except as noted below, Form FmHA or its successor agency under Public Law 103–354 460–9, will be executed by the assuming parties. The name, case number, and address, as applicable, will be changed to that of the transferees on the Finance Office records. In each of the following situations, Forms FmHA or its successor agency under Public Law 103–354 465–5 and 460–9 must be prepared and distributed in accordance with the applicable FMI.

(i) EM actual loss loans may be assumed on the same terms by those who were actually involved in the operation at time of the loss and meet one of the following requirements:

(A) If an individual received the actual loss loan, the transferee must be either an individual who is an immediate family member of the borrower or an entity which is made up of only immediate family members of the borrower. Such a transferee can assume the entire amount of the actual loss loan on the same terms.

(B) If a partnership on a joint operation received the actual loss loan, the transferee must be either a partner or a joint operator who was a partner or joint operator in the partnership or joint operation at the time the actual loss loan was made, or an entity which is made up of only those who were partners in the partnership or joint operators in the joint operation at the time the actual loss loan was made. Such transferees can assume the entire amount of the actual loss loan on the same terms.

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

(ii) A deceased borrower's spouse, other relative or joint tenant who did not sign the note but who acquires title to the property will be allowed to assume the loan on the same terms. Form FmHA or its successor agency

under Public Law 103–354 465–5 will not be completed.

(iii) When one of the jointly liable individual borrowers withdraws from the operation and conveys his/her interest in the security to the remaining borrower, who will repay the total indebtedness, and assumption agreement is not required. This paragraph does not apply to partners in a partnership, joint operators in a joint operation, stockholders in a corporation or members of a cooperative. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and 3 of Form FmHA or its successor agency under Public Law 103–354 1965–8, ''Release from Personal Liability,'' provided:

(A) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(B) The withdrawing party's interest in the security is conveyed to the person with whom the loan will be continued; and

(C) The person with whom the loan will be continued has adequate repayment ability.

(iv) As immediate family member of an individual borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing borrower. Also, an entity which is made up of only the individual borrower and the borrower's immediate family members may assume on the same terms the entire amount of a loan received by the individual borrower. Title to the real estate security would have to be transferred to the entity.

(v) If there is only one stockholder/member/partner/joint operator of a corporation/cooperative/partnership/joint operation who is personally liable on the note, and that stockholder/member/partner/joint operator withdraws from the operation or dies, *all* of the remaining individuals will be required to assume personal liability on the loan(s) or else the transfer will not be approved. A Form FmHA or its successor agency under Public Law 103–354 465–5 does not have to be processed unless title to the real estate is transferred.

(vi) If a stockholder/member/partner/joint operator or another corporation/cooperative/partnership/joint operation buy out the ownership interest of the other stockholders/members/partners/joint operators and continues to operate the farm; and if the remaining stockholder(s)/member(s)/partner(s)/joint operator(s) is not personally liable on the note(s), that stockholder(s)/member(s)/partner(s)/joint operator(s) will be required to assume personal liability on the loan(s) or else the transfer will not be approved. A Form FmHA or its successor agency under Public Law 103–354 465–5 does not have to be processed unless title to the real estate is transferred.

(vii) New stockholders/members/partners/joint operators entering the corporation/cooperative/partnership/joint operation will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA or its successor agency under Public Law 103–354 465–5 does not have to be processed unless title to the real estate is transferred.

(6) *Loan type*. The type(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as NP.

(7) *Transfer of a portion of the security*. Generally, title to all FmHA or its successor agency under Public Law 103–354 real estate security, including any water, access, development or other rights, must be conveyed to the transferee not later than the date of closing of the transfer. However, a transfer of a portion of the FmHA or its successor agency under Public Law 103–354 real estate security with an assumption of the *total* indebtedness may be approved, provided:

(i) The portion of the FmHA or its successor agency under Public Law 103–354 security transferred has a present market value at least equal to the total indebtedness owed by the borrower or such indebtedness is reduced by a cash payment to the present market value of the property;

(ii) The transaction is advantageous to the Government; and

(iii) In cases of SFH loans, the portion of the property improved with SFH funds is conveyed to the person assuming the SFH loan.

(iv) The security retained by the transferor will be released from the Government's lien. The transferor will be released from liability if the conditions of paragraph (f) of this section are met.

(8) *Partial transfer and assumption.* When a request is made by a borrower to transfer a portion of the real estate security the transferee must assume an amount which meet the requirements of paragraph (b)(3) of this section. The considerations for approval will be as set forth in §1965.13(b) of this subpart. Whole notes must be assumed; notes cannot be split. The portion of the security transferred will be released from the transferor's mortgage by partial release. When the assumption is by an eligible transferee, or by an ineligible transferee on terms of 5 years or less, the transferor may be released of liability on the loans assumed. The transferor will not be released of liability when the transferee is ineligible and terms exceed 5 years. Before approving a partial transfer and assumption it must be determined that the transaction is necessary for the borrower to establish a debt structure compatible with repayment ability, management ability or other limiting factor such as health, labor or markets available.

(9) *Multiple sales and assumptions.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with each assuming a portion of the debt, the County Supervisor may send the proposed action to the State Director for consideration if the County Supervisor recommends that the transaction would be advantageous to the Government. The total debt owed on all outstanding notes must be assumed by the transferees even though a portion of the security may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction, including appraisal reports showing the present market value of each portion to be transferred; value of the total unit before subdivision; the amount of indebtedness to be assumed by each transferee; and the cases file with other pertinent information outlining the reasons for the proposed actions. If approved by the State Director, new security instruments will be required for each transferee at closing and any security retained by the transferor will be released from the Government lien. This policy is to permit transfer to two or more transferees when the transferor owes more than one note evidencing indebtedness or the indebtedness on one note is to be divided between transferees. OGC guidance will be requested in these case to ensure enforceable liens are obtained.

(10) *Dual security.* When the account(s) is secured by both chattels and real estate, all the chattel security must be transferred, sold or liquidated by the time of the transfer of real estate, except that in cases of EM, EE, or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(11) *Consent of other lienholders.* Written consent to a proposed transfer and assumption must be obtained if required by any other lienholder(s).

(12) *Junior liens.* When the full amount of the FmHA or its successor agency under Public Law 103–354 debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA or its successor agency under Public Law 103–354 liens being assumed unless the State Director determines that the liens, judgments, or claims will not adversely affect the Government's security interests and that the transferee's ability to pay the FmHA or its successor agency under Public Law 103–354 debt will not be impaired. When less than the full amount of the FmHA or its successor agency under Public Law 103–354 debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA or its successor agency under Public Law 103–354 loans being assumed.

(13) *Loans.* A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the type of loan being made. When the

transfer is being made to an eligible FO applicant, FO loan funds may be used to pay for the equity in the property being transferred. When real estate security for an SFH loan is transferred to a person eligible under subpart A of part 1944 of this chapter for an SFH loan to purchase the real estate, SFH loan funds may be used to pay for the equity in the property being transferred other than income-producing land or buildings. In lieu of a subsequent loan of the kind involved, the Government's lien may be subordinated to enable the transferor to take a first mortgage, or permit another lender to take a first mortgage, in return for furnishing the funds needed in connection with the transfer. In these cases, the subordination will be processed in accordance with the applicable provisions of § 1965.12 of this subpart. For other than SFH loans, the transferor may convey title to the property by warranty deed or by purchase contract or similar instrument which meets the conditions of § 1943.16 (a)(3) of subpart A of part 1943 of this chapter. Prior lienholder's agreements will be obtained in accordance with subpart B of part 1927 of this chapter. When necessary to settle a divorce action, a subsequent loan may be made, or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property provided the purchase of land is an authorized loan purpose or the subordination is in accordance with § 1965.12 of this subpart. (Also see § 1965.11(d) of this subpart.)

(14) *Payments*. When a payment is made to the transferor in connection with the transfer and assumption, and the full amount of the FmHA or its successor agency under Public Law 103–354 secured debt is not being assumed and other FmHA or its successor agency under Public Law 103–354 debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any payment be applied on the debts.

(15) *Down payment*. An eligible transferee who is financially able, will be required to make a downpayment on the FmHA or its successor agency under Public Law 103–354 secured debts. When a downpayment is required it will be collected at closing.

(16) *Date*. The effective date of the assumption will be the date on which Form FmHA or its successor agency under Public Law 103–354 1965–13 is signed.

(17) *Nondiscrimination assurance*. When the property transferred will continue to be used for the same or a similar purpose, and the assistance was subject to the Civil Rights Act of 1964 and subpart E of part 1901 of this chapter which prohibits discrimination on the basis of race, color, national origin, handicap, age, religion, marital status, or sex in programs or activities receiving Federal financial assistance, the transferees must agree to comply with requirements of the statute and the regulation. The transferee will be required to sign a Form 400–4, ''Assurance Agreement.''

(18) *Recapture of subsidy*. Recapture of SFH subsidy in connection with assumption will be as provided in subpart I of part 1951 of this chapter.

(19) *County Committee*. The County Committee, except for SFH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan. (See paragraph (g)(6) of this section.)

(20) *Environmental requirements*. Applicable provisions of subpart G of part 1940 of this chapter are met, as well as those requirements found in exhibit M to subpart G of part 1940.

(21) Form FmHA or its successor agency under Public Law 103–354 1910–11, ''*Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.*'' For all transfers, the County Supervisor must review Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

(c) *Assumption of loans by eligible transferees*—(1) *Eligibility*. A loan may be assumed on eligible terms by an applicant (including an entity applicant)

who meets all of the eligibility and loan purpose requirements for the type of loan being assumed or whose situation after the transfer of the real estate will satisfy the eligibility and loan purpose requirements. Eligibility and loan purpose requirements can be found in the loan making regulations applicable to the type of loan being assumed. (See paragraph (b)(5) of this section for a list of situations in which the debt can be assumed on the same terms as in the existing note.) Eligible applicants can assume loans so long as their FmHA or its successor agency under Public Law 103–354 principal and interest indebtedness after the assumption does not exceed the maximum loan limits for the type(s) of loan(s) involved. Loans may also be assumed on eligible terms under the following conditions:

(i) *SFH assumptions.* An applicant who is eligible for SFH assistance under subpart A of part 1944 of this chapter may assume a low-or-moderate, or an above-moderate income SFH loan. An above-moderate loan assumed by a low-or-moderate applicant will be reclassified and serviced as a low-or-moderate loan. Where a property securing an SFH loan is located in an area which has been redesignated from rural to nonrural, the loan may be transferred without regard to the nonrural designation.

(ii) *NP loan.* An NP loan may be assumed by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as ''FO'' or ''SFH'', as applicable. See subpart J of part 1951 of this chapter.

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an immediate family member of an individual borrower, an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative, an entity which is made up of only immediate family members of an individual borrower, or an entity which is made up of only immediate family members of any partner(s), joint operator(s) stockholder(s) or member(s).

(B) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an applicant who is determined eligible for an FO loan if the property has a suitable farm tract, or by an applicant eligible for an SFH loan if the property has a suitable dwelling on a farm or non-farm tract. When closing an assumption under this paragraph or paragraph (A) above, the loan will be reclassified as ''FO'' or ''SFH,'' as applicable.

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

(iv) *EM actual loss loans.* See paragraph (b)(5)(i) of this section.

(v) *Other loan types currently being made*—(A) *Individual transferees.* If real estate security is transferred to an individual who meets all of the eligibility requirements and loan purpose requirements for the type of loan being assumed, the loan may be assumed on eligible terms. This applies to transfers of real estate from individual borrowers and from entity borrowers, including entities in which the transferee had an interest.

(B) *Entity transferees.* If real estate security is transferred to an entity which meets all of the eligibility requirements and loan purposes requirements for the type of loan being assumed, the loan may be assumed on eligible terms.

(C) *EM non-actual loss loans (if currently being made).* These loans can be assumed on eligible terms. The loan making regulation requirement that an applicant must have suffered an actual loss in order to be eligible for a non-actual loss loan does *not* apply, for the purposes of this paragraph. If EM non-actual loss loans are not currently being made, refer to (c)(1)(iii) of this section.

(2) *Rates and terms.* Except as provided in paragraph (b)(5) of this section

and in this paragraph, an applicant may request the interest rate charged by the agency to be the lower of the rate in effect at either the time the assumption is approved or closed. If the applicant does not indicate a choice, the assumption will be closed at the rate in effect at the time of loan approval. Interest rates are specified in agency National Office issuances (available in any agency office) for the type loan involved. The approval official will approve the assumption by executing and delivering a copy of Form RD 1940–1, ''Request for Obligation of Funds,'' to the assuming party. The field office will process the assumption via the field office terminal system in accordance with Form 1965–13. The repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, EM—depends on loan purpose and SFH—33 years. An NP loan will be considered an FO or SFH loan as appropriate, if the applicant and the property meet the requirements of paragraph (c)(1) of this section. Above-moderate loans assumed by low-or moderate-income applicants will be assumed at the current low- or moderate-income SFH interest rate. (See exhibit C to subpart A of part 1944 for income categories). See subparts A of parts 1941 and 1943 of this chapter for the definition of a limited resource applicant and an explanation of limited resource eligibility criteria; FO and OL loans may be assumed at the current rate in effect for limited resource loans if the applicant is a limited resource applicant.

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter. No assumption can be approved if the transferee has been liable for any Farm Loan Program (FLP) loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(e) *Consent of FmHA or its successor agency under Public Law 103–354 not required to transfer.* When the agency mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the agency debt in accordance with paragraphs (c) or (d) of this section, the Government will not consent to the sale. However, the sale cannot be used as a reason for liquidation. In such cases involving SFH loans, the County Supervisor will advise the State Director of the sale. If the SFH loan account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original agency borrower, in the usual manner. In such cases involving farmer program loans, they will be serviced in accordance with the provisions of subpart S of part 1951 of this chapter.

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government. When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. When the total outstanding debt is not assumed and an FLP borrower is to being released from liability, the borrower must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). In FLP cases, the County Committee must take certain action if it is to recommend that the transferor(s) and any cosigner be released from liability. They must determine that the transferor(s) and any cosigner do not

have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer; that the transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security. This action will be documented by checking the appropriate block on Form 440–2, ''County Committee Certification or Recommendation,'' as specified in the Forms Manual Insert.

(g) *Processing transfers and assumptions of indebtedness*. When the transfer is not within the County Supervisor's approval authority, the docket with the transferor's case file will be sent to the District Director or the State Office, as appropriate, for approval or disapproval.

(1) *Refund of unused funds, loan funds not advanced, transaction record*. Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligations of or request for loan funds not yet advanced will be cancelled. Form FmHA or its successor agency under Public Law 103–354 451–26, or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) *Preparation and distribution of transfer docket*. Loan docket processing and forms required will be the same as for an initial or subsequent loan of the type(s) involved.

(i) *Checking docket forms*. When the transfer docket forms, including those applicable forms, shown in exhibit C (available in any FmHA or its successor agency under Public Law 103–354 office) of this subpart have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with the FMI or other appropriate instructions, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which the items appear.

(ii) *Information on the availability of other credit*. An eligible transferee must meet the ''no credit elsewhere'' requirements for the type of loan being assumed. The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA or its successor agency under Public Law 103–354 personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full, which would make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Transferor records*. The transferor's copies of notes, mortgages and other instruments in connection with the security are to be made available to the transferee.

(iv) *Distribution of transfer docket forms*. The necessary forms will be distributed in accordance with the appropriate loan processing regulation and the FMI for the form. See exhibit C (available in any FmHA or its successor agency under Public Law 103–354 office) of this subpart which identifies the FmHA or its successor agency under Public Law 103–354 forms that will be used as appropriate.

(v) *Other transfer docket items when applicable*. Other transfer docket items may include a mortgage title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and cosigner(s). When the County Supervisor is the approval official, in lieu of including the document

evidencing ownership, he or she may include a statement in the docket indicating that the document has been seen and reviewed. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA or its successor agency under Public Law 103–354 451–26 will be forwarded to the County Office. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, the amount will be deducted from the total amount of principal and interest only when received in the form of currency and coin, treasury check, cashier's check, certified check, postal or bank money order, or bank draft (this figure will be based on the latest information available) before completing the assumption agreement and having it signed. The following will also be done:

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In those cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed in the Finance Office. The Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification of payments.* For payment received on the date of transfer, Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' will be prepared to show ''Transfer in process for account owed by (borrower's name and case number), to be transferred to (name of borrower and case number, if known).'' If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA or its successor agency under Public Law 103–354 451–2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farms and Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA or its successor agency under Public Law 103–354 1944–3 or FmHA or its successor agency under Public Law 103–354 431–2 or other plan of operation acceptable to FmHA or its successor agency under Public Law 103–354.

(5) *Appraisal report.* Real estate appraisals meeting the requirements of 761.7 of this title will be obtained when the amount to be assumed is less than the full amount of the indebtedness, when required in connection with an initial or subsequent loan to be processed with the transfer, or when the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except SFH loans, will be presented to the County Committee for review.

(i) The transfer will be contingent upon the County Committee certification on Form FmHA or its successor agency under Public Law 103–354 440–2 for an eligible applicant. This action will be documented by checking the appropriate block on Form FmHA or its successor agency under Public Law 103–354 440–2, as specified in the Forms Manual Insert.

(ii) When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under paragraph (c) or (d) of this section with an assumption of less than

the total debt, the provisions of paragraph (f) of this section will be followed.

(iii) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter.

(7) *Property insurance.* The transferee will obtain property insurance in accordance with the property insurance requirement for the loan(s) involved. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA or its successor agency under Public Law 103–354 indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with subpart B of part 1927 of this chapter. When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA or its successor agency under Public Law 103–354's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA or its successor agency under Public Law 103–354's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA or its successor agency under Public Law 103–354 1965–13; 460–9 (as applicable); 451–1, ''Acknowledgment of Cash Payment;'' and 1965–8, will be prepared and distributed according to the FMI.

(h) *Transfer of security without FmHA or its successor agency under Public Law 103–354 consent or approval.* When a borrower transfers or proposes to transfer real estate security to another party and FmHA or its successor agency under Public Law 103–354 is unable or unwilling to approve the transferee as either an eligible or ineligible applicant, the conveyance cannot be used as the basis for liquidation if the borrower's spouse or children become the owner of the property *or* if an intervivos trust becomes the owner of the property so long as the borrower is a trust beneficiary and there is no change in occupancy of the property. If the transfer is to someone other than a spouse, child or intervivos trust and the County Supervisor determines that it is not in the best interest of FmHA or its successor agency under Public Law 103–354 to liquidate to the loan(s) in accordance with § 1965.26 of this subpart, the following actions will be taken in order listed:

(1) The County Supervisor will advise the State Director of the transfer or proposed transfer of the security and reasons why FmHA or its successor agency under Public Law 103–354 cannot approve the transferee as eligible or ineligible. Complete details of the transfer conditions, terms and consideration will be submitted to the State Director with the borrower (transferor) file. Current information on status of the loan(s) owed FmHA or its successor agency under Public Law 103–354 and of any debts owed other lenders on the

property will be included with a current appraisal of the FmHA or its successor agency under Public Law 103–354 security and security equity position. The appraisal will be completed in accordance with §761.7 of this title. Recommendations of the County Committee, County Supervisor, and District Director will be included on the following:)

(i) Reasons why continuation of the loan would be in the best interest of the Government.

(ii) The effect continuation of the account will have on the FmHA or its successor agency under Public Law 103–354 program in the area.

(iii) Comments and opinion on adequacy of security and ability of transferor to pay the FmHA or its successor agency under Public Law 103–354 debt.

(2) The State Director will review all information submitted and request additional information needed to reach a decision. This includes advice of OGC. After deciding, the State Director will either:

(i) Return the file to the County Supervisor with instructions to proceed with liquidation of the account in accordance with §1965.26(b) of this subpart and state reasons for the decision; or

(ii) Return the file to the County Supervisor stating reasons for the decision and giving consent to continue the account as an NP loan with instructions for obtaining liability of the transferee, maintaining security position and future servicing. If FmHA or its successor agency under Public Law 103–354 is adequately secured and the entire FmHA or its successor agency under Public Law 103–354 debt will be paid in 5 years or less from date of the transfer, the borrower-transferor can be released of liability under paragraph (f) of this section and the account serviced in the name of the transferee. If the entire FmHA or its successor agency under Public Law 103–354 debt will not be paid within 5 years from date of the transfer, the borrower will not be released of liability, the account will continue to be serviced in the borrower's name and the borrower will remain liable for the debt under the terms of the security instruments. Advice of OGC will be obtained as needed to determine the borrower's continued liability and adequacy of security.

[51 FR 4140, Feb. 3, 1986, as amended at 51 FR 6735, Feb. 26, 1986; 51 FR 13483, Apr. 21, 1986; 51 FR 40787, Nov. 10, 1986; 51 FR 45440, Dec. 18, 1986; 53 FR 7339, Mar. 8, 1988; 53 FR 35797, Sept. 14, 1988; 54 FR 29333, July 12, 1989; 56 FR 3396, Jan. 30, 1991; 56 FR 12646, Mar. 27, 1991; 56 FR 15831, Apr. 18, 1991; 56 FR 67484, Dec. 31, 1991; 58 FR 44752, Aug. 25, 1993; 58 FR 52654, Oct. 12, 1993; 60 FR 28321, May 31, 1995; 62 FR 10159, Mar. 5, 1997; 64 FR 62569, Nov. 17, 1999]

§§ 1965.28–1965.30 [Reserved]

§ 1965.31 Taking liens or real estate as additional security in servicing FmHA or its successor agency under Public Law 103–354 loans.

Additional liens will not be taken for other loans on marginal land used for the production of softwood timber if the land is presently securing an ST loan.

(a) *Liens.* When taking real estate as additional security, the best lien obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Liens will be taken only when:

(1) Present security for the loan is not adequate to protect the interests of the FmHA or its successor agency under Public Law 103–354, and

(2) The borrower is delinquent, has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA or its successor agency under Public Law 103–354 real estate loan, which might be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for an FmHA or its successor agency under Public Law 103–354 loan the following items will be documented in the running record:

(1) the facts which justify taking the real estate lien;

(2) A conservative estimate of the present market value of the real estate to be mortgaged. (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) A brief description of any existing liens on the property, and the repayment terms and the unpaid balance on the debts secured by existing liens, unless this is accurately reflected on a recent financial statement; and

(4) The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Forms*. Each real estate lien taken as additional security for the FmHA or its successor agency under Public Law 103–354 loans will be taken on Form FmHA or its successor agency under Public Law 103–354 1927–1 (state), ''Real Estate Mortgage or Deed of Trust for _____(Insured Loans to Individuals)'' unless a State supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing the FmHA or its successor agency under Public Law 103–354 loans for which the additional security will be taken will be described in the same mortgage.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26139, July 13, 1987; 53 FR 35798, Sept. 14, 1988; 56 FR 67484, Dec. 31, 1991; 58 FR 52655, Oct. 12, 1993]

§ 1965.32 [Reserved]

§ 1965.33 Cosigners—SFH loans.

See § 1965.129 of subpart C of this part for servicing SFH loans with cosigners.

§ 1965.34 [Reserved]

§ 1965.35 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.36 State Supplements and reference to the OGC.

State Supplements will be prepared, with the advice of the OGC, as necessary to carry out this subpart and forwarded to the National Office for prior or post approval.

§ 1965.37 Redelegation of authority.

The State Director is authorized to redelegate in writing any authority delegated to the State Director in this subpart to one or more of the following State Office employees: Chief, Farmer Programs; Farmer Programs Specialist.

§§ 1965.38–1965.49 [Reserved]

§ 1965.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0086.

EXHIBITS TO SUBPART A

NOTE: The exhibits referenced in this subpart are available in any FmHA or its successor agency under Public Law 103–354 office.

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

EXHIBIT B—NOTIFICATION OF OTHER LIENHOLDERS INTENT TO FORECLOSE

EXHIBIT C—PROCESSING GUIDE

EXHIBIT D—EQUITY RECAPTURE AGREEMENT

Subpart B—Security Servicing for Multiple Housing Loans

SOURCE: 49 FR 49590, Dec. 21, 1984, unless otherwise noted.

§ 1965.51 General.

This subpart prescribes the policies, procedures, and authorizations for servicing and liquidating all Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) multiple housing type loans and labor housing grants. These loans include Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Farm Labor Housing (LH). The servicing functions described in this subpart are for the purpose of assisting the borrower in meeting the objectives of the loan, repaying loans on schedule, complying with FmHA or its successor agency under Public Law 103–354 agreements and regulations, protecting the interest of FmHA or its successor agency under Public Law 103–354, and maintaining the security property. Borrowers will be required to pay their debts to the FmHA or its successor agency under Public Law 103–354 and other creditors according to their agreements. Borrowers shall be required to operate their facilities according to FmHA or its successor agency under Public Law 103–354 regulations and applicable State and local laws and regulations. State Directors with the assistance of the Office of General Counsel (OGC) should issue necessary State Supplements to assure compliance with State laws. After careful analysis, and borrower in default who does not evidence prospects of attaining successful operations within a reasonable time will have its loan(s) liquidated according to authorizations contained in this subpart and Subpart A of Part 1955 of this chapter.

§ 1965.52 Definitions.

(a) *Borrowers*. ''Borrowers'' means all individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations which have received a loan or grant from FmHA or its successor agency under Public Law 103–354 for LH, RRH, RCH, or RHS purposes.

(b) *Case file*. ''Case file'' includes the total cumulative records concerning a borrower.

(c) *District Director*. For the purpose of this subpart, the term also includes the Assistant District Director, and other qualified District Office staff who may be delegated responsibilities under this subpart according to the provisions of Subpart F or Part 2006 (available in an FmHA or its successor agency under Public Law 103–354 office). Area Loan Specialists and Island Directors, and other qualified members of their staff in Alaska and Hawaii, respectively, are included in this definition. In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff.

(d) *FmHA or its successor agency under Public Law 103–354*. ''FmHA or its successor agency under Public Law 103–354'' means the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354 of the United States Department of Agriculture; it also includes FmHA or its successor agency under Public Law 103–354's predecessor agencies.

(e) *Governing body*. ''Governing body'' means those elected or appointed officials of an organization or public agency type borrower responsible for compliance with the security instruments and the operations of the project.

(f) *Mortgage*. ''Mortgage'' also includes deeds of trust and similar real estate security instruments and, where appropriate, chattel security instruments.

(g) *Note*. ''Note'' includes any note, bond, assumption agreement, or other evidence of indebtedness, including the obligations of LH grant only recipients operating under a grant agreement. All LH grant only recipients will be serviced in strict accordance with their grant agreement, appropriate program regulations, and this subpart.

(h) *OGC*. ''OGC'' means the Regional Attorney or the Attorney in charge in the field office of the Office of General Counsel of the United States Department of Agriculture.

(i) *Servicing*. ''Servicing'' includes the broad scope of activities undertaken by FmHA or its successor agency under Public Law 103–354 to see that the objectives of the loan are carried out; to assure compliance with the respective policies, procedures and authorizations set forth for each respective loan program; or to bring to a successful conclusion each loan or grant made by FmHA or its successor agency under Public Law 103–354 through transfer, sale, reamortization, payment or liquidation.

§§ 1965.53–1965.54 [Reserved]

§ 1965.55 Authority of State Director.

(a) Each State Director is authorized to perform the following functions upon determining that the action will not be to the financial detriment of FmHA or its successor agency under Public Law 103–354:

(1) Require additional security in accordance with § 1965.88 of this subpart.

(2) Require borrowers to carry insurance of the types and amounts determined necessary on the real estate and chattel property mortgaged to the FmHA or its successor agency under Public Law 103–354. The borrower must carry adequate liability insurance as required by exhibit B, paragraph XV B 3 of subpart C of part 1930 of this chapter. Evidence of insurance is required for Multiple Housing loans according to the provisions of subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instructions 426.1).

(3) Approve the issuance of transfer of stock, change of beneficial interest, change of membership, admittance of new or substitute partners, or withdrawal of partners from a partnership; provided, the State Director determines that the requirements of § 1965.63 of this subpart have been met, and that the change will not jeopardize the successful operation of the project, the soundness of the loan, or the eligibility of the borrower.

(4) Approve transfers with assumption of FmHA or its successor agency under Public Law 103–354 loan accounts when all development has been completed and the unpaid principal balance and accrued interest does not exceed the State Director's loan approval authority as set forth in subpart A of part 1901 of this chapter for the type of loan(s) involved. Transfers will be processed according to § 1965.65 of this subpart.

(5) Approve the reamortization of FmHA or its successor agency under Public Law 103–354 indebtedness that is within the State Director's loan approval authority as set forth in subpart A of part 1901 of this chapter for the type of loan(s) involved according to the provisions of § 1965.70 of this subpart.

(6) Consent to the sale, exchange, or release of security property according to the applicable provisions of § 1965.77 of this subpart.

(7) Accept payment of RRH, RCH and LH loans subject to the provisions of subpart E of this part.

(8) Approve subordination of FmHA or its successor agency under Public Law 103–354 lien position if the total debt against the security after the transaction is within the State Director's approval authority as set forth in subpart A of part 1901 of this chapter for the type of loan(s) involved according to the provisions of § 1965.79 of this subpart.

(9) Approve requests from borrowers for the creation of additional indebtedness on the security property. Such approvals must take into account the provisions of loan resolutions or other agreements with FmHA or its successor agency under Public Law 103–354 and other existing creditors. If the proposed additional debt would make the total outstanding obligations of the borrower exceed the FmHA or its successor agency under Public Law 103–354

loan approval limit of the State Director as set forth in subpart A of part 1901 of this chapter, complete documentation and the State Director's recommendations must be sent to the National Office for prior review and authorization to approve.

(10) Renew existing security instruments in accordance with FmHA or its successor agency under Public Law 103–354 State Supplements after consulting with OGC.

(11) Approve, with the concurrence of OGC, changes in a borrower's legal organization such as revisions to certificates of limited partnership, partnership agreements, articles of incorporation or charter, bylaws, or trust agreements when the changes proposed will promote better borrower organization and business operation, and will not adversely affect the repayment of the loan, impair the security rights of the FmHA or its successor agency under Public Law 103–354, or make the borrower ineligible for the existing FmHA or its successor agency under Public Law 103–354 loan or grant assistance.

(12) Approve the borrower's execution, extension, renewal, modification, or cancellation of contracts of types not covered elsewhere in this section when the State Director, with the advice of OGC, determines that the action is in the best interests of both the borrower and the FmHA or its successor agency under Public Law 103–354; and in the case of RRH, RCH, and LH projects, will not be detrimental to the tenants or members.

(13) Approve the extension or expansion of facilities and services in accordance with the respective loan program regulations when the action will best serve the interest of both the borrower and the FmHA or its successor agency under Public Law 103–354.

(14) Approve the lease of security property according to § 1965.61(e) of this subpart.

(b) The State Director may reject any servicing request not in accordance with the guidelines of this subpart.

(c) Any borrower directly and adversely affected by action under this subpart will be granted the appropriate appeal rights according to subpart B of part 1900 of this chapter.

(d) The State Director may request from the National Office any authority not specifically delegated to the State Director. Written requests consistent with the intent and requirements of each respective loan program must be submitted to the National Office for prior authorization and must include the complete docket and the State Director's specific recommendations.

[49 FR 49590, Dec. 21, 1984, as amended at 55 FR 29564, July 20, 1990; 56 FR 2257, Jan. 22, 1991; 58 FR 38928, July 21, 1993]

§§ 1965.56–1965.57 [Reserved]

§ 1965.58 Responsibilities.

(a) District Directors will: (1) Keep sufficiently informed of borrower operations to know whether they are operating successfully and complying with their obligations to the FmHA or its successor agency under Public Law 103–354,

(2) Furnish borrowers with information, notices, reminders, fair housing posters, advice and assistance, and take other actions regarding the loan obligations and compliance therewith as considered necessary to determine whether borrowers are operating successfully, are complying with their loan obligations, and are likely to continue with compliance. This includes conducting all civil rights compliance reviews to determine compliance with all appropriate legislation regarding nondiscrimination in federally financed programs, in accordance with Subpart E of Part 1901 of this chapter,

(3) Promptly report to the State Director the failure of any borrower to comply with the terms and conditions of its agreements with FmHA or its successor agency under Public Law 103–354 after noncompliance has been brought to the attention of the borrower and recommended corrective action has not been taken,

(4) Furnish training and technical guidance not readily available through other sources to borrowers to protect the FmHA or its successor agency under Public Law 103–354's interests. This training and guidance may relate to business operations, project management, personnel training, membership activities, fair housing requirements and policy, or any other phase which

vitally affects the borrower's operations,

(5) Maintain the Management Card System according to FmHA or its successor agency under Public Law 103–354 Instruction 1905–A (available in any FmHA or its successor agency under Public Law 103–354 office) to assure prompt compliance by borrowers with FmHA or its successor agency under Public Law 103–354 requirements relating to repayments, budgets and reports, taxes, insurance and bond renewals, reports required by State law or regulations as indicated in State Supplements, security instrument expirations, and other items of loan and security servicing,

(6) Maintain the official borrower case files according to the requirements of FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in FmHA or its successor agency under Public Law 103–354 State and District offices), and MISTR according to FmHA or its successor agency under Public Law 103–354 Instruction 2033, and

(7) Promptly collect FmHA or its successor agency under Public Law 103–354 loan payments and service security for the FmHA or its successor agency under Public Law 103–354 loans.

(b) State Director will:

(1) Coordinate and direct loan servicing activities relating to borrowers and perform other functions as prescribed by this subpart.

(2) Delegate in writing any authority delegated to the State Director in this subpart unless otherwise restricted, to only those State Office staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the MFH policies and procedures of FmHA or its successor agency under Public Law 103–354. The individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director and will be prepared according to FmHA or its successor agency under Public Law 103–354 Instruction 2006–F (available in any FmHA or its successor agency under Public Law 103–354 office). Unless specifically authorized elsewhere in this subpart, the authorities of the State Director may not be delegated below the State Office staff level. (The State Office staff does not include District Office staff for the purposes of this subpart.)

(3) Ensure that District Directors carry out their responsibilities for loan servicing and provide the District Office with appropriate technical guidance, training and follow-up supervision to service loans.

(4) Coordinate as appropriate with OGC.

(5) Maintain necessary liaison with State and local officials.

§§ 1965.59–1965.60 [Reserved]

§ 1965.61 General loan servicing requirements.

(a) *Payments.* Payments will be handled according to the applicable provisions of subparts A and B of part 1951 of this chapter, and subparts D and E of part 1944 of this chapter.

(b) *Borrower reports, audits, and analyses.* Borrower reports, audits, and analyses, including the approval or disapproval of annual operating budgets, requests for rent and occupancy charge changes, and occupancy problems will be processed and handled according to subpart C of part 1930 of this chapter.

(c) *Maintenance.* Project maintenance is of utmost importance. All projects must be adequately maintained by the borrower not only to protect the FmHA or its successor agency under Public Law 103–354's interest, but also to attract potential clients (tenants for rental projects, members for cooperative projects, purchasers for RHS). Maintenance should be reviewed during each supervisory visit and appropriate recommendations made to the borrower. The District Director will inspect the real estate security as required by subpart C of part 1930 of this chapter.

(d) *Actions by third parties affecting FmHA or its successor agency under Public Law 103–354 security.* Cases including third party action will be handled according to the provisions of § 1965.104(c) of subpart C of part 1965 of this chapter, except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) *Lease of security property*. The leasing of property (except to tenants for specific program purposes) serving as security for multiple housing loans and grants other than as indicated in this section is not authorized. Approval of leases by the State District is authorized in the following cases:

(1) *Leases to public housing authorities*. RRH and RCH borrowers may be permitted to renew and continue leasing all or part of the housing facilities to a housing authority with the benefits of the HUD Section 23 leasing program. No new leases will be entered into. The lease will be on a form provided by the housing authority and must be on terms that will enable the borrower to continue the objectives of the loan and make payments on schedule.

(2) *Lease of a portion of the security property*. When the RRH or RCH or LH borrower will continue to operate the facilities for the purpose for which the loan or grant was made, the State Director or his/her designee may approve the leasing of related facilities such as kitchens, recreation facilities and community buildings, subject to the applicable provisions of § 1944.212 of subpart E of part 1944 of this chapter for RRH and RCH and § 1944.158 of subpart D of part 1944 of this chapter for LH and under the following conditions:

(i) The lease is advantageous to the borrower and the tenants, and will not impair the FmHA or its successor agency under Public Law 103–354's interest.

(ii) The amount of the consideration is adequate. The consideration must be sufficient to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(iii) The lease should provide at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and FmHA or its successor agency under Public Law 103–354.

(iv) Consent to the lease shall not exceed 3 years at a time unless the State Director determines with the prior written concurrence of the National Office that a longer lease is clearly more advantageous to the borrower, the tenants, and the FmHA or its successor agency under Public Law 103–354.

(v) If foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions from OGC or the U.S. Attorney, as appropriate.

(vi) When another lienholder's mortgage requires consent of that lienholder to a lease, written consent will be obtained prior to FmHA or its successor agency under Public Law 103–354 approval of the lease.

(vii) The authority to approve the lease of laundry facilities or commissary stores may be redelegated in writing to the District Director by the State Director.

(3) *Mineral leases*. Mineral leases will be handled according to § 1965.113 of subpart C of part 1965 of this chapter except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

(4) *Processing*. When a borrower requests consent to lease a portion of the security property or the District Director discovers that the borrower is leasing the security without consent, Form FmHA or its successor agency under Public Law 103–354 465–1, ''Application for Partial Release, Subordination or Consent,'' will be prepared.

(i) The form will show the terms of the proposed lease and will specify the use of proceeds, including any proceeds to be released to the borrower.

(ii) The form will be submitted through the District Director to the State Director, along with a copy of the lease, official borrower case files, the District Director's comments and recommendations, and any other information pertinent to the transaction.

(iii) The State Director will review the material, obtain the guidance of OGC prior to indicating approval or disapproval on Form FmHA or its successor agency under Public Law 103–354 465–1, and provide additional servicing instructions to the District Director.

(f) *Consent of lienholders*. Before FmHA or its successor agency under Public Law 103–354 consents to any transaction which affects its security or lien position, the written consent of any other lienholders must be obtained. The consent will include an

agreement on the disposition of any funds resulting from the transaction and will be consistent with the respective loan program requirements.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 39640, Sept. 30, 1985; 56 FR 2257, Jan. 22, 1991; 58 FR 40956, July 30, 1993]

§ 1965.62 [Reserved]

§ 1965.63 Issuance or transfer of stock, or change in membership, or membership interests in organizations indebted to FmHA or its successor agency under Public Law 103–354.

Organizations which may be indebted to FmHA or its successor agency under Public Law 103–354 include, but are not limited to: public bodies, broadly-based nonprofit corporations, nonprofit organizations of farmworkers, associations of farmers, RCH consumer cooperatives, profit and limited profit corporations, trusts, profit and limited profit general partnerships, and limited partnerships. This section describes the policy of FmHA or its successor agency under Public Law 103–354 in approving changes of members, ownership interest, and transfer or issuance of stock in these organizations, to determine the continued eligibility of the borrower entity. It *does not* apply to the sale or exchange of title to the security property, or the conversion from one form of ownership to another such as changing a general partnership to a limited partnership. Stock, partnership, or membership changes which the State Director is not authorized to approve under the conditions of this section will be submitted to the National Office for handling.

(a) *Profit and limited profit corporations, general partnerships, limited partnerships, and trusts.* Ownership changes within the existing borrower entity will be processed as follows:

(1) Ownership changes totalling *100 percent* of the ownership interests in a project within any consecutive 12-month period will be treated as transfers and processed under the provisions of § 1965.65 of this subpart.

(2) Ownership changes in *excess of 50% but less than 100%* within the first five years of loan or assumption closing, will be subject to § 1965.65(a)(4) of this subpart which covers hardship provisions and the restrictions on subsequent changes. However, changes in only the limited partner interests in a limited partnership will not be subject to the restrictions of § 1965.65(a)(4) of this subpart when completed in accordance with the approved partnership agreement.

(3) Other ownership changes of 50% or less within any consecutive 12 month period will be processed without restriction.

(4) All changes of less than 100% will be processed according to paragraph (e) of this section.

(b) *Public bodies, broadly-based nonprofit corporations, or nonprofit organizations of farmworkers.* FmHA or its successor agency under Public Law 103–354 consent will not be required for broadly-based nonprofit corporations or nonprofit organizations of farmworkers indebted to FmHA or its successor agency under Public Law 103–354 to change or transfer membership. Each organization, however, must maintain the number and type of members required by its Articles of Incorporation and Bylaws. Organizations will only permit membership changes as authorized by the organizational documents previously approved by FmHA or its successor agency under Public Law 103–354. Should the minimum number of required members in any organization fall below that prescribed by their organizational documents, the following actions will be taken:

(1) The District Director will provide the State Director with a complete written report of the circumstances, including the organization's plan for obtaining additional membership, and the continued operation of the project. The District Director should submit this report only after he or she has personally met with the governing body and found that they will not be able or willing to comply with FmHA or its successor agency under Public Law 103–354 requirements. The report should be precise and include recommendations on further servicing actions.

(2) The State Director will review the report and evaluate any adverse effect the noncompliance will have on the loan. If it appears that the interest of the United States will be adversely affected, the State Director will forward the material together with appropriate

comments and recommendations, to the OGC for review and guidance in the continued servicing or liquidation of the account as appropriate. The State Director will provide the District Director with instructions for servicing the account.

(c) *Associations of farmers.* Changes in membership will be governed by the organizational documents previously approved by FmHA or its successor agency under Public Law 103–354 and any eligibility requirements set forth in program regulations. (See subpart D of part 1944 of this chapter.) In those cases where proposed membership changes are not covered in the documents or are in conflict with the provisions of subpart D of part 1944 of this chapter, case files will be submitted for National Office consideration.

(d) *RCH consumer cooperatives.* Changes in the membership of RCH consumer cooperatives will be processed according to the provisions of subpart E of part 1944 of this chapter.

(e) *Processing organizational membership changes.* Organizations are required by their loan agreement or resolution to obtain prior FmHA or its successor agency under Public Law 103–354 consent to transfer stock, or to transfer or change any interest in the borrower entity. (The admission or substitution of limited partners in a limited partnership does not require prior authorization. See paragraph (e)(3) of this section.) Therefore, when organizations request FmHA or its successor agency under Public Law 103–354 consent to: issue additional stock, transfer stock, change membership or membership interests other than limited partner interests in limited partnership, admit new or substitute general partners of any kind, withdraw general partners of any kind, alter the beneficiary of the trust, or when such a change has taken place without prior FmHA or its successor agency under Public Law 103–354 consent, the District Director shall process and submit Form FmHA or its successor agency under Public Law 103–354 465–1 to the State Director. The State Director is authorized under § 1965.55(a) of this subpart to approve or disapprove these transfers or changes on Form FmHA or its successor agency under Public Law 103–354 465–1. For approval, the State Director must determine that the following conditions have been met:

(1) The borrower has provided a listing showing the name, address, Employer Indentification or Social Security number, and percent of ownership of each member, stockholder, general partner, or beneficiary of a trust that will have an interest in the organization.

(2) All new or substitute general partners, and all new or substitute trustees, members, stockholders in privately held corporations, or beneficiaries that will hold an interest in the organization in excess of 10 percent have submitted a current, dated, and signed financial statement showing assets and liabilities, with information on the status and repayment schedule of each debt. (The admission of limited partner in a limited partnership is addressed in § 1965.63(e)(3) of this subpart.) In cases involving publicly held corporation borrowers, borrowers will be required to notify FmHA or its successor agency under Public Law 103–354 of stockholders admitted to the organization in accordance with the approved articles of incorporated and bylaws. However, FmHA or its successor agency under Public Law 103–354 consent is required when there are changes in the overall corporate management or in the organizational documents. (All other changes in stockholders in publicly held corporations are subject to the requirements of this section.) All financial statements submitted must comply with the reporting requirements set forth in exhibit A–7 to subpart E of part 1944 of this chapter. A resume must also be submitted, together with a statement setting forth any identity of interest as described in exhibit A–7 to subpart E of part 1944 of this chapter. The resume should explain the past performance, experience, qualifications, and abilities of the individual or organization, who is obtaining an interest in the borrower organization. A determination must be made before approval that the incoming individual or organization described in this section will not adversely affect the borrower's continued eligibility under the requirements of subpart E of part 1944 of this chapter.

(3) The admission of limited partners in a limited partnership on the basis of the limited partnership agreement previously approved by FmHA or its successor agency under Public Law 103–354 does not constitute a change requiring redetermination of eligibility. Borrowers admitting new or substitute limited partners are however required to notify FmHA or its successor agency under Public Law 103–354 at least annually with a listing showing the name, address, Taxpayer Identification number, and percent of ownership of each new or substitute limited partner. The borrower must also provide copies of any amendments to the organizational documents effecting such changes in the organization together with an opinion from the borrower's attorney certifying that the changes in limited partner interests have been completed in accordance with the approved partnership agreement.

(4) The borrower is unable to provide the housing or other facilities from its own resources and is unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the borrower to refinance the FmHA or its successor agency under Public Law 103–354 indebtedness and operate the project for amounts within the payment ability of those eligible to occupy the housing or benefit from the project. When tenants are benefiting from any FmHA or its successor agency under Public Law 103–354 or other Government subsidy program, the continued availability of the subsidy will be considered in making this decision. For profit and limited profit organizations, the assets of the individual general partners, members or stockholders will also be considered.

(5) The type of change must not adversely affect the operations of the project. *Liens may not be taken against the FmHA or its successor agency under Public Law 103–354 security*. Payments on any debt incurred for the purchase of the stock or interest in the organization will *not* be considered authorized debt payments and will not be included in project operations as a budgeted expense. In those cases where the withdrawing member or ownership interest proposes to use a security agreement or other document to secure an equity payment, the State Director must determine that:

(i) The payment is not contingent on the planned sale of the project or additional owership interests;

(ii) An assignment of interests to secure a promissory note, in the case of a limited partnership, is restricted to the limited partners interests only and *not the general partner* interest;

(iii) In cases other than the limited partner's interest in a limited partnership, that there is no reversionary interest held in the entity; and

(iv) Any security agreement or equity note, clearly indicates the necessity of FmHA or its successor agency under Public Law 103–354 approval before any substitutions of interests take place, regardless of any default on the equity note.

(6) In the case of the sale of the interest of a general partner, or the admission or substitution of any general partner, in either a limited partnership or a general partnership, the new or substitute general partner must agree to assume the responsibilities and obligations of the original general partner under the terms of the FmHA or its successor agency under Public Law 103–354 promissory note, mortgage, and the borrower's partnership agreements. The assumption of any personal liability of the transferring general partner by the assuming general partner in a limited partnership may be waived by the State Director with the advice of the OGC if the organizational papers require that liability be limited to the asssets of the partnership according to §1944.21(a)(2) of subpart E of part 1944 of this chapter. After consulting OGC, the State Director will require the new or substitute general partner to execute an agreement as follows for the inclusion in position 5 of the official case file:

ASSUMPTION OF ORIGINAL OR WITHDRAWING PARTNER'S OBLIGATIONS

In consideration for being approved by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) for admission as a general partner into _____(the partnership), the undersigned hereby assumes all responsibilities and obligations of _____ under the terms of the Partnership Agreement

dated _____, the terms of (a) (all) note(s) or assumption agreement(s) dated _____ in the respective amount(s) of _____, and the terms of the FmHA or its successor agency under Public Law 103–354 security instrument(s) taken on the partnership property dated _____ and filed for record in the _____ office at

_____

Document No. or Book and Page No.

_____

Date

_____

Signature of New or Substitute Partner

(7) Any withdrawing stockholder, member, or partner personally liable for the FmHA or its successor agency under Public Law 103–354 indebtedness will not be released of liability unless the new stockholder, member, or partner is made personally liable for the FmHA or its successor agency under Public Law 103–354 debt on an agreement approved by OGC, and the State Director determines that the assets and net worth of the new stockholder, member, or partner are substantially the same as, or greater than, that of the party to be released.

(8) The State Director must determine that approval of the transaction will not adversely affect the FmHA or its successor agency under Public Law 103–354 program in the area, that the objectives of the loan will not be changed, and that the successful operation of the project will not be jeopardized. In making this determination, the State Director must consider the past performance, experience, qualifications and abilities of any individual or organization obtaining an interest in the borrower organization, other than a limited partner holding a minority interest in a limited partnership. Serious consideration must also be given to an individual having a record or reputation for discriminating against individuals because of their race, color, national origin, handicap or other prohibited basis.

(9) Organizational papers must be amended to reflect the changes and a copy submitted to FmHA or its successor agency under Public Law 103–354 to be retained in the case files. The amendment should specify that FmHA or its successor agency under Public Law 103–354 must approve all membership changes (except the admission of limited partners described in § 1965.63(e)(3) of this subpart) or transfers, if they do not already do so. OGC will review any proposed changes of beneficial interests in a trust to determine that all applicable program requirements have been met.

[49 FR 49590, Dec. 21, 1984, as amended at 56 FR 2257, Jan. 22, 1991]

§ 1965.64 [Reserved]

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) *General*. The transfer may be approved only if it is determined that the transfer would ensure the further availability of the housing and related facilities for very-low, low, and moderate income families or persons and would be in the best interests of the residents and the Federal Government.

(1) The requirements of this section apply when:

(i) Title to the security property is transferred, either when the project is sold or through a change in the borrowing legal entity, such that the new entity is considered a distinct and separate legal entity from the original borrower;

(ii) An unauthorized sale of a project has occurred or will occur through a land contract or similar contract;

(iii) The liability for the FmHA or its successor agency under Public Law 103–354 indebtedness has been or will be assumed by an organization, entity or individual who is not presently liable for the debt;

(iv) Membership interests within a borrower entity have been or will be changed 100 percent within any consecutive 12-month period as indicated by § 1965.63(a) of this subpart.

(2) When the mortgage or deed of trust requires FmHA or its successor agency under Public Law 103–354 consent to the sale or other transfer or real estate security, the borrower should be advised of its provisions. Before firm agreements are reached between the borrower and the proposed purchaser or transferee, the borrower should notify the District Director of the proposed sale or transfer. The District Director shall then explain the requirements of this subpart.

(3) Proposed transfers must not be the detriment of the FmHA or its successor agency under Public Law 103–354 or the tenant. LH loans will only be transferred under this subpart when

they will continue to be used to provide housing for farm laborers as defined in subpart D of part 1944 of this chapter. Cooperative loans will only be transferred when they will be used for the purpose of providing low income rental housing to promote the general welfare of the community.

(4) The transfer of projects as defined in § 1944.205 of subpart E of part 1944 of this chapter, in which the FmHA or its successor agency under Public Law 103–354 loan transfer is needed to remove a hardship which adversely impacts the present borrower and was caused by circumstances beyond the borrower's control, such as:

(i) Illness or death of the principals;

(ii) Court order requiring the division of security property;

(iii) The individual borrower faces serious financial difficulties due to circumstances beyond the borrower's control, which will force him/her out of operation. These circumstances do not include transferring the property to obtain the equity needed to permit the borrower to apply for additional FmHA or its successor agency under Public Law 103–354 loans or to raise capital to support the borrower's other financial interests not including the FmHA or its successor agency under Public Law 103–354 financed project. Borrowers under this type of hardship must be able to show that they have acted in good faith, demonstrated their managerial skills and financial abilities; and otherwise complied with all other agreements made with FmHA or its successor agency under Public Law 103–354. Hardship transfers due to construction cost overruns will only be considered in the case of individual borrower accounts. (If additional funds are needed to cover cost overruns for any other type of borrower entity, consideration should be given to the admission of new partners, sale of stock, etc., under the provisions of § 1965.63 of this subpart to continue ownership of the project.)

(5) When the State Director determines that a hardship is present and the official case files have been adequately documented to clearly identify the hardship, a transfer may occur without penalty to the transferor. When a hardship is not present and the loan(s) are less than 5 years old, transfer requests should be processed but the transferor (including principals) will be ineligible for further loans or participation in the transferee or other RRH applicant entities for the remainder of the 5-year period. The start of the 5-year period begins on the date of FmHA or its successor agency under Public Law 103–354 loan closing and/or any subsequent transfer.

(6) Transfers of RRH projects with initial or subsequent loans (except loans for the purpose of repairs to existing units) that are at least 5 years old will be processed according to the provisions of this subpart without penalty to the transferor. The transferor (including the principals) may continue to participate in the RRH program through new and existing projects assuming he/she has performed satisfactorily and meets the eligibility criteria of § 1944.211 of subpart E of part 1944 of this chapter.

(7) In all cases, the purchaser is required to provide evidence of its inability to obtain credit elsewhere on rates and term that will not cause rental rates in excess of what low- and moderate-income tenants could afford, considering the availability of any rent subsidies that may be available to the project.

(8) All transfers are subject to the payment application system conversion requirements in subpart K of part 1951 of this chapter.

(9) For all transfers, the District Director must review Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

(b) *State Director authority*. The State Director is authorized under § 1965.55(a)(4) of this subpart to approve initial and subsequent transfers, with an appropriate assumption of the FmHA or its successor agency under Public Law 103–354 unpaid loan balance(s) when the principal amount (including any authorized junior liens) plus accrued interest is within the

State Director's loan approval authority, subject to the following general conditions and requirements:

(1) Transfers will be made to either eligible or ineligible applicants. Eligible applicants are those applicants meeting all of the eligibility criteria as defined by the appropriate loan program regulations. Ineligible applicants are those applicants failing to meet the eligibility requirements for the respective loan type. Transfers to eligible applicants will receive preference over transfers to ineligible applicants, provided recovery to FmHA or its successor agency under Public Law 103–354 is not less than it would be if the transfer were to an ineligible applicant.

(i) Transfers to eligible applicants will generally be completed on the basis of the same terms if the loan account is current or can be brought current when the transfer and assumption is closed.

(ii) Transfers to eligible applicants desiring to assume delinquent loans which cannot be brought current at the time of closing, and transfers to ineligible applicants, will be transferred on the basis of new terms.

(2) The approval official must determine that the security is adequate for the FmHA or its successor agency under Public Law 103–354 indebtedness being assumed. If the State Director determines that the total secured FmHA or its successor agency under Public Law 103–354 debt(s) exceeds the present market value of the security, the transferee must assume an amount at least equal to the present market value less any prior liens. In those cases, the transferor will be released from liability and the remaining debt will also be processed according to the applicable provisions of subpart B of part 1956 of this chapter. When the present market value of the security equals or exceeds the debt the transferee will assume the total FmHA or its successor agency under Public Law 103–354 secured debt(s). Security will be upgraded if necessary to meet FmHA or its successor agency under Public Law 103–354 standards.

(3) The transferor shall not receive an equity payment as part of a transfer unless:

(i) All unpaid FmHA or its successor agency under Public Law 103–354 indebtedness against the property is assumed;

(ii) All real estate and personal property taxes owned by the project are current;

(iii) All FmHA or its successor agency under Public Law 103–354 loan payments on the project are current;

(iv) The reserve account is at the authorized level at the time of the transfer;

(v) The State Director receives National Office authorization to proceed, if the preceding requirements cannot be met and it can be demonstrated that no other alternative, including liquidation, would be in the best interests of FmHA or its successor agency under Public Law 103–354 and the tenants; and

(vi) When the transfer is NOT being made in connection with a request for prepayment of the FmHA or its successor agency under Public Law 103–354 loan;

(A) Any equity payment paid to the transferor shall be paid in cash at the time of the transfer; or

(B) If paid on terms;

(*1*) The rates and terms are documented and the transferee is able to show that the obligation can be met from outside sources of income without jeopardizing the operation of the project. No rental or other project income (except authorized return to owner as specified in the loan agreement or resolution) shall be used to make payments on the obligation;

(*2*) No present or future liens will be attached to the secured project real estate, personal property, accounts, or revenue from the operation of the project;

(*3*) The equity payment to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those identified in the transferee's organizational documents approved by FmHA or its successor agency under Public Law 103–354;

(*4*) The seller does not and will not have a reversionary interest in the FmHA or its successor agency under Public Law 103–354 encumbered property;

(*5*) In the case of a limited partnership, the right of FmHA or its successor agency under Public Law 103–354 to approve or disapprove the substitution of general partners in accordance with § 1965.63 of this subpart has not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by FmHA or its successor agency under Public Law 103–354 for partner changes in the case of default; and the right to assign partnership interests is restricted to only the limited partners' interests and such right does not include the general partners' interests;

(*6*) An opinion is provided from the transferee's legal counsel certifying that the financial and other arrangements comply with all FmHA or its successor agency under Public Law 103–354 requirements of this section; and

(*7*) An assignment of project income will be taken by FmHA or its successor agency under Public Law 103–354 in accordance with the requirements of § 1944.221(b) of subpart E of part 1944 of this chapter as additional security with the advice and guidance of OGC;

(vii) When the transfer is being made to avert prepayment of the FmHA or its successor agency under Public Law 103–354 loan, an equity loan may be made in accordance with the provisions of subpart E of this part and subpart E of part 1944 of this chapter. If additional equity is to be paid by the purchaser to the seller above the amount of equity recognized by FmHA or its successor agency under Public Law 103–354 in the prepayment valuation of the project, the provisions of paragraph (b)(3)(vi) of this section will apply.

(4) No payment will be received by the transferor for regular equity or equity in connection with a prepayment action unless all FmHA or its successor agency under Public Law 103–354 loans against the project are assumed in full or the payment to the transferor is applied in total against non-FmHA or its successor agency under Public Law 103–354 prior liens. The State Director may require that all or a part of any equity payment be applied against other FmHA or its successor agency under Public Law 103–354 loans owed by the borrower on other FmHA or its successor agency under Public Law 103–354 projects owned by the borrower that are not current, if the FmHA or its successor agency under Public Law 103–354 loans against the project being purchased are assumed in full and all prior liens paid in full.

(5) Upon completion of the transfer there must be no liens, judgments, or other claims against the security being transferred other than those by FmHA or its successor agency under Public Law 103–354 and those authorized liens to which FmHA or its successor agency under Public Law 103–354 has previously agreed, unless prior written approval is obtained from the National Office.

(6) When the loan(s) is secured by both chattel and real estate, all chattel security must be transferred, sold, or liquidated by the time of closing the transfer of the real estate.

(7) The transferee must complete and submit Form HUD 935.2, ''Affirmative Fair Housing Marketing Plan,'' for the State Director's approval as required by § 1901.203 of subpart E of part 1901 of this chapter.

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through use of Form FmHA or its successor agency under Public Law 103–354 1965–9, ''Multiple Family Housing Assumption Agreement and Form FmHA or its successor agency under Public Law 103–354 1965–10, 'Information on Assumption of Multiple Family Housing Loans,'' on the same rates and terms if the account is current or new rates and terms if the account is not current. If the spouse is determined to be an eligible applicant according to applicable provisions of the respective loan program and this Subpart, the approval official may waive the submission by the assuming spouse of any form or material not required by OGC to complete the assumption, if the present forms and materials in the current casefile are otherwise acceptable.

(9) The transfer must be completed with the advice and closing instructions of the OGC.

(10) The rents to the tenants can be increased only if the provisions of paragraph XI of exhibit B to subpart C of part 1930 of this chapter are met.

(11) The transferee will be required to submit reports according to § 1930.122 of subpart C of part 1930 of this chapter.

(12) Forms FmHA or its successor agency under Public Law 103–354 1944–50, ''Multiple Family Housing Borrower/Project Characteristics'' and 1944–51, ''Multiple Family Housing Obligation—Fund Analysis'' must be processed in accordance with their respective FMIs for all transferees to update the accounting system.

(c) *Transfers to eligible applicants.* Transfers of security with an assumption of FmHA or its successor agency under Public Law 103–354 debts by transferees who are eligible applicants for the type of loan being assumed may be approved subject to the general conditions contained in paragraph (b) of this section and the following:

(1) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in exhibits A–1 or A–2 of subpart E of this part.

(2) All necessary repairs to assure that the housing will be decent, safe and sanitary should be made prior to the transfer whenever possible. When repairs cannot be completed prior to closing, the necessary funds will be escrowed and the repairs will be identified, agreed upon prior to closing and documented as specified in § 1924.5 of subpart A of part 1924 of this chapter. Also, any improvements required by FmHA or its successor agency under Public Law 103–354 to meet the accessibility requirements of section 15b.41 of subpart F of part 15b of subtitle A (see § 1944.215(b)(6) of subpart E of part 1944 of this chapter) should be considered part of any substantial rehabilitation work undertaken as part of the transfer. All repairs will be in accordance with the provisions of subpart A of part 1924 of this chapter. Funds for such improvements or repairs will be from sources in the following priority: Transferor's equity payment; contributions by the transferee; reserve account being transferred provided the amount remaining in the reserve account will be adequate to meet the repairs and expenses in the immediate or near future; if loan funds are available, from the use of an RRH or LH loan when appropriate.

(3) For rental and RCH (as applicable) projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferor will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Any RA determined to not be needed will be reassigned in accordance with the provisions of paragraph XV of exhibit E to subpart C of part 1930 of this chapter.

Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA or its successor agency under Public Law 103–354, reserve and other accounts must be at the scheduled level at the time of transfer.

(4) Any excess development funds held in a supervised bank account must be refunded to the respective loan account upon receipt of the transfer request.

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferor unless authorized in accordance with subpart E of this part to avert prepayment.

(6) The transferees must prepare operating budgets, as required by the appropriate program regulations governing the kind of loan being transferred, covering the first partial year and the next full year's operation. The budgets must be realistic and reflect sufficient funds to pay operation and maintenance expenses, fund any required reserve, and keep the FmHA or its successor agency under Public Law 103–354 account(s) current. The charges for the use of the facility or services must be within the payment ability of

those it is intended to serve. A current utility allowance must also be prepared when required by program regulations.

(7) For transfers of RRH and RCH loan accounts, current executed tenant and former member certifications using Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification,'' or a HUD approved form of ''Certification or Recertification of Tenant Eligibility'' for any tenants receiving Section 8 subsidy, must be on file with FmHA or its successor agency under Public Law 103–354 or provided for each tenant, as required by Exhibit B to subpart C of part 1930 of this chapter, evidencing that the units are or will be occupied by tenants meeting the FmHA or its successor agency under Public Law 103–354 eligibility requirements when the transfer is closed.

(8) For transfers of RRH and LH loan accounts, all leases should also be assigned to the transferee no later than the date of closing.

(9) The proper type of loan agreement or loan resolution for the type of transferee involved must be in effect and secured in the mortgage or deed of trust at the time of transfer. If changes are needed in the exisiting loan agreement or loan resolution to accomplish this, amendments must be made to the existing loan agreement or resolution secured by the mortgage on the security property with the advice of the transferee's attorney and approval of OGC or by any other method acceptable to OGC. If the RRH transferee wishes to convert to the loan agreement/resolution format of Form 1944–33, ''Loan Agreement''; 1944–34, ''Loan Agreement''; or 1944–35, ''Loan Resolution'', as appropriate, the transferee may accomplish this by amending the existing loan agreement/resolution with the advice of transferee's attorney and concurred in by OGC.

(10) When the transfer is NOT being made in connection with a request for prepayment of the FmHA or its successor agency under Public Law 103–354 loan, a limited profit RRH transferee's initial investment and rate of return in the project will remain the same as that originally provided to the transferor. However, if a loan to a nonprofit or profit type borrower is being transferred to a limited profit type transferee, the initial investment to be shown in the loan resolution or agreement will be ''None'' unless an exception is made by the State Director. (The State Director's authority to establish initial investment will not be delegated to other State Office staff.) Any initial investment established by the State Director should not exceed the amount shown in the transferor's loan agreement/resolution with a rate of return which will not exceed the rate set forth in §1944.215(n) of subpart E of part 1944 of this chapter when the transfer is approved. An exception will be considered when the following conditions are met and fully documented in the casefile:

(i) The transferee contributes funds for repairs or authorized improvements beyond those which would have been paid from the transferor's equity as indicated in paragraph (c)(2) of this section, or

(ii) The transferee contributed sufficient cash to reduce the loan principal being assumed to no more than 95% (97% for loan agreements dated on or after March 11, 1988) of the original development cost (unless an exception is made in writing by the National Office), or

(iii) The transferee's total contributions for the repairs and debt reduction identified in paragraphs (c)(9) (i) and (ii) of this section, exceed 5% (3% for loans approved on or after March 11, 1988) of the purchase price, or

(iv) The transfer is referred to the National Office with the appropriate recommendations and a request to establish an initial investment for the transferee for those cases in which the State Director requests advice and assistance.

(11) When the transfer is being made to avert prepayment of the FmHA or its successor agency under Public Law 103–354 loan, the recognized equity and/or rate of return may be increased in connection with an incentive offer made under the provisions of subpart E of this part.

(12) If the transfer involves an RRH or RCH loan using interest credit with a Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit

and Rental Assistance Agreement,'' in effect, the transferee may also receive interest credit by executing a new Form FmHA or its successor agency under Public Law 103–354 1944–7 effective the date of transfer. RRH and RCH loans will not be converted from a subsidized (interest credit) basis to a nonsubsidized (full profit) basis as part of the transfer process. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the loan is eligible for interest credit according to exhibit H to subpart C of part 1930 of this chapter. A new Form FmHA or its successor agency under Public Law 103–354 1944–7 will be executed by the transferee, attached to Form FmHA or its successor agency under Public Law 103–354 1965–10, ''Information on Assumption of Multiple Family Housing Loans,'' and a copy of Form FmHA or its successor agency under Public Law 103–354 1944–50, and forwarded to the Finance Office, MFH Unit, when the transfer is closed. The borrower project data on Form FmHA or its successor agency under Public Law 103–354 1944–50 should have been established when the transfer was approved.

(13) A transferee may participate in the RA program if the transferor's project is an eligible project and the transferee is an eligible borrower according to exhibit E to subpart C of part 1930 of this chapter. If the transferor participates in the RA programs, the transferee may assume the remaining portion of the transferor's RA agreement when the transferee is eligible. When the transferee is assuming the transferor's RA agreement, Form FmHA or its successor agency under Public Law 103–354 1944–55, ''Multiple Family Housing Transfer of Rental Assistance,'' will be executed and attached to the new or existing Form FmHA or its successor agency under Public Law 103–354 1944–27. A copy of Form FmHA or its successor agency under Public Law 103–354 1944–55 and a copy of Form FmHA or its successor agency under Public Law 103–354 1944–50 will be attached to Form FmHA or its successor agency under Public Law 103–354 1965–10 and forwarded to the Finance Office. If the transferee will not be assuming an existing RA agreement, the agreement will be suspended by memorandum to the Finance Office. Subsequently, the State Director must transfer the suspended RA unit(s) to another project(s), using Form FmHA or its successor agency under Public Law 103–354 1944–55, in accordance with exhibit E of subpart C of part 1930 of this chapter.

(14) If a project operates under the HUD Section 8 program, the Housing Assistance Payment (HAP) contract must also be assigned to the transferee with prior approval from HUD. This approval must be obtained so that the assignment of the HAP contract occurs no later than the closing of the transfer.

(15) The transferee must thoroughly understand all loan requirements including the tenant eligibility, management, reserve account, audit, and reporting requirements of applicable FmHA or its successor agency under Public Law 103–354 regulations; and the loan agreement or loan resolution and the content of the signed Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.'' Before the transfer is closed the District Director shall carefully review with the transferee subpart L of part 1944 of this chapter, subpart C of part 1930 of this chapter, the applicable loan program regulations, and the loan agreement or resolution with the transferee.

(16) Release of liability will be considered according to the following:

(i) When all FmHA or its successor agency under Public Law 103–354 security is transferred and the total outstanding debt is assumed, the transferor will be released from liability.

(ii) In those cases where the value of the security transferred and debt assumed is less than the full amount of the FmHA or its successor agency under Public Law 103–354 debt, the transferor may be released from liability if the State Director determines that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer, and certifies that the transferor has cooperated in good faith, has used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to

the loan to the best of the borrower's ability. The approval official must execute a memorandum containing the following statement for inclusion in the official case file.

(Transferor's name), in our opinion, does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the transferor be released of personal liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security property.

(d) *Transfers to ineligible applicants.* The transfer of an FmHA or its successor agency under Public Law 103–354 loan account to a transferee who is an ineligible applicant for the type of loan involved will be considered only when the transfer is needed as a method for servicing a problem case in which the objectives of the original loan cannot be realized and an eligible transferee is not available. Transfers will not be considered when they basically serve as a method or provide a means by which members of a borrower-organization can obtain an equity payment, or when they serve basically as a method of providing a source of credit for purchasers. The State Director is authorized to approve transfers to ineligible applicants, subject to the general conditions of paragraph (b) of this section and the following:

(1) Ineligible applicants can only be approved when a downpayment is made equivalent to a minimum of 10 percent of the remaining loan balance to be assumed. Each ineligible transferee will be encouraged to make as large a downpayment on the FmHA or its successor agency under Public Law 103–354 secured indebtedness as the transferee is financially able.

(2) The transferee must have the ability to pay the FmHA or its successor agency under Public Law 103–354 debt(s) according to the assumption agreement and must possess the legal capacity to enter into the contractual agreement.

(3) The balance of the FmHA or its successor agency under Public Law 103–354 indebtedness assumed must be scheduled for repayment in 2 years or less for RHS accounts, and usually 10 years or less for other types of multiple family loan accounts. If longer terms are needed for LH, RRH, or RCH projects with multiple unit structures, the State Director may authorize longer terms up to 20 years. (Single Family type structures may be sold on terms for 15 years or less.) Amortized monthly or annual installments will be charged with interest to the transferee at the rate currently applicable to above-moderate RH loans, including insurance charges, or at the rate of interest specified in the note(s) being assumed, whichever is greater. Form FmHA or its successor agency under Public Law 103–354 1965–9 will be executed by the transferee.

(4) The State Director may release the transferor from liability under the same provisions as stated in paragraph (c)(14) of this section only when all of the real estate security for a loan is transferred, the total outstanding indebtedness or that portion of the debt equal to the present market value of the security is scheduled for repayment in five years or less from the date of the assumption agreement.

(5) When an ineligible transferee assumes an FmHA or its successor agency under Public Law 103–354 loan where the present borrower has personal liability and it is scheduled for repayment in more than 5 years from the date of the assumption agreement, the transferor must acknowledge their continued liability for the debt by signing an agreement as follows:

CONTINUED LIABILITY AGREEMENT OF PRESENT DEBTORS

The undersigned hereby acknowledges the continued personal liability for the indebtedness owed to the FmHA or its successor agency under Public Law 103–354 and assured by _____ (assuming parties) under assumption agreement dated _____.

_____

_____

_____

_____

Date

(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's

District Office case folder, and a copy provided the transferor.)

(6) Transfers to ineligible applicants of loans made on or after December 21, 1979, will not be authorized without the prior consent and authorization of the National Office. Authorization must be requested in writing and include all the information required in paragraph (e) of this section.

(7) Transfers to ineligible applicants of projects subject to restrictive-use provisions will continue to retain the applicable restrictive-use provisions and cause the project to be operated in conformance with FmHA or its successor agency under Public Law 103–354 instructions. If it is determined by FmHA or its successor agency under Public Law 103–354 that the housing is no longer needed to house eligible tenants in accordance with the provisions of subpart E of this part, the restrictive-use provisions may be released.

(8) Those loans which are transferred to ineligible applicants will be classified as Nonprogram Property (NP) and serviced according to this subpart to the extent possible. Those cases which cannot be serviced according to this subpart will be forwarded to the National Office for advice and guidance.

(e) *Submission to National Office.* In those cases where the proposed transfer cannot be made in compliance with paragraphs (a) and (b) or (c) of this section, the State Director may submit the entire proposal, complete with all the case files, the State Director's specific recommendations and justifications to the National Office for review, consideration, and any special instructions for handling the account(s). The State Director must have determined prior to submission however, that it is in the best interest of the FmHA or its successor agency under Public Law 103–354 to permit the transfer before submitting the proposal for consideration. All transfers where the total indebtedness (principal and interest) exceed the State Director's approval authority must be submitted to the National Office for prior review and authorization to approve the transfer request.

(f) *Processing transfers.* (1) Form FmHA or its successor agency under Public Law 103–354 465–5, ''Transfer of Real Estate Security,'' must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the proration of taxes and insurance, title, legal and filing fees, equity and method of payment, charges to the loan account other than principal and interest, future dated payments presently credited to the account, assignment of project accounts and leases, and other appropriate items. Additional information may also be attached to this form when necessary to fully describe the proposed transaction. The transfer will become effective the data Form FmHA or its successor agency under Public Law 103–354 1965–9 is executed.

(2) Form FmHA or its successor agency under Public Law 103–354 1965–9 will be executed according to the FMI. The unpaid principal balance and accrued interest to be shown on Form FmHA or its successor agency under Public Law 103–354 1965–9 and 1965–10 will be determined by accessing the project account record via field terminal. When this is not possible, the unpaid principal balance, accrued interest, and any other charges will be computed from Form FmHA or its successor agency under Public Law 103–354 1951–53, ''Multiple Family Housing Transaction Record'' or Form FmHA or its successor agency under Public Law 103–354 451–11, ''Statement of Account.'' The transferee will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date and, any payments required to bring any monthly or annual payments current, and the amount needed to bring the reserve account current less any authorized withdrawals. If the loan account or the reserve account cannot be brought current, or less than the total debt is assumed, the transfer will be closed on new terms and the interest rate charged by FmHA or its successor agency under Public Law 103–354 will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA or its successor agency under Public Law 103–

354 1944–51 is approved), whichever is less.

(3) When the property transferred will continue to be used for the same or a similar purpose for which Federal financial assistance was extended, the transferee must sign Form FmHA or its successor agency under Public Law 103–354 400–4.

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will always be required for transfers on new terms.) An FmHA or its successor agency under Public Law 103–354 designated MFH appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the FmHA or its successor agency under Public Law 103–354 designated MFH appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the FmHA or its successor agency under Public Law 103–354 designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal by attaching information on the present market value. A new appraisal will be prepared according to the requirements of FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. An independent appraisal may NOT be accepted from the transferor or transferee for the initial appraisal required of FmHA or its successor agency under Public Law 103–354 under provisions of subpart E of this part. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an FmHA or its successor agency under Public Law 103–354 prepared appraisal are:

(i) The expense of the appraisal will be paid by the transferee or transferor without obligation to FmHA or its successor agency under Public Law 103–354,

(ii) The appraisal will be prepared by an accredited Senior Real Property Appraiser (SRPA), Senior Real Estate Analyst (SREA) or Member, Appraisal Institute (MAI) real estate appraiser. The State Appraiser/Trainer may accept an appraisal report from other than an accredited SPRA, SREA or MAI appraiser if he or she determines that:

(A) There are no accredited appraisers within a reasonable distance from the project location, and

(B) The individual preparing the appraisal has satisfactorily completed a minimum of *80* hours of accredited appraisal courses.

(iii) The appraisal report form will be Form FmHA or its successor agency under Public Law 103–354 1922–7, ''Appraisal Report for Multi-Unit Housing,'' or the Federal Home Loan Mortgage Corporation form, FHLMC Form 71A, and it will include adequate documentation to support the appraised value and the qualifications of the appraiser.

(iv) The total FmHA or its successor agency under Public Law 103–354 debt will be assumed by the transferee.

(v) A review of the appraisal will be made by the State Appraiser/Trainer according to FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) using Form FmHA or its successor agency under Public Law 103–354 1922–13, ''Reviewer's Appraisal Analysis.''

(vi) The appraised value of the property is sufficient to secure the existing FmHA or its successor agency under Public Law 103–354 debt, planned subsequent FmHA or its successor agency under Public Law 103–354 loan(s), and any authorized junior liens.

(5) Form FmHA or its successor agency under Public Law 103–354 1965–9 will be executed according to the FMI when the full debt will be assumed at the

same rate and terms. The loan account(s) must be current at the time of the transfer and the reserve account on schedule, less any authorized withdrawals, if the transfer is to be at the same rate and terms.

(6) Form FmHA or its successor agency under Public Law 103–354 1965–9 will be executed according to the FMI when an account cannot be brought current at the time of transfer or less than the full debt is assumed. The loan repayment period may be extended to the maximum term authorized by the appropriate loan program, considering the value and economic life of the security. Transfers on new terms are also subject to the following conditions:

(i) The interest rate charged for all loans, except LH loans, will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA or its successor agency under Public Law 103–354 1944–51 is approved), whichever is less. The interest rate of LH loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farmworkers, and broadly-based nonprofit corporations for LH purposes may be at a one percent interest rate regardless of the rate specified in the note if the State Director determines that the reduction is necessary in order to maintain rental rates at a level affordable to the tenants. If the State Director determines that the transfer at one percent is necessary for other types of LH transferees, the case should be submitted to the National Office, with the State Director's recommendations and justifications for consideration.

(ii) Loans for RRH and RCH projects which are amortized on an annual payment basis and transferred through the use of Form FmHA or its successor agency under Public Law 103–354 1965–9 shall be converted to a monthly payment amortization and are subject to PASS.

(iii) LH loans may continue to be transferred on a DIAS basis or may be converted to PASS when the approval official determines such a conversion will not be detrimental to the successful operation of the project.

(7) The following paragraph is to be inserted in Form FmHA or its successor agency under Public Law 103–354 1965–9 whenever the full amount of equity has not been paid in cash or through an equity loan made by FmHA or its successor agency under Public Law 103–354 to avert prepayment:

The assuming party covenants and agrees that irrespective of any other agreement to the contrary, (a) no present or future lien(s) have or will be attached to the partnership property encumbered by FmHA or its successor agency under Public Law 103–354 or the income therefrom, (b) the equity payable to the seller will be provided from outside sources or from any authorized return on investment and not from a planned sale of the project, (c) the right of FmHA or its successor agency under Public Law 103–354 to approve or disapprove the substitution of partners in a general or limited partnership transferee organization (this phrase may be stricken when the transferee is an individual) has not and will not be superseded by any agreement between the purchaser and seller that implies prior consent by FmHA or its successor agency under Public Law 103–354 on partner changes in the case of default, (d) the seller does not and will not have a reversionary interest in the FmHA or its successor agency under Public Law 103–354 encumbered property, and (e) the requirements of §1965.65 of FmHA or its successor agency under Public Law 103–354 Instruction 1965–B (7 CFR part 1965) have been met.

(8) All RRH, RCH, and LH loans, including those approved prior to December 21, 1979, which are transferred to eligible applicants will become subject to the restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate exhibits A–1 or A–2 in accordance with §§1965.214(g) and 1965.216(c)(3) of subpart E of this part must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/resolution. The restrictive-use period will begin on the date the transfer and assumption is closed.

(9) When the transfer docket forms are completed, the approval official must determine that:

(i) The proposed transfer conforms to the applicable procedural requirements and that determinations of hardship status, eligibility, etc., are clearly documented in the casefile.

(ii) Each form is prepared correctly according to the FMI or other appropriate regulations, and

(iii) Items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which those items appear.

(10) The District Director will record in the Running Case Record or in memo form, the pertinent information concerning the negotiations made between an eligible transferee, FmHA or its successor agency under Public Law 103–354 personnel, the applicant's creditors, and other lenders concerning the availability of other credit. The investigation on the availability of other credit for eligible transferees will be documented in the case file as required for the kind of loan being assumed. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain credit elsewhere on rates and terms that would not cause rental rates to be in excess of what low and moderate income tenants could afford will be included in the docket.

(11) A compliance review should be conducted as required by subpart E of part 1901 of this chapter, if a current one has not recently been completed.

(12) The District Director will forward the transferee's application docket and the official case file, with any comments and recommendations to the State Office. The following table will be used as a guide in distributing the necessary forms for a transfer docket:

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
**SF 424.2*	Application for Federal Assistance (For Construction)	3	1	2–O&1C	1–O.
**HUD Form 2530/FmHA or its successor agency under Public Law 103–354.*	Previous Participation Certification	2	1	2–O&1C	1–C.
1944–37	*Information to be Submitted with Preapplication for Loan as required by program regulations specifically related to applicant eligibility.	2	0	1–O	1–C.
	*Letter of Application with applicable attachments as required in Subpart G of Part 1822 of this chapter or of Subpart D or E of Part 1944 of this chapter.	2	1	1–O	
	**Evidence of Legal Authority (Copies of citation of specific provisions of State Constitution, statutory authority, etc.).	2	1	1–O	1–C.
	**Proof of Organization (certified copy of Charter, Articles of Incorporation, or Certificate of Limited Partnership, etc.).	2	1	1–O	1–C.
	**Certified copies of bylaws, partnership agreement, or regulations.	2	1	1–O	1–C.
	**List of names, addresses and social security or Tax Identification Numbers of officers, directors, and members, and ownership interest held by each.	2	1	1–O	1–C.
	A current financial statement from the transferee, and others, as required by appropriate program regulations.	2	1	1–O	1–C.
	*Credit Report(s)				
FmHA or its successor agency under Public Law 103–354 465–5.	Transfer of Real Estate Security[2]	3	1–O	1–O	1–C.
**FmHA or its successor agency under Public Law 103–354 1930–7.*	Statement of Budget and Cash Flow (Excluding Depreciation) (Operating Budget—first year) (Operating Budget—typical year).	2	2–O&1C	1–O	1–C.
*Exhibit A–6 to Instruction 1944–E.	Housing Allowances for utilities and Other Public Services.	3	2–O&1C	1–O	1–C.
HUD 935.2	Affirmative Fair Housing Marketing Plan	2	2–O&1C	1–O	1–C.
**FmHA or its successor agency under Public Law 103–354 400–1.*	Equal Opportunity Agreement	2	2–O&1C	1–O	1–C.
**FmHA or its successor agency under Public Law 103–354 400–4.*	Assurance Agreement	2	2–O&1C	2–O&C	1–C.
FmHA or its successor agency under Public Law 103–354 1944–50.	Multiple Family Housing Borrower/Project Characteristics.	3		1	

FmHA or its successor agency under Public Law 103–354 1944–51.	Multiple Family Housing Obligation/Fund Analysis	3	2–O&1C	1–O	1–C.
FmHA or its successor agency under Public Law 103–354 451–26.	Transaction Record (most recent)	1		1	
**FmHA or its successor agency under Public Law 103–354 451–10.*	Request for Statement of Account	2		2–O&C	
**FmHA or its successor agency under Public Law 103–354 451–11.*	Statement of Account	1		1	
**FmHA or its successor agency under Public Law 103–354 451–25.*	Status of Account	1		1	
**FmHA or its successor agency under Public Law 103–354 1922–7.*	Appraisal Report for Multi-Unit Housing (see paragraph (f)(4) of this section.	1		1–O	
**FmHA or its successor agency under Public Law 103–354 1922–13.*	Reviewer's Appraisal Analysis				
**FmHA or its successor agency under Public Law 103–354 1922–8.*	Uniform Residential Appraisal Report	1		1–0	
**FmHA or its successor agency under Public Law 103–354 426–1.*	Valuation of Buildings	1		1–O	
**FmHA or its successor agency under Public Law 103–354 424–1.*	Development Plan	2	1–O	2–O&C	1–C.
**FmHA or its successor agency under Public Law 103–354 1965–9.*	Multiple Family Housing Assumption Agreement	4	1–O	1–O	1–O.
**FmHA or its successor agency under Public Law 103–354 1965–10.*	Information on Assumption of Multiple Family Housing Loans.	2	1	1–O	.
**FmHA or its successor agency under Public Law 103–354 1965–18.*	Multiple Family Housing Release from Personal Liability.	2		1–C	1–C.
**FmHA or its successor agency under Public Law 103–354 440–9.*	Supplementary Payment Agreement[1]	3	1–O	2–O&C	1–C.
**FmHA or its successor agency under Public Law 103–354 1944–7.*	Interest Credit and Rental Assistance Agreement (RRH and RCH loans).[1]	3	1–O	1–O	1–C.
**FmHA or its successor agency under Public Law 103–354 1944–27.*	Rental Assistance Agreement	2	1–O	1–O	1–C.

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
	*Loan Agreement	2	1–O	1–O	1–C.

O—Original; C—Copy.
*—When applicable.
**—When applicable is an organization.

[1]—The original Form will not be executed until date of closing the transfer.
[2]—When requested, prepare an additional copy for delivery to transferor.
[3]—Applicant must sign and date this form unless a similar certification is obtained on the application form. For ineligible transferees, delete the first sentence referring to other credit in item 42 of the form. The applicant must initial each deletion.

Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property, purchase contract or other instrument of ownership, assignment of HUD Section 8 Housing Assistance Payments contract, and information on prior or junior mortgage(s). When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making instruction. (Subsequent loans will not be made to pay equity unless authorized in accordance with subpart E of this part to avert prepayment.)

(13) The following additional information is required for an equity loan to a nonprofit organization in conjunction with the transfer:

(i) Identity of Interest statement between transferor and transferee,

(ii) Statement of experience of organization and all principals,

(iii) Management Plan and Agreement in accordance with exhibit B of subpart C of part 1930 of this chapter,

(iv) Proposed Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with exhibit B of subpart C of part 1930 of this chapter.

(v) Option or purchase agreement,

(vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(vii) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants based on the proposed budget.

(viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined,

(ix) A breakdown of packaging and administration costs to be paid with any advance to nonprofit organizations or public agencies purchasing a project to avert prepayment, if an advance has not previously been applied for.

(x) If needed, a request for initial operating funds and a detailed breakdown of expenses anticipated to be paid from the funds, and

(xi) District Office comments and recommendations and the State Office evaluation.

(14) If the transfer is within the State Director's loan approval authority, the docket will be forwarded to OGC for review and necessary closing instructions. If the transfer is not within the State Director's loan approval authority, or all planned development is not complete; the complete transfer docket, borrower case file, OGC comments, and complete comments and recommendations of both the District and State Director will be forwarded to the National Office for review and approval authorization.

(15) During the period that a transfer is pending in the District Office, payments received by the Finance Office will continue to be applied to the transferor's account. Those payments include any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. Any payment on the account not included in the latest transaction record will be deducted from the total amount of principal and interest calculated from the latest information available before the assumption agreement is completed and signed.

(i) *Identification.* Payments received on the date of transfer will be remitted as Regular payments on Form FmHA or its successor agency under Public Law 103–354 1951–55 ''Collection Log.'' The payments will be credited to the transferor's borrower and project number when the payment should be credited prior to the transfer. The payments will be credited to the transferee's borrower and project number when the payment should be credited after the transfer.

(ii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should if possible, be collected at the time of transfer and remitted in the transferee's name.

(g) *Closing transfer cases.* (1) Title clearance and legal services, including OGC closing instructions, will be obtained according to subpart B of part 1927 of this chapter.

(2) The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer. A profit or limited profit organization transferee may use any designated attorney or title insurance company to close the transfer according to the applicable closing instructions. The attorney or the title insurance company and their principals or employees must not be members, officers, directors, trustees, stockholders or partners of the transferee or transferor entity. Nonprofit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and is earned.

(3) The transferee will obtain fire and extended coverage insurance, and flood insurance when required, according to the appropriate program requirements for the outstanding loan(s) involved, unless the State Director requires additional insurance as a condition of approval after evaluating the potential for loss due to special hazards associated with the project. When insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the FmHA or its successor agency under Public Law 103–354 debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(4) The proper type of loan agreement or resolution for type of transferee involved must be in effect at the time of the transfer. If changes are needed in the existing loan agreement or resolution cited in the mortgage, the changes should be made by amending the existing loan agreement or resolution after obtaining the advice of OGC.

(5) The restrictive language contained in §1944.176(d)(1) of subpart D of part 1944 of this chapter and §1944.236(b)(1) of subpart E of part 1944 of this chapter must be inserted in the deed of conveyance or other instruments as required by OGC for RRH, RCH, and LH loans.

(6) At a time no later than the transfer closing, the transferee will be provided copies of the security instruments (promissory note, mortgage or deed of trust, rental assistance agreement, loan agreement of resolution, etc.) which were executed by the transferor or previous borrower to originally secure the loan being assumed.

(7) A servicing visit should be scheduled within 90 days of closing to verify the transferee's compliance with program requirements.

(h) *Transfer not completed*. If for any reason a transfer will not be completed after approval, the District Director will immediately notify the State Director.

[49 FR 49587, Dec. 21, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1965.65, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§§ 1965.66–1965.67 [Reserved]

§ 1965.68 Consolidation.

General. Loans and/or loan agreements/resolutions may be consolidated to reduce the administrative burden (recordkeeping, budgeting, etc.), to improve the cost effectiveness and efficiencies of project operations, and/or to effectively utilize the physical facilities common to projects. State Directors may approve the consolidations with the advice of OGC and when the following conditions are met:

(a) *Consolidation of loans*.

(1) The loans are being transferred under §1965.65(f)(6) of this subpart on new terms to the transferee, OR.

(2) An initial and subsequent loan(s) under one project number were closed on the same date at the same rates and terms, i.e., same interest rate and final due date.

(3) The promissory notes and the loan agreements/resolutions will be consolidated.

(4) The conditions for consolidation of loan agreements/resolutions must be met.

(5) The total indebtedness (principal plus accrued interest, overage and late fees) of all loans being consolidated does not exceed the State Director's approval authority.

(6) If consolidation of loans is not possible on the Amortization Effective

Date (AED) for the loans, consolidation should occur as soon as possible after the AED is established.

(b) *Processing consolidation of loans.* (1) Form FmHA or its successor agency under Public Law 103–354 1944–52, ''Multiple Family Housing Promissory Note,'' will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form FmHA or its successor agency under Public Law 103–354 1944–52 is processed, or as soon as possible thereafter. Promissory notes should be prepared on a monthly payment basis, as appropriate.

(2) A new Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Interest Credit and Rental Assistance Agreement,'' will be prepared and signed by the borrower for the new consolidated promissory note and distributed according to the FMI. The Interest Credit Plan originally established for the project will apply to the consolidated note. If the Interest Credit Plan is changed with the new Form FmHA or its successor agency under Public Law 103–354 1944–7, the District Office will enter the new plan for the project through their field office terminal.

(3) Form FmHA or its successor agency under Public Law 103–354 1965–17, ''Multiple Family Housing Note Consolidation,'' will be completed to show all of the notes which have been consolidated in the new Form FmHA or its successor agency under Public Law 103–354 1944–52. A copy of the completed Form FmHA or its successor agency under Public Law 103–354 1965–17 will be sent to the Finance Office for processing. The AMAS M5A screen for the project should be reviewed by the District Office and updated, as appropriate, when submitting Form FmHA or its successor agency under Public Law 103–354 1965–17 for processing.

(4) The original and District Office copies of all notes or assumption agreements that are consolidated will be stamped ''consolidated,'' by the District Office. The original instruments being consolidated will be stapled to the ''consolidated'' note and filed in the safe in the District Office. When the consolidated note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of §1951.15 of subpart A of part 1951.

(5) A consolidated loan agreement or resolution using Forms FmHA or its successor agency under Public Law 103–354 1944–33A, ''Consolidated Loan Agreement RRH Insured Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis,'' FmHA or its successor agency under Public Law 103–354 1944–34A, ''Consolidated RRH Loan Agreement To a Partnership Operating on a Profit Basis, To a Limited Partnership Operating on a Profit Basis, To a Partnership Operating on a Limited Profit Basis, To a Limited Partnership Operating on a Limited Profit Basis,'' or FmHA or its successor agency under Public Law 103–354 1944–35A, ''Consolidated Loan Resolution RRH Loan to a Broadly Based Nonprofit Corporation, RRH Loan to a Profit Type Corporation, RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis,'' as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(6) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory notes be consolidated if the security position of FmHA or its successor agency under Public Law 103–354 will be adversely affected.

(7) New security instruments which describe the consolidated note will be filed to perfect the FmHA or its successor agency under Public Law 103–354 lien position. If the new lien position taken is junior only to the previous lien position securing the loans being

consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(c) *Consolidation of loan agreements/resolutions (project consolidation).* (1) The security for the loans must be on the total project, ''project'' being defined per subpart C of part 1930 of this chapter.

(2) The State Director may approve the consolidation of loan agreements/resolutions irrespective of the total indebtedness represented by all loan agreements/resolutions being consolidated.

(3) The loan agreements being consolidated are for loans made for the same purpose (for example, loans specifically made for senior citizen projects cannot be consolidated with loans for family projects, unless the consolidated project is redesignated ''mixed'' and the units previously designated ''senior citizen'' are restricted to tenants meeting the requirements for ''senior citizen'' as specified in exhibit B of subpart C of part 1930 of this chapter), to the same borrower entity and have the same plan of operation (nonprofit, limited profit or full profit), and are operating under the same type of Interest Credit, if applicable.

(4) The requirements of subpart C of part 1930 of this chapter concerning reporting, accounting and project management will be fulfilled as a single project.

(5) All project accounts being consolidated must be current after the consolidation processes, unless authorized by the National Office.

(6) RA agreements will not be consolidated; each RA agreement will be tracked under a separate RA number through AMAS. The RA can be assigned to eligible tenants in the new ''project'' per assignment priorities. The waiting list(s) for the projects being consolidated will be combined.

(7) For consolidation of loan agreements/resolutions of loans in which no loan to build or acquire new units was made on or after December 15, 1989, the restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in exhibit A–1 of subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/ resolution and security instruments as a condition of FmHA or its successor agency under Public Law 103–354 approval of the action. The restrictive-use period will begin on the date the consolidation is effective.

(8) For consolidation of loan agreements/resolutions of loans for which a loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

(d) *Processing loan agreement/resolution consolidations.* (1) Form FmHA or its successor agency under Public Law 103–354 1965–17A will be completed to show all of the notes for the projects being consolidated. The AMAS M5A screen for all projects should be reviewed and updated before submitting Form FmHA or its successor agency under Public Law 103–354 1965–17A.

(2) A consolidated loan agreement or resolution using Form FmHA or its successor agency under Public Law 103–354 1944–33A, 1944–34A, or 1944–35A, as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(3) Consolidation of projects will only be accomplished with the guidance and assistance of OGC. Under no circumstances will projects be consolidated if the security position of FmHA or its successor agency under Public Law 103–354 will be adversely affected.

(4) All of the general requirements of paragraph (c) of this section must be met.

(5) Neither the terms nor the due date of the loan(s) involved are altered, and other security instruments remain unchanged, and are not released.

(6) All of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects if required by OGC.

[56 FR 25351, June 4, 1991, as amended at 56 FR 66964, Dec. 27, 1991; 58 FR 38930, July 21, 1993; 62 FR 25070, May 7, 1997]

§ 1965.69 [Reserved]

§ 1965.70 Reamortization.

(a) *General.* State Directors may approve the reamortization of RRH, RCH, and LH loan accounts within their approval authority for the type of loan involved. RHS loans will not be reamortized and will be serviced according to program requirements. If an RHS loan becomes seriously delinquent and efforts to sell the lots are not successful, the account will be liquidated according to subpart A of part 1955 of this chapter. The reamortization of an account will make the borrower subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of this part.

(b) *Conditions for reamortization.* The conditions under which a reamortization will be considered are:

(1) The borrower has made extra payments and/or refunds totaling 10 percent or more of the original loan amounts being reamortized (from sources other than the sale of units within the LH, RRH, or RCH project), and the State Director determines that the borrower and the tenants cannot reasonably be expected to meet their obligations unless the account is reamortized to reduce substantially the FmHA or its successor agency under Public Law 103–354 installments and rental rates; or,

(2) The borrower has a substantial delinquency which was caused by circumstances beyond the ultimate control of the borrower that cannot be cured within one year, and the borrower has acted in good faith and has complied with all applicable FmHA or its successor agency under Public Law 103–354 procedures and policies governing the particular program under which the loan is made; or

(3) The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment; or

(4) And, all of the following conditions exist and are adequately documented in the official case file and on Form FmHA or its successor agency under Public Law 103–354 1951–33, ''Reamortization Request,'' as appropriate:

(i) The reamortization will not operate to the financial detriment of the FmHA or its successor agency under Public Law 103–354 or impair the security rights of the FmHA or its successor agency under Public Law 103–354.

(ii) The budget or plan of operations for the borrower provides reasonable assurance that the newly scheduled payments will be made according to the terms of the proposed reamortization, and that the charges for the use of the facility or service are within the payment ability of those it is intended to serve and are comparable to other similar units in the area; and, the rent increase procedures set forth in exhibit C of subpart C of part 1930 of this chapter will be followed if any increase in rental rates is required.

(iii) The Board of Directors and membership will retain, or have definite plans for obtaining, membership and community support; and, will provide competent management for the continued operation of the borrower entity and the facility financed with the loan.

(iv) The State Director believes that reamortization will enable the borrower to operate successfully and carry out the purpose of the loan.

(v) The FmHA or its successor agency under Public Law 103–354 lien position remains unchanged.

(vi) The approval official must be satisfied that the security (including the potential income for debt service) will be adequate to protect the FmHA or its successor agency under Public Law 103–354's interests over the term of the reamortization. An appraisal as required by FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) must be made and must reflect that the security is adequate for the principal and interest being reamortized when the reamortization will extend the term of the repayment period more than 5 years.

(vii) The borrower has corrected any management deficiencies which may have contributed to the borrower's previous inability to generate sufficient income to bring or keep the account

current. Such actions may include revision of the management plan or employment of professional management services.

(viii) All MFH loans being reamortized must be closed on PASS, except LH loans specified in §1951.501(a)(2)(i) of subpart K of part 1951 of this chapter. All initial and subsequent loans must convert to PASS in connection with the reamortization.

(ix) When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage and late fees) is reamortized.

(x) Audit receivables may not be reamortized.

(c) *Submission to National Office*. When the unpaid indebtedness of the borrower's account(s) to be reamortized exceeds the State Director's approval authority and the State Director determines that the conditions of paragraph (b) of this section can be met, the request for reamortization, official case file and all other pertinent information, along with complete comments and recommendations by both the State and District Directors, will be sent to the National Office. The State Director shall submit all subsequent reamortization requests for the same project to the National Office for prior authorization.

(d) *Processing reamortizations*. To reamortize the account, the following actions will be taken:

(1) Form FmHA or its successor agency under Public Law 103–354 1965–16, ''Multiple Family Housing Reamortization Agreement,'' will be completed according to the FMI. The effective date and the due date for all payments will be the first of the month, except for LH loans whose due date will be established in accordance with the FMI.

(2) If the note or assumption agreement being reamortized is not held in the District Office, the District Director will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original of the note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: ''A reamortization agreement dated _____ 19__, in the principal sum of $_____, has been given to modify the payment schedule of the note.''

(4) The end of the amortization period will be the final due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC (and it is permissible according to State and local Statutes), and the FmHA or its successor agency under Public Law 103–354 lien position is not altered. (Any extension of the final due date will not exceed the lesser of the remaining useful life of the security property or the maximum term authorized by the respective loan program authorizations.)

(5) The interest rate for the account will be unchanged except when the final due date has been extended. The interest rate charged will be the rate at the time the Reamortization Request (Form FmHA or its successor agency under Public Law 103–354 1951–33) is approved, or the current interest rate at closing, whichever is less.

(6) The reamortization will be processed with the guidance of OGC.

(7) If the borrower is to receive interest credit benefits following the reamortization of the account, the current interest credit agreement will be cancelled and a new Form FmHA or its successor agency under Public Law 103–354 1944–7 will be prepared and attached to Form FmHA or its successor agency under Public Law 103–354 1965–16 for submission to the Finance Office.

(8) The prepayment restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in exhibit A–1 of subpart E of this part for RRH, RCH or LH loans will be added with the advice of OGC, to the loan agreement/ resolution and security instruments, as a condition of FmHA or its successor agency under Public Law 103–354 approval of the action. The restrictive-use period will begin on the date the amortization agreement is effective.

(9) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 8605, Mar. 4, 1985; 52 FR 24288, June 30, 1987; 55 FR 25081, June 20, 1990; 56 FR 25352, June 4, 1991; 56 FR 66964, Dec. 27, 1991; 58 FR 38930, July 21, 1993]

§ 1965.71 [Reserved]

§ 1965.72 Deceased borrower.

Deceased borrower cases will be handled according to the policy outlined in § 1962.46 of subpart A of part 1962 of this chapter except that all references to the County Supervisor are now construed to mean the District Director. The advice of OGC will be obtained as necessary.

§ 1965.73 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled according to the policy outlined in § 1962.47 of subpart A of part 1962 of this chapter except that all references to the County Supervisor now mean District Director. The handling of bankruptcy cases varies from state to state. Therefore, the State Director may issue State Supplements providing more specific guidance to expedite the handling of those cases. The advice of OGC will be obtained as necessary.

§ 1965.74 Divorce actions.

When individual borrowers with loans are involved in a divorce action, the District Director will review the case after the final divorce decree has been granted to determine if any action is needed for the future servicing of the account. The District Office file will be submitted to the State Director for advice if the District Director is uncertain of the servicing actions needed to protect the FmHA or its successor agency under Public Law 103–354's interest or if continuation of the loan with the remaining borrower is not authorized. No subsequent loan will be made to pay any equity as a result of a divorce action.

§ 1965.75 Abandonment.

When the District Director believes that the borrower has abandoned a project, an immediate check with the appropriate sources (for example: tenants, management agents, assessor's office, etc.) will be made to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken.

(a) A property is considered abandoned when any or all of the following conditions exist:

(1) The borrower cannot be located after the District Director has made diligent efforts to contact the borrower. This condition also applies to those instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or cannot be located.

(2) The project remains unoccupied for an extended period of time and the borrower makes no effort to maintain the security property, secure eligible occupants, and/or comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance.

(b) If the property is not being maintained and the District Director determines that the borrower has abandoned the project, the District Director will attempt to contact any prior lienholders with a request that they take control of the property and make any emergency repairs necessary. If no prior lienholder is involved or the prior lienholder cannot immediately be contacted or refuses to make the emergency repair, the District Director will immediately notify the State Director and request permission to take possession of the property pending liquidation, make emergency repairs to prevent further deterioration of the security, and to enter into a lease with the individual tenants, or a management or caretaker's agreement, on behalf of the borrower.

(c) A caretaker or management agent will normally be obtained when the borrower has abandoned the security property or has failed to maintain its operation and the State Director determines, with the advice of OGC, that the FmHA or its successor agency under Public Law 103–354 should take possession of the property to best protect the interest of the Government subject to the following:

(1) *Selection of a caretaker or management agent.* Persons or firms chosen as caretakers or management agents should have experience in operating and managing similar properties or have business background or experience which qualifies them to perform the needed services. They must be located near the property to provide day-to-day supervision or appoint a qualified local person to meet this requirement. Caretakers will normally be selected for unoccupied projects or those not suitable for occupancy. Management agents will only be selected for projects which are occupied or suitable for occupancy. Selection procedures will be in accordance with § 1955.63(a) of subpart B of part 1955 of this chapter, and will be appropriately documented. (No other actions specified in subpart B of part 1955 may be implemented until such time as liquidation action has been approved in writing by the appropriate FmHA or its successor agency under Public Law 103–354 official.)

(2) *Fees.* The amount of the management agent or caretaker fee should be no more than the typical rate for similar services in the area. The amount may be based on a percentage of the income from the property or a flat fee amount. The fees will be considered a recoverable cost and charged to the borrower's account. The fees will be paid on a monthly basis in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(3) *Rental rates for abandoned projects.* Rental rates will normally remain the same for eligible occupants as when the project was under the control of the borrower. Rental rates may be revised with the approval of the State Director under the following conditions:

(i) The lease agreement between the borrower and tenant permits changing the rates.

(ii) A change of rates is needed to provide income sufficient to pay operational and maintenance expenses, including the caretaker's fee, and to repay the loan on schedule.

(iii) Any increase will not result in rental rates above the payment ability of eligible occupants, unless the State Director has given the authority to rent units to ineligible occupants.

(d) All these actions shall be fully documented in the official case file. Liquidation will immediately be instituted according to subpart A of part 1955 of this chapter.

(e) When the project is occupied but rent is not paid or collected, the eligibility of the occupants cannot be determined, and the borrower has failed to comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance, the State Director should refer the case to the Regional Attorney for guidance, including the possibility of having a receiver appointed.

[49 FR 49590, Dec. 21, 1984, as amended at 57 FR 36592, Aug. 14, 1992]

§ 1965.76 [Reserved]

§ 1965.77 Consent to sale or other disposition of security property.

(a) *General policies.* The State Director may approve requests for and consent to:

(1) Use of proceeds from the sale of a portion of or an interest in the security,

(2) Exchange of all or a part of the undeveloped security for other real estate, or

(3) Granting or conveyance of rights-of-way subject to the conditions and requirements of this section.

(b) *Processing requests.* These requests will be made on Form FmHA or its successor agency under Public Law 103–354 465–1. The District Director will forward a properly completed and executed Form FmHA or its successor agency under Public Law 103–354 465–1, the proposed deed, easement, or other form of title conveyance, and the case file to the State Director with a memorandum containing additional information, as needed, to justify the approval or disapproval of the proposed transaction.

(c) *Conditions of approval.* The State Director may grant consent provided:

(1) The orderly payment of the FmHA or its successor agency under Public Law 103–354 indebtedness will not be impaired. Except that in condemnation

case, after the final judgment or award has been granted and is not appealed, the necessary adjustments in project operation will be approved to comply with the court order.

(2) The transaction will not interfere with the successful operation of the multiple housing project or prevent the borrower from carrying out the purpose for which the loan was made. This requirement will not apply in the case of a condemnation action in which a final judgment or award has been made and is not appealed.

(3) The sale of individual units or developed portions of an RRH, RCH or LH project shall require the prior concurrence and authorization of the National Office.

(4) If property to be sold or exchanged is to be used for the same or similar purpose for which the FmHA or its successor agency under Public Law 103–354 loan or grant was made, the purchaser shall execute Form FmHA or its successor agency under Public Law 103–354 400–4. The agreement will remain in effect as long as the property continues to be used for the same or similar purpose for which the FmHA or its successor agency under Public Law 103–354 loan or grant was made.

(5) The consideration is at least equal to the market value of the security property disposed of or the rights being granted. However, right-of-way easements may be granted or conveyed without consideration or with only the minimal consideration being offered if the approval official determines: the value of the security property will not be reduced; its suitability for the intended purpose will not be impaired; and the easement is granted for the borrower to develop additional lots or units which will be integrated into the project or to a public body for enhancement of streets or utilities benefitting the project.

(i) An FmHA or its successor agency under Public Law 103–354 official authorized to appraise multi-unit housing properties shall either make a new appraisal as required by FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) if the current appraisal is more than one year old, or supplement the present appraisal report by inserting in or attaching to the ''Remarks'' section, information as to the market value of the security disposed; or

(ii) The approval official may also accept a value determination for such easements which has been provided by other competent sources at no cost to the Government which is mutually acceptable to the borrower and FmHA or its successor agency under Public Law 103–354;

(iii) However, if the proceeds are to be used for development or enlargement, a new appraisal reflecting the market value of the security property as improved or enlarged will be made in all cases.

(iv) The State Director may request an appraisal for any transaction under this section involving security property whenever necessary.

(6) The remaining property is adequate security for the unpaid balance of the FmHA or its successor agency under Public Law 103–354 loan, or the transaction will not adversely affect FmHA or its successor agency under Public Law 103–354's security position or interfere with the successful operation of the security property.

(7) The proceeds from the disposition of the security are used for one or more of the following purposes:

(i) To pay the customary incidental closing costs such as title and recording fees appropriate to the transaction, including additional real estate tax the borrower is required to pay for the year for which arrangements to pay cannot otherwise be made.

(ii) To pay debts owed to any prior lienholders.

(iii) To make extra payments on the FmHA or its successor agency under Public Law 103–354 loan.

(iv) To pay costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber where the necessary appraisal cannot be obtained without costs.

(v) To pay real estate brokers' commission if a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained had the sale been made without

the assistance of the real estate broker.

(vi) To develop or enlarge the borrower's facility for purposes for which a loan of the same type involved could be made, if the development or enlargement is necessary to improve the borrower's debt-paying ability, place the operation on a more sound basis, or otherwise further the objectives of the FmHA or its successor agency under Public Law 103–354 loan. Any proposed development will be planned and performed according to subpart A of part 1924 of this chapter and funds to be used for development or enlargement will be handled according to subpart A of part 1902 of this chapter.

(vii) To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the FmHA or its successor agency under Public Law 103–354 debt will be as well secured after the transaction as before. FmHA or its successor agency under Public Law 103–354 will obtain a lien on the acquired property, and will obtain title evidence according to subpart B of part 1927 of this chapter.

(viii) To pay any additional income tax which the borrower must pay for the year because of the capital gain or royalty tax attributable to the transactions. Funds for back taxes must be estimated and held in a supervised bank account until actual payment of the tax.

(8) FmHA or its successor agency under Public Law 103–354 liens are not released until receipt of the appropriate sales proceeds for application on the Government's claim.

(d) *Releasing security*. Security for FmHA or its successor agency under Public Law 103–354 loans addressed in this subpart will be released according to applicable program regulations and as follows:

(1) Borrowers will be held strictly accountable to the FmHA or its successor agency under Public Law 103–354 for all proceeds derived from the sale of mortgaged property which the FmHA or its successor agency under Public Law 103–354 is entitled to receive under its lien.

(2) Consent to disposition of part, or an interest in, security property as authorized in this subpart may be given by approving a completed Form FmHA or its successor agency under Public Law 103–354 465–1 or other forms approved by OGC or prescribed in State Supplements. Upon request for consent, the District Director will forward Form FmHA or its successor agency under Public Law 103–354 465–1, the borrower's case folder, and any other pertinent information to the State Director.

(i) Chattel security may be released from a chattel mortgage by use of Form FmHA or its successor agency under Public Law 103–354 460–1, ''Partial Release,'' or other approved form, and from a security interest under the Uniform Commercial Code by use of Form FmHA or its successor agency under Public Law 103–354 462–12, ''Statements of Continuation, Partial Release, Assignment, Etc.'' Satisfaction or termination of chattel security instruments will be accomplished following the guidance of subpart A of part 1962 of this chapter.

(ii) Real estate security may be released by use of Form FmHA or its successor agency under Public Law 103–354 460–1 or other form approved by OGC. Satisfaction or termination of real estate security instruments when the FmHA or its successor agency under Public Law 103–354 debt has been paid in full or satisfied by debt settlement action will be accomplished with the use of Form FmHA or its successor agency under Public Law 103–354 460–4, ''Satisfaction.''

(iii) Any consent which would result in the FmHA or its successor agency under Public Law 103–354 loan account being paid in full will be subject to the prepayment provisions of § 1965.90 of this subpart and subpart E of this part as applied to RRH, RCH, and LH loans.

[49 FR 49590, Dec. 21, 1984, as amended at 56 FR 67484, Dec. 31, 1991; 58 FR 38930, July 21, 1993]

§ 1965.78 [Reserved]

§ 1965.79 Subordination.

(a) *General policies*. The State Director is authorized to approve requests for subordination of LH, RRH or RCH loans according to this section, if the total debt against the security after the transaction does not exceed the

State Director's loan approval authority for the type of loan involved. Subordination by the State Director will only be considered for individual LH borrowers on farm tracts, multiple housing loans on nonfarm tracts to obtain construction financing, and in those cases where FmHA or its successor agency under Public Law 103–354 loan funds are unavailable or the funds can be provided from the private sector at competitive or less costly rates than those offered by FmHA or its successor agency under Public Law 103–354. All other subordination requests, and those exceeding the State Director's approval authority limit must be submitted to the National Office for prior authorization to approve. Each request for subordination will be made on Form FmHA or its successor agency under Public Law 103–354 465–1. The District Director will forward a properly completed and executed copy of the form to the State Director with a memorandum containing any needed information to justify approval or disapproval of the request.

(b) *Conditions of approval.* Subordination of the FmHA or its successor agency under Public Law 103–354 lien will only be authorized when it will enable the present borrower to permit another creditor to refinance, extend, reamortize, or increase the amount of a prior lien, or place a lien ahead of the FmHA or its successor agency under Public Law 103–354 lien. When the prior lien is being increased by an amount which exceeds normal transaction costs or a new prior lien is being placed against the security, an FmHA or its successor agency under Public Law 103–354 official authorized to make appraisals for the type of project involved will supplement the present appraisal report by inserting in the ''Remarks'' section information as to the market value of the security after the transaction if the appraisal is less than one year old. If the appraisal is more than one year old, a new appraisal as required by FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) must be completed. The State Director may also request an appraisal at any time deemed appropriate. In all cases, the following conditions must be met:

(1) The FmHA or its successor agency under Public Law 103–354 multiple housing account must be current and the borrower must be capable of providing adequate management.

(2) The transaction must further the objectives for which the FmHA or its successor agency under Public Law 103–354 loan or loans were made and FmHA or its successor agency under Public Law 103–354's debt must be adequately secured or will not be adversely affected.

(3) The proposed use of the funds will improve the borrower's ability to repay the FmHA or its successor agency under Public Law 103–354 loan(s) or is necessary to place the borrower's operation on a sound basis.

(4) The borrower is unable to refinance the FmHA or its successor agency under Public Law 103–354 loan on terms which can reasonably be expected to be met yet still meet the original intent of the program.

(5) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.

(6) The amount of the indebtedness against the security property, including the amount of the subordination, will not exceed its present market value.

(7) When an increase in the amount of the prior lien or a new prior lien is involved, subordination will be granted only when the funds will be used for the same purposes for which the loan of the same type is authorized; except, all LH loans on a farm tract may be subordinated for essential farm improvements and any other purpose for which an FmHA or its successor agency under Public Law 103–354 Farm Ownership loan can be made as described in § 1943.16 of subpart A of part 1943 of this chapter. LH loans will not be subordinated to provide operating capital or purchase chattels. If the LH loan is secured only by the LH units and the project site, the LH loan will only be subordinated for purposes for which an LH loan may be made.

(8) Any proposed development will be planned and performed according to subpart A of part 1924 of this chapter or

in a manner directed by the other creditor which reasonably attains the objectives of subpart A of part 1924 of this chapter and is concurred with by the State Director.

(9) Funds to be used for development or enlargement of farm operations will be handled as prescribed for loan funds in subpart A of part 1902 of this chapter except that, if the creditor will not permit the use of a supervised bank account, arrangements should be made to assure that funds will be spent for planned purposes and should be approved by the District Director before being released.

(10) In case of land purchase, FmHA or its successor agency under Public Law 103–354 will obtain the best lien obtainable on the land purchased.

(11) Subordinations need not cover the entire site. If a subordination is requested to permit an interim lender to advance construction funds, only the portion of the site scheduled for construction will be subordinated. If the entire farm tract has been taken as security for a LH loan, subordination of the lien on all property except the minimum adequate site, including necessary ingress and egress, on which the LH units are situated, may be authorized for any purpose consistent with the LH program regulations and paragraph (b)(7) of this subpart. For RHS loans, the prorated portion of the lien for the individual lots may be subordinated to permit construction of dwelling units utilizing conditional commitments as authorized in the RHS program regulations.

(12) All subordination requests will be forwarded to OGC for review. The guidance of OGC should be obtained in the preparation of the documents necessary to effect the subordination.

(13) The subordination is for a specific amount.

(14) The proposed action will not change the nature of the borrower's activities so as to make it ineligible for appropriate loan program assistance.

(15) The subordination must not adversely impact the agency's ability to service the loan according to program regulations, and has been determined to be within the bounds of good judgment considering the intent, funding limitations, and respective program authorities.

(16) An agreement to provide notice of foreclosure must be obtained from any new prior lienholder as required in subpart B of part 1927 of this chapter. As appropriate, any junior lienholders consent to the transaction and use of proceeds will be obtained prior to approval of the transaction.

[49 FR 49587, Dec. 21, 1984; 50 FR 21583, May 28, 1985, as amended at 56 FR 67484, Dec. 31, 1991]

§ 1965.80 [Reserved]

§ 1965.81 Severance agreements.

(a) *General policies.* Severance agreements or other instruments of similar effect under which a borrower may acquire through other credit, items such as laundry equipment, air conditioning units, and basic household furnishings that will not become part of real estate security, may be approved by the State Director, provided:

(1) The transaction will not adversely effect the FmHA or its successor agency under Public Law 103–354's security position and any additional obligations incurred will be within the borrower's repayment ability.

(2) The items covered by the severance agreement are needed in the successful operation of the security property.

(3) The financing arrangements are otherwise sound and proper.

(b) *Handling requests.* Requests will be made on Form FmHA or its successor agency under Public Law 103–354 465–1. The District Director will forward to the State Director a properly completed and executed Form FmHA or its successor agency under Public Law 103–354 465–1, any proposed severance agreement, the case file, and specific recommendations regarding the request.

(c) *Consent and approval.* The State Director will indicate approval or disapproval on Form FmHA or its successor agency under Public Law 103–354 465–1. The OGC will be requested to prepare or approve the form of severance agreement and issue any special instructions when necessary.

§ 1965.82 [Reserved]

§ 1965.83 Consent to junior liens.

(a) *General policies*. Borrowers will be strongly discouraged from giving junior liens to other creditors on the FmHA or its successor agency under Public Law 103–354 security property. Each request for consent to junior liens will be made on Form FmHA or its successor agency under Public Law 103–354 465-1.

(b) *Conditions of approval*. The State Director may approve a junior lien if the request for the lien is authorized prior to the lien being placed against the property under the following conditions:

(1) The junior lien will enable the borrower to obtain additional credit to make needed improvements or repairs on the security property for purposes for which a loan of the same type involved could be made and funds in the reserve account have been depleted. Except, zero interest loans available from other Federal, State or local agencies, authorities, or commissions; and those from utility companies regulated by such governmental bodies, may be secured by a junior lien when the State Director determines it is in the best interest of the FmHA or its successor agency under Public Law 103–354, borrower and tenants irrespective of the balance in the reserve account.

(2) The junior lien will improve the borrower's total financial condition or debt-paying ability as it relates to the multiple family housing project.

(3) The terms of the junior lien will not jeopardize the borrower's ability to repay the FmHA or its successor agency under Public Law 103–354 indebtedness and, in the case of RRH, RCH, and LH loans, will not result in increased rental rates for the project unless authorized according to exhibit C to subpart C of part 1930 of this chapter.

(4) The junior creditor agrees in writing that foreclosure action under their lien will not be initiated before holding a discussion with the District Director and after giving a reasonable period of notice to FmHA or its successor agency under Public Law 103–354, and any operating plans of the junior lien holder are consistent with FmHA or its successor agency under Public Law 103–354 requirements.

(5) Security for the junior lien must not include project income or revenue.

(6) No junior liens will be authorized in connection with a transfer of ownership.

(7) The total debt (including the outstanding FmHA or its successor agency under Public Law 103–354 loan balance) is within the State Director's approval authority.

(8) All other requests for consent to junior liens must be submitted to the National Office with complete comments and recommendations from both the District Director and State Director, and all of the borrower's case files. Such requests will be reviewed on a case-by-case basis and appropriate authorization given or withheld depending on the individual merits of the proposal and its compatibility with the respective loan program requirement.

(9) When a junior lien is placed on any property without the prior consent of FmHA or its successor agency under Public Law 103–354, the account will be serviced for liquidation with the guidance of OGC according to the security instruments. However, the State Director may request permission to post approve the junior lien by submitting a formal request to the National Office provided he/she determines that all other conditions set forth in this section are met.

§ 1965.84 [Reserved]

§ 1965.85 Default and liquidation.

(a) *General*. Liquidation will be recommended only after all efforts by FmHA or its successor agency under Public Law 103–354 officials have failed to effect a satisfactory solution whereby the borrower will comply with its obligations under the note, mortgage, loan agreements or resolution, and all related security agreements and other instruments. Liquidation, whether by voluntary conveyance or foreclosure, will be handled in strict accordance with the provisions of subpart A of part 1955 of this chapter. FmHA or its successor agency under Public Law 103–354 Form 1965–11, ''Accelerated Repayment Agreement,'' *will not* be used in lieu of foreclosure for RRH, LH, or RCH loans

unless specific prior written authorization is received from the National Office.

(b) *Servicing delinquent accounts.* Delinquent multiple housing accounts will be serviced according to the respective program requirements and the following:

(1) The District Director will service delinquent accounts with guidance and assistance as necessary from the State Director. Every delinquent borrower will be serviced according to a routine established for the particular loan type by the State Director. The following sequential steps should be taken for each delinquent account:

(i) Each quarterly delinquency Report Code 616 and 621 or other official FmHA or its successor agency under Public Law 103–354 Report will be reviewed for accuracy by the State Director. The following delinquency classification system for multi-housing accounts may be used. The District Director will classify each account on the Report Code 621, as follows:

D1—Delinquent; a servicing plan or action has not been formulated
D2—Audit trail has been completed to verify amount delinquent
D3—Agreement has been made with borrower to become current within a set period
D4—Transfer or substitution of membership interests is in process to correct the delinquency
D5—Reamortization is in process
D6—Account has been accelerated
D7—Borrower is in bankruptcy
D8—Voluntary conveyance is planned
D9—A subsequent loan is planned to correct delinquency
D10—Other (litigation, abandonment before action taken, etc.)
C1—Current (D/O records show the account current)
C2—Audit trail completed that shows D/O or F/O error (double maturities, misapplication, etc.) and action taken has been taken to correct the error
C3—Account paid current since latest Report Code 616 or 621
C4—Other
C5—Requesting an exception to the late fee charged to the account according to subpart K of part 1951 of this chapter, when appropriate.
X1—Property in inventory (from foreclosure, voluntary conveyance or bankruptcy)
X2—Credit Sale finalized
X3—Charge-off of account in process
X4—Transfer or reamortization closed; waiting for F/O to process
X5—Other

(ii) if the report is in error, the District Director will immediately contact the Finance Office and provide any information necessary to correct the report and/or remove the account from the delinquent status. These communications with the Finance Office should be directed to the Multiple-Family Housing unit. Before contacting the Finance Office, the District Director must complete a field audit of the account to be submitted with the inquiry.

(iii) If the report is accurate and a delinquency indeed exists, the District Director will immediately contact the borrower to determine the reason for the delinquency and will attempt to collect either in a lump sum or in additional monthly payments over a short period of time, usually not to exceed one year. This should include foregoing any cash return until the account is current.

(iv) Within 30 days of receipt of the quarterly delinquency report, the District Director will submit to the State Director a detailed report with specific comments and recommendations for servicing each delinquent account. This report will classify the accounts and indicate which accounts are actually delinquent. Emphasis will be placed on performing delinquency servicing actions to reduce true delinquencies. The State Director will assist the District Director in developing a realistic servicing plan for each delinquent account. The State Director will prepare a statewide delinquency reduction plan annually and update it quarterly based on the delinquency reports and information provided by the District Directors. Appropriate consideration should be given to reamortizing, transferring, conveying or foreclosing accounts recognizing the willingness of the borrower to cooperate and comply with FmHA or its successor agency under Public Law 103–354 requirements and to meet the purposes for which the loan was made. Consideration should also be given to:

(A) Adequate budgeting of project income and expenses.

(B) Improving management and outreach.

(C) Implementing interest credit and/or rental assistance if the borrower and project qualify.

(D) Participating in the HUD Section 8 program for existing housing through the local Public Housing Agency (PHA).

(E) Effecting a justified rent increase according to applicable program requirements.

(F) Obtaining an assignment of project income.

(2) District Directors should be firm in dealing with the borrower or the borrower's representative. However, the management agent is not the party ultimately responsible for the loan, and it is therefore imperative that the borrower fully understand the consequences of the default. Courtesy, cooperation and sound judgment must be involved. If the delinquent account cannot be brought current within a reasonable period, steps should be taken according to subpart A of part 1955 of this chapter to protect the Government's interest.

(c) *Failure to maintain reserves.* A borrower's failure to maintain adequate reserves should be treated in a manner similar to delinquent accounts. The District Director should carefully monitor the required transfers to the reserve account. Borrowers who fail to make the required transfers or use reserve funds without prior FmHA or its successor agency under Public Law 103–354 authorizations should be carefully counseled. Demand should be made upon borrowers misusing the reserve account to promptly correct any deficiency. As appropriate, the District Director may request assistance from the State Director. As necessary to protect the Government's interests, assistance from OGC should be requested through the State Office.

(d) *Nonmonetary defaults.* Attempts to resolve nonmonetary defaults should be handled whenever possible at the District Office level with appropriate guidance and assistance from the State Office. The State Director should counsel with OGC, to determine the appropriate servicing actions in those cases where nonmonetary defaults cannot be resolved at the District Office level. These actions may include liquidation of the account.

(e) *Liquidation.* Liquidation of all multiple-family type loans will be handled according to the applicable portions of subpart A of part 1955 of this chapter. In cases of forced liquidation where the acceleration notice has been delivered and the borrower has willfully failed to make the required loan payments, eligible tenants are not occupying the units and/or the borrower is not collecting the approved rents or transmitting the required payments to FmHA or its successor agency under Public Law 103–354, any outstanding interest credit agreement will be cancelled after the appeal period prescribed in subpart B of part 1900 of this chapter has expired. However, the rental assistance agreement will not be cancelled until the foreclosure action has been completed and the redemption period has expired according to paragraph XIV B 5 of exhibit E of subpart C of part 1930 of this chapter. In no cases will RA be renewed during the redemption period. In all liquidation cases, the State Director will be responsible for the final decision to liquidate the account based upon an opinion from the OGC and the following information supplied by the District Director:

(1) The specific recommendations of the District Director on the method of carrying out the liquidation,

(2) The case file and any other pertinent information developed in support of the accusations,

(3) A summary of FmHA or its successor agency under Public Law 103–354 efforts to work out an acceptable solution short of liquidation,

(4) A current appraisal of the security property as required by FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) will be completed by an FmHA or its successor agency under Public Law 103–354 official authorized to make that particular type of appraisal and an estimate of the net amount that may be realized from the sale of the assets,

(5) The most recent balance sheet or financial statement from the borrower,

(6) A current statement of account from the Finance Office, and

(7) A problem case report using Form FmHA or its successor agency under

Public Law 103–354 465–7, ''Report on Real Estate Problem Case,'' or exhibit A to subpart A of part 1955 of this chapter as appropriate.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 8605, Mar. 4, 1985; 51 FR 11564, Apr. 4, 1986]

§ 1965.86 [Reserved]

§ 1965.87 Miscellaneous security.

(a) *Membership liability agreements.* As a loan approval requirement, some borrowers may have special agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or they may have instruments which are commonly referred to as individual liability agreements which are usually assigned to and held by the FmHA or its successor agency under Public Law 103–354 as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. These security and liability instruments will be serviced in a manner indicated by the agreements to adequately protect the interest of the FmHA or its successor agency under Public Law 103–354. The State Director will develop servicing actions with the assistance of OGC.

(b) *Other security.* Other security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest will be serviced according to acceptable practices in the respective states. The State Director should develop any special servicing actions with the assistance of OGC to protect the interest of FmHA or its successor agency under Public Law 103–354. Evidence of the security will be filed in the loan docket in the District Office. A notation will be made on the Management System Card showing that the security has been retained. When other security is taken, a plan for servicing it should be developed by the approval official and included as an approval condition at the outset.

§ 1965.88 Obtaining additional security for inadequately secured loans.

(a) *General policies.* As a general policy, additional security for multiple housing loans should not be needed or taken to protect the interest of FmHA or its successor agency under Public Law 103–354. However, the State Director may authorize taking additional security in the form of real estate or other security as described in § 1965.87(b) of this subpart when the additional security is needed to enhance the chances that the FmHA or its successor agency under Public Law 103–354 will not suffer a loss and any of the following conditions exist:

(1) The account is behind schedule.

(2) The property has not been properly managed or maintained.

(3) There is serious doubt that the borrower can carry out the objectives of the loan.

(b) *Conditions of approval.* In cases where the District Director determines that the conditions as stated in paragraph (a) of this section exist, the borrower's case file will be forwarded to the State Director with a memorandum providing the following information:

(1) The facts which justify the taking of additional security.

(2) A conservative estimate of the market value of any real estate to be mortgaged; however, it will not be necessary to make a formal appraisal of the property to be mortgaged unless determined necessary by the State Director.

(3) A brief description of any existing liens on the additional security including the repayment terms and the unpaid balance.

(4) The name of the title holder and how title to the property is held. Title evidence need not be required.

(5) A plan for servicing the additional security to be taken.

(6) A description of the other servicing alternatives available to assure that the objectives of the loan will be met and to protect the Government from loss.

(c) *Processing.* The guidance and assistance of OGC will be obtained whenever additional security is taken. The highest quality security available will be taken whenever additional security is considered.

[49 FR 49590, Dec. 21, 1984. Redesignated at 55 FR 29564, July 20, 1990]

§ 1965.89 Equity take-out for loans made after December 15, 1989.

For initial loans made or insured pursuant to contracts entered into on or after December 15, 1989, equity loans may be guaranteed by FmHA or its successor agency under Public Law 103–354 after a 20-year period, from the date of the loan, has elapsed. The following steps will be followed when a borrower wishes to receive this equity:

(a) Borrower submits a plan requesting an equity loan which ensures that the cost of amortizing the loan doesn't result in the displacement of very low-income tenants or substantially alter the income mix of the tenants in the project.

(b) FmHA or its successor agency under Public Law 103–354 will determine whether the housing will continue to remain decent, safe, and sanitary and that the local housing market is such that the housing will continue to meet the needs of eligible tenants for the remaining life of the initial loan.

(c) In accordance with the conditions outlined in subpart E of this part, FmHA or its successor agency under Public Law 103–354 will offer to guarantee an equity loan to the borrower which may be repaid from an occupancy surcharge account in accordance with subpart K of part 1951 of this chapter. In addition it must be determined that such an equity loan would not impose undue hardship on tenants or unreasonable cost to the Federal Government. The guaranteed loan will not exceed the lesser of:

(1) The amount determined and calculated in accordance with the equity loan instructions contained in subpart E of this part or (2) 30 percent of the appraised value of the project at the time of the initial loan as shown on the appraisal for that loan.

(d) If the borrower indicates preliminary acceptance of the equity loan, an application will be completed in accordance with subpart E of part 1944 of this chapter and two appraisals will be conducted in the manner outlined in subpart E of part for loans to nonprofit organizations.

(e) When the actual amount of the guaranteed equity loan is determined, the borrower will indicate acceptance of the loan.

[55 FR 29564, July 20, 1990, as amended at 56 FR 66964, Dec. 27, 1991; 58 FR 38930, July 21, 1993]

§ 1965.90 Payment in full.

(a) *Prepayment of multi-family housing loans.* Subpart E of this part must be complied with for all multi-family housing loans that are planned to be prepaid prior to the scheduled final due date of the loan.

(b) *Borrower responsibility.* Borrowers must advise the District Office servicing the account of any plan to pay the account in full 6 months prior to the date of the planned payment in full.

(c) *FmHA or its successor agency under Public Law 103–354 responsibility.* The FmHA or its successor agency under Public Law 103–354 District Office must ensure payments in full and releases of security are processed in accordance with subpart D of part 1951 of this chapter and other appropriate program requirements and regulations. FmHA or its successor agency under Public Law 103–354's interest in property insurance will be released in accordance with § 1806.4 (a)(3) of subpart A of part 1806 of this chapter (paragraph IV A 3 of FmHA or its successor agency under Public Law 103–354 Instruction 426.1). In all cases, references to County Supervisors will be construed to mean District Directors when applied to multi-family housing borrowers.

[58 FR 38930, July 21, 1993]

§ 1965.91 Servicing loans in formerly eligible areas.

All servicing actions contained in this subpart are authorized without regard to whether the area is no longer defined as an eligible area.

§ 1965.92 Information to be provided to IRS on RRH transfers, voluntary conveyances, foreclosures, and 100% membership changes.

State Offices are to provide information to the National Office for submission to IRS at their request on RRH transfers, voluntary conveyances and foreclosures that were finalized (the deed recorded) subsequent to January 22, 1985. In addition, information is to

be provided on changes of membership interests that are covered under § 1965.63 of this subpart which result in a 100 percent change in the entity membership, such as, beneficial interests, partnership interests and stock transfers. Exhibit A to this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) must be completed for each project affected with particular attention given to supplying the Employer Identification and/or the Social Security numbers of the parties involved. Field Offices should not contact the borrowers or transferees for information that is not otherwise available from the casefiles, except in the case of missing Taxpayer Identification numbers. Exhibit A available in any FmHA or its successor agency under Public Law 103–354 office will be prepared when the servicing action is completed and sent to the National Office within 30 days of the servicing action.

[49 FR 49587, Dec. 21, 1984, as amended at 52 FR 24291, June 30, 1987; 58 FR 38930, July 21, 1993]

§ 1965.93 [Reserved]

§ 1965.94 State supplements.

State supplements will be prepared with the advice of OGC as necessary to comply with State laws and to provide guidance to the District Director in the servicing actions required. All State supplements, unless specifically authorized by particular subsections of this subpart must be submitted for prior National Office approval before implementation. Requests for approval must include complete justification, citations of State law, and appropriate legal opinions from the respective Regional Attorney.

§ 1965.95 [Reserved]

§ 1965.96 Nondiscrimination.

Each instrument of conveyance for any transfer or foreclosure sale of real property subject to Title VI of the Civil Rights Act of 1964 will contain the following convenant:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations as issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended or for so long as the purchaser owns it, whichever is later.

§ 1965.97 Exception authority.

The Administrator of the Farmers Home Administration or its successor agency under Public Law 103–354 may, in individual cases, make an exception to any requirement of this Subpart not inconsistent with the authorizing statute if the Administrator finds that application of the requirement would adversely affect the interest of the Government or the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data which demonstrates the adverse impact, identifies the particular requirement involved, shows proper alternative courses of action, and identifies how the adverse impact will be eliminated.

§§ 1965.98–1965.99 [Reserved]

§ 1965.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0100. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 4.25 hours per response, with an average of 1.67 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0100), Washington, DC 20503.

[56 FR 28039, June 19, 1991, as amended at 58 FR 38930, July 21, 1993]

Subparts C–D [Reserved]

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

SOURCE: 58 FR 38931, July 21, 1993, unless otherwise noted.

§ 1965.201 General.

Requests to pay Multi-Family Housing (MFH) loans in full require that certain actions be taken to ensure the affordability of housing for specified tenants for a guaranteed period of time. The requirement applies to all projects, whether or not they are subject to restrictive-use provisions or prohibitions on prepayment. This subpart provides step-by-step guidance for use by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) and MFH borrowers when prepayment requests are made. The steps outlined are mandated by the Rural Rental Housing Displacement Prevention Provisions of the Housing and Community Development Act of 1987. When a MFH project is subject to multiple FmHA or its successor agency under Public Law 103–354 MFH loans, and the borrower offers prepayment or payment in full for one or more but not all of the MFH loans on the project, the borrower will not be allowed to pay off the most restrictive loan without invoking the prepayment provisions of this subpart, unless the borrower agrees to be bound by the more restrictive provisions for the balance of the time period remaining on the more restrictive loan being paid in full.

§ 1965.202 Definitions.

Affordable housing. Housing with a rent rate which does not create new or increased rent overburden for tenants of prepaying projects.

Displaced tenant. A displaced tenant is a tenant who is either forced to move from a project or a tenant who experiences new or increased rent overburden as a result of prepayment of a MFH loan. The new or increased rent overburden may occur at the time of prepayment or at any time in the future restrictive-use provisions are in force.

Income limits. Very low, low, and moderate income are defined in accordance with exhibit C of subpart A or part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

Letter of priority entitlement (LOPE). A letter issued by FmHA or its successor agency under Public Law 103–354 to a tenant displaced through a prepayment action that will give the tenant priority on waiting lists at any FmHA or its successor agency under Public Law 103–354 project for which they may qualify.

Local nonprofit corporation or public agency. A public agency or nonprofit corporation which operates primarily in the local community and its trade area. Local nonprofit corporations must have a broad based board reflecting various interests in the community or trade area. A public agency must be organized in accordance with State and local statutes. Either type of organization must include as one of its primary purposes developing or managing low-income housing or community development projects, which meet the requirements of § 1944.211(a)(10)(i) of subpart E of part 1944 of this chapter. Countywide agencies/corporations may meet the definition of local organization if, in the judgment of the District Office, the community's trade area is countywide. Tenant associations and cooperatives may meet the definition if they are organized as nonprofit organizations.

Market Area. The market area is the community in which the project is located and those outlying rural areas which are impacted by the project (excluding all other established communities).

Minorities. Individuals such as members of the following groups: African-American, not of Hispanic Origin; Hispanic; American Indian or Alaskan Native; and Asian or Pacific Islander. Refer to FmHA or its successor agency under Public Law 103–354 Instruction 1900–A (available in any FmHA or its successor agency under Public Law 103–354 office) for further clarification and a description of each group.

Prepayment. A loan which has been paid by the borrower in full, before the loan maturity date. After a prepayment, no FmHA or its successor agency under Public Law 103–354 loan remains on the property and the property is removed from the FmHA or its successor agency under Public Law 103–354 program, although restrictive-use provisions may remain.

Prohibition on prepayment. Loans which may not be prepaid prior to the final amortization date as described in § 1965.208 of this subpart.

Protected population. Individuals or families, whether very low, low, or moderate income, who are current tenant or wish to occupy rural rental housing (RRH) or labor housing (LH), and who are protected by a particular restrictive-use provision.

Regional or national nonprofit corporation or public agency. Any public agency or nonprofit corporation meeting the conditions in § 1965.216(c) of this subpart, which operates in an area larger than the local community and its trade area, or, if a nonprofit corporation, does not also have a broadly-based membership and board of directors reflecting various interests in the community or trade area, and does not have among its officers or directorate persons or parties with a material interest in (or persons or parties related to any person or party with such an interest) in loans financed under section 515 that have been prepaid. The primary purposes of the organization need not include developing or managing low-income housing or community development projects.

Rent overburden. Shelter costs (rent and anticipated utility costs) exceeding 30 percent of a tenant's adjusted income, or the amount of payment designated by a third-party payor as shelter cost, whichever is greater.

Restrictive-use provisions. Conditions restricting the use of the property to housing for very low-, low- and/or moderate-income tenants, whether or not the FmHA or its successor agency under Public Law 103–354 loan is in force or has been paid in full as described in § 1965.209 of this subpart.

Section 8. Tenant rental subsidies as provided under the Housing and Urban Development (HUD) section 8 Housing Assistance Payment Program.

Unsubsidized conventional housing. Housing which receives no interest or project based rent subsidies, and which has no maximum income limits for its residents. When a borrower submits a request for prepayment of the FmHA or its successor agency under Public Law 103–354 loan, the anticipated use of the project will be considered as unsubsidized conventional housing.

§ 1965.203 Nonprofit organization and public agency interest lists.

Nonprofit organizations and public agencies interested in being notified of projects being offered for sale by FmHA or its successor agency under Public Law 103–354 borrowers wishing to prepay should contact FmHA or its successor agency under Public Law 103–354. Local nonprofit and public agencies wishing to purchase projects in one district need only contact the applicable FmHA or its successor agency under Public Law 103–354 District Office. Organizations or agencies interested in one state only should contact the FmHA or its successor agency under Public Law 103–354 State Office. National and regional nonprofit organizations interested in receiving multistate notifications should contact the FmHA or its successor agency under Public Law 103–354 National Office. Interested organizations should submit their names, addresses, contact persons, and the areas in which they wish to purchase. The notification to FmHA or its successor agency under Public Law 103–354 must be updated annually if the organization wishes to continue to receive notifications of pending prepayments. FmHA or its successor agency under Public Law 103–354 will send notices requesting the update at least 30 days prior to removing the organization's name from the list. The National Office will not verify the eligibility of the organizations requesting notification, but will periodically forward the names of interested organizations to State Offices. The State Office will periodically compile a list of interested nonprofit organizations and public agencies and forward the list to its District Offices.

§ 1965.204 Processing prepayment requests and related rent increases.

(a) *Chronological order of steps in processing prepayment requests.* Prior to approving prepayment of an FmHA or its successor agency under Public Law 103–354 MFH loan, FmHA or its successor agency under Public Law 103–354 must determine the eligibility and ability of the borrower to prepay the loan; attempt to keep needed housing in the very low-, low-, and moderate-income market; and ease the transition of tenants that may be affected by the conversion of a federally-financed project to unsubsidized conventional housing. The remainder of this procedure provides the chronological order for the actions to be taken:

(1) Borrower written request for prepayment (§ 1965.205 and exhibit C of this subpart).

(2) Required notifications (§ 1965.206 of this subpart).

(3) Evaluation of borrower ability to prepay (§ 1965.211 and exhibit E of this subpart).

(4) FmHA or its successor agency under Public Law 103–354 incentive offer and borrower decision regarding incentives (§§ 1965.213 and 1965.214 and exhibits D and E of this subpart).

(5) Evaluation of project need by FmHA or its successor agency under Public Law 103–354 (§ 1965.210 and exhibit E of this subpart).

(6) Approval of prepayment under exception authority (§ 1965.215 and exhibit E of this subpart).

(7) Sale to nonprofit organizations or public agencies (§§ 1965.216 and 1965.217 of this subpart).

(8) Approval of prepayment in the absence of interest in purchase by nonprofit organization of public agency (§§ 1965.218 and 1965.219 of this subpart).

(9) Actions to be taken in the event of restrictive-use violations (§ 1965.222 of this subpart).

(10) Relationship of these procedures to other servicing actions (§ 1965.223 of this subpart).

(11) Prepayment of loans due to advance payments or completion of amortized payments (§ 1965.224 of this subpart).

(b) *Rent increases resulting from prepayment process.* If rent increases are necessary due to the making of an equity loan to avert prepayment with or without a transfer, the procedures for tenant notifications and comment will be followed as set forth in paragraphs IV B of exhibit C to subpart C of part 1930 of this chapter. The reason for the rent increase will be shown as ''to meet the additional expense incurred in order to avert removal of (name of project) from the FmHA or its successor agency under Public Law 103–354 program.''

[58 FR 38931, July 21, 1993, as amended at 58 FR 40956, July 30, 1993]

§ 1965.205 Borrower request to prepay.

(a) Prior to initiating a formal prepayment request, borrowers considering prepaying their loans should meet with the applicable FmHA or its successor agency under Public Law 103–354 Servicing Office to discuss the prepayment request and the requirements of this procedure. The borrower will be provided with exhibit C of this subpart, to aid in completing the prepayment request package.

(b) At the meeting, the Servicing Office will inform the borrower that the project will be evaluated as unsubsidized conventional multi-family housing for the purposes of determining eligibility for incentives. An appraisal will be completed to determine if any equity exists in the project when valued as unsubsidized conventional multi-family housing. The components of the incentive offer, if any, will be dependent upon the amount of equity as follows:

(1) If the project has equity in excess of the borrower's initial investment, an equity loan and a combination of additional incentives may be considered;

(2) If no equity exists, but it can be shown that the project can be prepaid and operated successfully in the subject market, a combination of incentives not including an equity loan will be considered; or

(3) If, based upon the Servicing Office's knowledge of the market it appears likely the project would not qualify for an equity loan, the Servicing Office should so inform the borrower during the meeting. However, in no instance will the Servicing Office personnel discourage eligible borrowers

from submitting a prepayment request, should the borrower so desire.

(c) Borrowers seeking to prepay MFH loans must submit a complete prepayment request to the Servicing Official at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with §1965.215 (f)(2) of this subpart). A prepayment request will not be considered complete nor will the 180-day period begin until all of the following items have been submitted:

(1) A written request to prepay the FmHA or its successor agency under Public Law 103–354 loan on a specified date;

(2) Complete and documented information necessary to prepare the prepayment report as outlined in exhibit B of this subpart and to make the required determination needed to develop an incentive offer as outlined in exhibit D of this subpart. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;

(3) Documentation of the borrower's ability to prepay under the conditions specified in the prepayment request. Exhibit C of this subpart should be used as guidance for the documentation necessary;

(4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;

(5) A statement from the borrower accepting restrictive-use provisions in the release documents if the borrower wishes to prepay the loan subject to restrictions; and

(6) Evidence that actions required by any applicable State laws related to prepayment have been met.

§1965.206 Review of borrower prepayment request by Servicing Office.

The Servicing Office will determine whether the prepayment request is in conformance with §1965.205 of this subpart. Within 15 working days of receipt of a prepayment request, the Servicing Office will take the following actions:

(a) *Return of incomplete requests.* If an incomplete request is submitted, the Servicing Official will return the request to the borrower specifying the additional information needed.

(b) *Receipt of complete requests.* If a complete prepayment request is submitted, the Servicing Official will:

(1) *Acknowledge the request.* Send an acknowledgment letter to the borrower specifying the date of receipt of the complete request and informing the borrower that prepayment commitments should not be finalized until FmHA or its successor agency under Public Law 103–354 issues a letter of approval.

(2) *Notify current tenants.* Notify each tenant household by Certified Mail, Return Receipt Requested, of the receipt of the prepayment request and prepare notices for the borrower to post in public areas of the project. The notices are to remain posted until a final determination is made on the prepayment request or the prepayment offer is withdrawn. The Servicing Official will not wait to determine if submitted information is accurate or if the prepayment will be accepted or denied before notifying tenants. FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–2 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used as a guide. The following issues are to be addressed in the letter:

(i) The borrower proposes to prepay the FmHA or its successor agency under Public Law 103–354 loan and remove the housing from the FmHA or its successor agency under Public Law 103–354 program if all prepayment requirements imposed by FmHA or its successor agency under Public Law 103–354 are met;

(ii) FmHA or its successor agency under Public Law 103–354's preliminary determination that the borrower's request to prepay will/will not be approved;

(iii) The likely effect of the prepayment on tenants living at the project. Include:

(A) The level at which rents at the project are projected to be set if prepayment is accepted;

(B) Restrictive-use provisions the borrower has agreed to maintain and the terms of the restrictions;

(C) Whether Section 8 or State or local subsidy will remain with the project; and

(D) Whether the borrower has the option to terminate section 8 assistance at the next renewal period (opt-out), and if so, when.

(iv) FmHA or its successor agency under Public Law 103–354 must make a determination as to whether tenants would be displaced due to increased rents, and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure before deciding to accept the prepayment;

(v) Conditions under which prepayment will be accepted;

(vi) A 30-day tenant comment period will be available for tenants to present comments concerning the proposed prepayment. Tenants will be allowed to review the information used by FmHA or its successor agency under Public Law 103–354 to make the determinations regarding prepayment;

(vii) Tenants will be given immediate priority for other federally-financed housing if there will be any displacement;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance of the prepayment and action dates;

(ix) Tenants will be given the opportunity to submit evidence at any appeal hearing the borrower may request;

(x) If prepayment is accepted, tenants choosing to stay in their units and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for cause unrelated to prepayment; and

(xi) Any other information relevant to the case.

(3) *Notify National Office.* The Servicing Office is to notify the FmHA or its successor agency under Public Law 103–354 State Office, who will notify the Assistant Administrator, Housing, FmHA or its successor agency under Public Law 103–354 National Office, in writing using the format of FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–1 (available in any FmHA or its successor agency under Public Law 103–354 office). National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request by the Servicing Office.

(4) *Notify other agencies.* The FmHA or its successor agency under Public Law 103–354 State and Servicing Offices, as appropriate, will notify other agencies of the borrower's intent to prepay the FmHA or its successor agency under Public Law 103–354 loan. The agencies contacted will include nonprofit organizations; local, State, and Federal agencies; and public organizations who have expressed an interest in purchasing a project and who provide housing assistance to low- and moderate-income people. The interest list, compiled in accordance with § 1965.203 of this subpart, is to be used in notifying organizations of the borrower's intent to prepay. Letters sent to the agencies will inform the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a nonprofit organization or public agency. Organizations contacted will be advised that an offer to sell may be forthcoming. Generally, the FmHA or its successor agency under Public Law 103–354 State Office will notify State and Federal agencies and the appropriate Servicing Office will notify local agencies.

(5) *New tenant notification.* (i) The borrower will be required to submit for approval proposed language to be used as an addendum to leases for all tenants moving into the project while the prepayment request is pending. The language will specify the effect of the prepayment on the tenants if prepayment is accepted. The recommended language to be included in the leases is as follows:

> ''The mortgage on this project may be repaid to the Federal Government on or after (*date*). (At that time/ (date restrictive-use provisions expire)/ (other relevant date), your rent may be raised to _____/ and/or you may be asked to move from this project.''

(ii) The borrower will also be required to provide new tenants with copies of all letters sent to existing tenants advising them of the status of the prepayment. The Servicing Office will also send new tenants any additional correspondence sent to existing tenants, but will inform the new tenants that they will not be eligible for an LOPE.

(6) *On-going tenant notification.* The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

§ 1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.

Loans made on or after December 15, 1989, to build or acquire new RRH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in subpart E of part 1944 of this chapter.

§ 1965.208 Restrictive-use provisions related to LH projects with grants.

For LH projects with *any* size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

§ 1965.209 Restrictive-use provisions after prepayment.

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

(1) A servicing action;

(2) Acceptance of prepayment incentives; or

(3) Restrictions accepted as a condition of prepayment as specified in this subpart and exhibits A–1 through A–4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category in the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in § 1965.215 (e)(6) of this subpart.

§1965.210 Loans approved prior to December 15, 1989—RHS actions when processing prepayment requests.

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, including equity loans, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan, or prevent displacement of the tenants. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart (available in any Rural Development State or District Office) will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer has expired.

[62 FR 25070, May 7, 1997]

§ 1965.211 Evaluation of the borrower's ability to prepay the loan.

The borrower's ability to prepay the loan will be evaluated in accordance with exhibit E of this subpart. If it is

determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

§ 1965.212 Appraisals.

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower's current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-FmHA or its successor agency under Public Law 103–354 project based tenant subsidies will be valued as assets of the project for inclusion in the appraisal. FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

§ 1965.213 Offer of incentives to borrowers.

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower's loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes any equity loan is accepted, the equity loan may be processed and closed with the current borrower or any eligible transferee.

(a) *Availability of incentives.* Incentives may be offered only if the restrictive period has expired for any RRH project loan.

(b) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart (available in any Rural Development State or District Office).

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. Equity loans may not be offered unless the servicing official determines that other incentives offered under this paragraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan, or to prevent the displacement of project tenants.

(2) *Rental assistance.* Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(iii) Reamortizing the existing debt under the provisions of § 1965.70 of subpart B of this part should be examined to determine if reamortization will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.

(3) *Increase the maximum annual return on investment*—(i) *Borrower equity*. The borrower's equity in the project may be increased. The new equity is the difference between the value of the project appraised as unsubsidized conventional housing in conjunction with the incentive loan (if offered) and the unpaid balances of all loans against the project, including the incentive loan. If no new appraisal is made, equity will be determined by subtracting the outstanding balances of all loans against the project from the value shown in the most recent FmHA or its successor agency under Public Law 103–354 appraisal completed for the project prior to receipt of the prepayment request.

(ii) *Rate of return*. Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package which may include an increased rate of return. The rate to be offered will be the greater of the borrower's current rate established in the initial loan, or 2 percent above the 30-year Treasury Bond rate, rounded to the nearest ¼ percent. The appropriate Treasury Bond rate will be determined from newspapers or available financial publications and will be the rate published for the first day of the month following receipt of the complete prepayment request. The rate of return for borrowers receiving equity loans will remain at the rate currently established in the initial loan.

(iii) *Recept of increased return*. Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in paragraph XII B of exhibit B of subpart C of part 1930 of this chapter.

(4) *Excess section 8 rents*. For projects with project-based section 8 rents, the owner may be permitted to receive rents considered in excess of the amounts needed to meet annual project operating and maintenance, debt service, and reserve expenses. In conjunction with the acceptance of excess section 8 rents as an incentive, the reserve account will be adjusted to reflect adequate funding for long-term repair, replacement and maintenance costs.

(5) *Conversion or modification of interest credit*. Convert full profit loans to limited profit Plan II loans or increase the interest subsidy for loans with section 8 assistance to make contract rents more financially feasible. The conversion would be accomplished by changing the designation of the project to Plan II.

(c) *Development of incentive package*—(1) *Borrowers requesting immediate conversion from low and moderate-income use*. The required borrower information and criteria to be used in determining the incentives to offer, along with the steps to develop the incentive offer, are listed in exhibits D and E of this subpart.

(2) *Projects committed to low- and moderate-income use after prepayment by parties other than FmHA or its successor agency under Public Law 103–354*. In accordance with exhibits D and E of this subpart, incentives will be reduced in proportion to the length of time a project is committed to low- and moderate-income use after prepayment through requirements of parties other than FmHA or its successor agency under Public Law 103–354. The commitment for extended use may be voluntary or required by legal restrictions on use. The effect on the value of the project will be taken into consideration during the appraisal process.

(3) *Adjustment of project reserve accounts*. The reserve account must be maintained in conformance with the requirements of paragraph XIII B 2 c of exhibit B of subpart C of part 1930 of this chapter. At the time an incentive offer is developed, the maximum reserve amount should be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project.

(d) *Letter offering incentives to borrowers*. Within 20 days of the end of the tenant comment period, a letter will be sent to borrowers outlining the elements of the incentive offer developed in accordance with this section and exhibits D and E of this subpart. The letter will include the following:

(1) A statement that the package is a one-time incentive being offered in return for the extension of the low and moderate income use of the housing.

The letter will establish that, by accepting the incentives outlined in the letter, the borrower will be subject to a restrictive-use provision obligating the housing to low- and moderate-income use in the FmHA or its successor agency under Public Law 103–354 program for 20 years from the date the extended use agreement is executed, and prohibited from future incentive offers on the project so long as the restrictive-use provisions remain in effect.

(2) The amount of the equity loan being offered (if any). Any offer of an equity loan will include a statement that the borrower is subject to:

(i) A continued eligibility determination in accordance with subpart E of part 1944 of this chapter; and

(ii) Appropriation limitations. When an incentive offer that includes an equity loan is accepted by a borrower, funding the components of the offer is considered binding on FmHA or its successor agency under Public Law 103–354. If funds are not immediately available to fund an incentive loan, the amount of the offer will be included on a funding waiting list maintained by the National Office. Priority for funding is based on the date of receipt of the original complete prepayment request, as specified in § 1965.205 of this subpart.

(3) The maximum amount of any increased return on investment offered.

(4) The number of RA units that will be provided to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(5) Interest credit or additional interest credit if needed to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(6) The offer of borrower receipt of excess project-based section 8 rents, if applicable.

(7) The offer must be accepted or rejected in writing within 30 days, or the prepayment request will be voided.

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on FmHA or its successor agency under Public Law 103–354. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

[58 FR 38931, July 21, 1993, as amended at 62 FR 25071, May 7, 1997]

§ 1965.214 Offering and processing of incentives.

(a) *Borrower does not respond to incentive offer*. If the borrower does not respond to the incentive offer within 30 calendar days of the date of the letter offering incentives, the State Office will advise the National Office by means of FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–1 (available in any FmHA or its successor agency under Public Law 103–354 office) to remove the name from the waiting list. Tenants and any agencies notified in accordance with § 1965.206 (b) of this subpart will be notified by the Servicing Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) *Borrower rejects the incentive offer*. If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with § 1965.215 (b) and exhibit E of this subpart. Tenants will be notified that the borrower has rejected the incentive offer and that a decision will be made by FmHA or its successor agency under Public Law 103–354 whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) *Borrower indicates acceptance of the incentive package*. If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application in accordance with exhibit A–11 of subpart E of part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in § 1965.212 of this subpart, one will be made at this time in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office). The Servicing Official will determine the feasibility of the loan, including any needed reamortization of

existing loans. No equity loan is to be made without sufficient RA to protect current tenants against new or increased rent overburden.

(d) *Application for transfer with incentives.* If a transfer is to take place simultaneously with the incentive, a complete transfer application package, in accordance with §1965.65 of subpart B of part 1965 of this chapter, will be submitted. A completed application for an equity loan, if applicable, will be completed and submitted in accordance with paragraph (c) of this section. The determination of borrower eligibility, evaluation of the transfer and any equity loan will be made concurrently. If a proposed transferee is determined not to be eligible for the transfer and assumption, appeal rights concerning transferee eligibility will be provided to the proposed transferee. If the FmHA or its successor agency under Public Law 103–354 decision is upheld, the borrower will be given an additional 15 days to reconsider whether to accept the original incentive offer.

(e) *Notification that incentives are ready for funding.* When the borrower indicates that the final incentive offer is acceptable, and the processing of the incentive application is complete, the Servicing Official will notify the State Office, which in turn will notify the National Office of all required information through use of FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–1 (available in any FmHA or its successor agency under Public Law 103–354 office).

(1) All interested agencies contacted in accordance with §1965.206 (b) of this subpart and tenants will be advised that prepayment of the loan will not take place. If the ownership is to be transmitted, tenants will be so advised. Any rent increases resulting from acceptance of an incentive offer will be processed in accordance with §1965.204(b) of this subpart.

(2) The National Office will issue authorizations to obligate incentives to the extent possible, depending upon the availability of loan funds and RA. Authorizations will be issued in the order in which complete prepayment requests were received as set forth in §1965.205 of the subpart. To fully utilize all available prepayment incentive loan funds and RA, projects with fully processed incentive packages may be authorized prior to authorizing packages with earlier receipt dates for which incentives have not been fully processed. Any other required National Office authorizations will be given at the same time.

(f) *Processing the incentives.* When authorization to proceed is received, the Servicing Office will process the incentives, with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate:

(Note: If the project is to be transferred at the time the incentive is processed, all obligations will be made to the transferee)

(1) If the annual return on investment is increased, a statement will be added to the loan agreement specifying that, ''The maximum annual return on investment is being increased by $_____ for a total maximum annual return of $_____.'' No equity level or rate of return need be mentioned.

(2) If a conversion of profit type is made, the procedures of paragraph IV A 2 d of exhibit B of subpart C of part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement,'' will be executed.

(3) Any change in the amount of RA will require the execution of a new RA agreement or a change in the existing RA agreement, as described in paragraph V C of exhibit E of subpart C of part 1930 of this chapter.

(4) Loans for equity will be made in accordance with subpart E of part 1944 of this chapter. In accordance with §1951.517 (b)(1) of subpart K of part 1951 of this chapter, the equity loan will be established as a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project will be converted to PASS. All assumptions and transfers will be processed in accordance with §1965.65 of subpart B of this part. All existing project loans may be consolidated and reamortized in accordance with §§1965.68 and 1965.70 of subpart B of this part, unless consolidation is not necessary to maintain

feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent loans must be brought current, cost items paid in full, and project operating and reserve accounts brought current. All project operating and reserve accounts will remain at authorized levels during and after the closing of the incentive package, regardless of whether a transfer was included as part of the prepayment. All taxes, assessments and other liens must be prorated, brought current or paid in full as appropriate. Deferred maintenance identified in previous inspections must be performed before any equity may be received by the borrower or transferor, as applicable.

(g) *Restrictive-use provisions.* The restrictive-use provisions contained in exhibit A–1 of this subpart will be inserted in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate with the advice of OGC.

[58 FR 38931, July 21, 1993, as amended at 58 FR 40956, July 30, 1993]

§ 1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment.

(a) *Approving or disapproving prepayments.* If the borrower rejects the incentive offer and indicates a preference to prepay, prepayment may be approved in accordance with paragraph (d) of this section within 180 days of the decision that the prepayment can be accepted if the determinations required in paragraph (c) of this section can be made. Exhibit E of this subpart provides additional guidance for making the necessary determinations. The State Director or other designated official in the National Office, with the recommendation of the Servicing Official, will make the decision to either approve or disapprove the prepayment request.

(b) *Determining the need for housing.* (1) The Servicing Office or other designated office will review the following, using exhibit E of this subpart as a guide:

(i) Local market conditions;

(ii) Information submitted as support for the prepayment request;

(iii) Responses to the 30-day tenant comment period;

(iv) the effect of the prepayment on minorities, handicapped individuals, and families with children; and

(v) Any other relevant information.

(2) The results of the determination of need will be documented in the case file.

(c) *Conditions under which prepayment may be approved.* In certain instances, prepayment may be approved after a borrower has rejected the incentive offer. If the decision is made to approve a prepayment request, restrictive-use provisions will be inserted in the deed, deed of release or satisfaction, if the project is determined to be needed under the provisions of the following paragraphs (1)(i) and (ii) of this section. The borrower will also execute the applicable restrictive-use agreement. If the project has section 8 assistance, the local HUD Area Office must be notified. To determine whether a prepayment offer can be approved, the following decision steps must be followed by the Servicing Office:

(1) *The loan is not currently subject to restrictive-use provisions nor prohibition on prepayment.* To determine whether a loan not subject to restrictive-use provisions or prohibition on prepayment may prepay, and if so, what restrictions must be inserted in the release documents, the following determinations must be made.

(i) If the Servicing Office cannot make the determination that housing opportunities to minorities will not be materially affected as a result of the prepayment, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive language found in paragraph (A) or (B) of exhibit A–4 of this subpart, and to execute the applicable Restrictive-Use Agreement found in exhibit G–2 or G–3 of this subpart;

(A) Maintain the housing for low- and moderate-income people for a minimum period of 20 years from the date of the closing of the last loan or servicing action. At the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section

and paragraph (A) of exhibit A–4 of this subpart; or

(B) If 20 years from the date of the closing of the last loan or servicing action has already lapsed, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (B) of exhibit A–4 of this subpart;

(ii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, but that there is an inadequate supply of safe, decent, and affordable rental housing within the market area, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive-use language found in paragraph (C) of exhibit A–4 of this subpart and agrees to execute the Restrictive-Use Agreement found at exhibit G–4 of this subpart:

Maintain the housing for current eligible tenants in occupancy as of the date of the prepayment for the life of the project or until the current tenants are no longer eligible for the housing under FmHA or its successor agency under Public Law 103–354 regulations, or the tenants choose to vacate of their own will. The owner will ensure the tenants will not be displaced due to a change in the use of the housing, an increase in the rental or other charges as a result of the prepayment, or a decrease in income. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project.

(iii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, and that there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions. The provisions of paragraph (c)(3) of this section will apply.

(2) *The loan is subject to restrictive-use provisions and the borrower agrees to continue to adhere to the provisions after prepayment.* In accordance with exhibit A–3 of this subpart, the borrower agrees to continue to maintain the housing in accordance with the restrictions already in effect. The borrower must also agree to execute the Restrictive-Use Agreement found at exhibit G–1 to this subpart.

(3) *It is determined by FmHA or its successor agency under Public Law 103–354 that restrictions are not needed.* If actions in accordance with § 1965.206 (b)(2) of this subpart and paragraph (e)(3) of this section have been taken to ensure that alternative rental housing will be made available to each tenant upon displacement, the prepayment may be accepted without restrictions if:

(i) For loans not subject to restrictive-use provisions nor prohibition on prepayment, it is determined by FmHA or its successor agency under Public Law 103–354 that housing opportunities for minorities will not be materially affected as a result of the prepayment. Exhibit E of this subpart will be used to assist in making this determination.

(ii) For loans subject to restrictive-use provisions, it is determined Federal or other financial assistance provided to residents will no longer be provided, due to no fault, action or lack of action on the part of the borrower. If a borrower applies to have restrictions removed after prepayment because Federal or other financial assistance will no longer be provided, the restrictions will be released only if the loss of Federal or other financial assistance could not have been reasonably anticipated at the time of acceptance of the prepayment.

(iii) Regardless of whether or not the loan is subject to restrictive-use provisions, a determination is made by FmHA or its successor agency under Public Law 103–354 that there is no longer a need for the housing (in accordance with exhibit E of this subpart).

(4) *Projects with both LH loans and grants.* If a prepayment is accepted on an LH loan for a project which also has an LH grant, restrictive-use provisions for the project may be released only under the conditions specified in the Grant Agreement.

(5) *Documentation.* Thorough documentation of the reasons and decision to approve prepayment will be entered

in the casefile and appended to the prepayment report. Any additional materials used to reach the decision will be included in the casefile.

(d) *Borrower notification of approval or disapproval of prepayment*. The Servicing Office or other designated office will notify the borrower as to whether the prepayment has been approved or disapproved within:

(1) 15 days of the borrower's rejection of an incentive offer for loans not subject to restrictive-use provisions nor prohibited from prepayment; or

(2) 60 days of a complete prepayment request by a borrower subject to restrictive-use provisions.

(e) *Processing acceptance of prepayment*. After approval of a prepayment, the following actions must be taken:

(1) *Completion of the prepayment report and notification of the National Office*. If prepayment is approved, the Servicing Office or other designated office will complete a prepayment report in the format of exhibit B of this subpart, and submit the report with all documentation on each prepaid loan to the State Director or other designated official for indefinite retention. Any information for the report supplied by the borrower must include documentation and verification by the Servicing Office. For prepayment of on-farm labor housing units, only items relevant to the on-farm units need be completed. The State Office will notify the National Office in the format of FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–1 (available in any FmHA or its successor agency under Public Law 103–354 office) indicating that the prepayment has been accepted. A copy of the prepayment report will be included in the materials forwarded to the National Office.

(2) *Notify interested agencies*. All interested agencies notified in accordance with § 1965.206 (b)(4) of this subpart will be notified of the decision to accept the prepayment. Agencies which may aid displaced tenants will be advised of any anticipated displacement, the level at which post-prepayment rents will be set and any restrictive-use provisions which will remain in the deeds of release. Other agencies will be advised that no offer to sell will be made.

(3) *Notify tenants*. The Servicing Office will send an additional notice to tenants at least 60 days prior to the prepayment. The prepayment may not take place less than 60 days from the tenant notification or 180 days from the initial notification unless an exception is allowed in accordance with paragraph (f)(2) of this section. Tenant notices will be sent certified mail to each tenant and also posted at the project in public areas. Copies of the notice will remain posted at the project until the prepayment is accepted and all existing tenants voluntarily vacate their units. The notice and attachments will contain all of the following information appropriate for the prepayment action and any other relevant information necessary to allow tenants to make informed choices (FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–3 (available in any FmHA or its successor agency under Public Law 103–354 office) and attachments are provided as a guide for this purpose). The notice will contain the following applicable statements and information:

(i) All relevant information concerning the prepayment has been reviewed and FmHA or its successor agency under Public Law 103–354 has decided to accept the prepayment on (date).

(ii) Fully detailed reason(s) describing why the prepayment was approved. Also include the reasons for acceptance of the prepayment in less than 180 days (if applicable).

(iii) At the time of prepayment, rents are expected to be $_____.

(iv) The tenant will be affected by this change on (date the tenant's current lease expires, date of the prepayment or other mandated date, whichever is later.)

(v) (The following statement should be included if the loan is being prepaid but will retain restrictive-use provisions.) All current eligible tenants may continue to occupy the housing until the tenants decide to voluntarily move, the tenants no longer meet eligibility requirements or the restrictive-use provisions expire on (insert expiration date), whichever is sooner. The rents of

current eligible tenants may not be increased as a result of current owner actions to exceed levels which create new or increased rent overburden as established by FmHA or its successor agency under Public Law 103–354 regulations, in accordance with title V of the Housing Act of 1949, during the period of eligible tenant occupancy during the restricted period. However, declines in tenant income shall not require corresponding reductions in rent levels. A tenant, or those wishing to occupy the housing (if applicable), as well as the Government, may seek enforcement of the provisions. Annual income recertifications will continue to be required in order to protect eligible tenant rents. The preceding requirements are binding on the current owner and any successors in interest.

(vi) (The following statement should be included if the project has project-based section 8 rents.) Eligible tenant rents will continue to be subsidized by the Department of Housing and Urban Development (HUD) until (insert the date the section 8 contract expires). (If applicable, include the following.) If section 8 subsidies are not continued after (insert the date the section 8 contract expires), the owner of the project will continue eligible tenant rents at levels that will not create or increase rent overburden until (insert date the restrictive-use expires. However, declines in tenant income shall not require corresponding reductions in rent levels.

(vii) (The following statement should be included if project-based HUD section 8 or other subsidies will expire prior to 2 years after the prepayment.) Eligible tenants currently residing in the project who may subsequently be displaced or experience rent overburden due to the prepayment may qualify for certain protections. The following protections are available to eligible tenants who believe they have experienced displacement or rent overburden:

(A) Letters of Priority Entitlement (LOPE) to other FmHA or its successor agency under Public Law 103–354 housing. Tenants may apply for LOPEs up until the day the tenants' rents are scheduled to be increased. These letters will be valid for 60 days after issuance. All LOPEs will be issued in accordance with title VI of the Civil Rights Act of 1964, as codified in subpart E of part 1901 of this chapter.

(B) Tenants currently receiving rental assistance (RA) will be able to continue to receive RA if they move to other FmHA or its successor agency under Public Law 103–354 financed housing in which they are eligible for RA.

(C) Tenants choosing to stay in their units after prepayment and pay higher rents, with or without Federal, State or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(viii) Eligible tenants residing in prepaying projects will also be sent:

(A) A list of project names, locations, number of apartments, senior citizen or family designation, and unit sizes of other FmHA or its successor agency under Public Law 103–354 projects in the market area.

(B) The names and locations of other subsidized housing; and

(C) Addresses and telephone numbers of the applicable HUD area office, and other agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(ix) Tenants will be allowed to review the information used to make any of the determinations regarding acceptance of the prepayment, prepayment rent increases and alternatives to prepayment.

(4) *Issue LOPEs*. Upon request by a tenant for an LOPE, the Servicing Official will prepare the letter and forward the letter to the tenant (FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–4 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used as a guide). The LOPE, which is to be addressed to FmHA or its successor agency under Public Law 103–354 borrowers, will include:

(i) A tenant with an LOPE has 60 days to apply in writing to other FmHA or its successor agency under Public Law 103–354 projects in any location in the country.

(ii) A tenant with an LOPE is to be placed at the top of all waiting lists in FmHA or its successor agency under Public Law 103–354 projects applied to,

which have appropriate units the tenant qualifies for. Such tenants will follow only those tenants with LOPEs who were previously placed on the waiting list. Handicapped tenants on the list for handicapped units which have appropriate design features will maintain priority over non-handicapped tenants with LOPEs.

(iii) The tenant will not be removed from the priority position on the waiting list until the tenant moves to a unit utilizing an LOPE or is purged from the waiting list in accordance with exhibit B or subpart C of part 1930 of this chapter.

(iv) If the tenant holding the LOPE is receiving RA in the prepaying project, and uses the LOPE to move to a Plan II project for which the tenant would qualify for RA, the RA will be transferred to the project to which the tenant moves. The RA will be reassigned to that tenant without competition. RA brought to a project by a tenant from a prepaying project will remain at the receiving project if the tenant subsequently moves to another FmHA or its successor agency under Public Law 103–354 project.

(v) If the tenant's current security deposit of (a specified amount) has not been released by the prepaying project by the date a tenant moves, the new landlord will be encouraged to defer collection of the new security deposit until the tenant's current deposit is refunded, even if the date of release is after the date the tenant occupies the new unit.

(5) *Approval of tenant leases*. Prior to accepting the prepayment, the Servicing Office will also review and approve a modified tenant lease to be used for all protected tenants during any applicable restrictive-use period. This lease will explain the restrictive-use provisions, who is protected, describe the limits on rents during the period of restrictions, explain that no tenant can have a lease renewal denied for other than ''good cause'' (which cannot include income level), that charges, rules and regulations, and services may not change substantially from those aplicable at present, and explain all other provisions necessary to protect affected tenants including Fair Housing Act Amendment provisions. The lease shall retain provisions for annual income certification. The approved lease, with signatures of both the borrower and FmHA or its successor agency under Public Law 103–354, will be maintained by the Servicing Office until expiration of the restrictive-use period, although FmHA or its successor agency under Public Law 103–354 will not be responsible for monitoring compliance. If the owner wishes to make subsequent modifications to the lease, FmHA or its successor agency under Public Law 103–354 will review the lease to ensure that none of the modifications are contrary to the intent of this regulation.

(6) *Borrower responsibilities after prepayment*. Prior to accepting the prepayment, the Servicing Official will meet with the borrower to discuss borrower obligations under restrictive-use and fair housing provisions remaining in effect after the prepayment is accepted. The Servicing Official will review the applicable restrictive-use requirements, if any, in detail with the borrower. In particular, the Servicing Official will explain that the applicable provisions of subpart C of part 1930 of this chapter specific to tenant rights and relations shall remain in effect during the restrictive-use period. Owners of prepaid projects will be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forthin subpart C of part 1930 of this chapter, and also adhere to applicable local, State, and Federal laws. The borrower will be informed that it is the borrower's responsibility to obtain FmHA or its successor agency under Public Law 103–354 concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The

former borrower must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels in accordance with the applicable restrictive-use provisions. The former borrower must also agree to make the documentation available for Government inspection upon request. The former borrower and any successors in interest will be required to provide the following signed and dated certification to the applicable Servicing Office or other designated office within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions:

(Name of owner) certifies that (name of project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which set forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA or its successor agency under Public Law 103–354 regulations (Name of borrower) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Government to seek enforcement of the provisions.

The borrower must also agree to execute the applicable Restrictive-Use Agreement found at exhibits G–1 thru 4 to this Subpart.

(7) *Servicing Office responsibilities after prepayment.* Upon prepayment, the Servicing Office will send a notice to all tenants informing the tenants of the acceptance of the prepayment. The borrower will be notified that a copy of the notice must be posted and maintained in public areas in the project until all restrictive-use provisions expire. FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–5 (available in any FmHA or its successor agency under Public Law 103–354 office) will be used for the notice. The Servicing Office or other designated office will monitor receipt of the certaification referred to in paragraph (e)(6) of this section and maintain case files on the prepaid project until such time as the restrictive-use provisions expire. The Servicing Office or other designated office will take such actions as necessary to follow-up on receipt of the annual certifications from each prepaid borrower. If the Servicing Office is unable to obtain borrower cooperation, the Servicing Office shall refer the case to the State Office for transmittal to the National Office for further servicing guidance and/or enforcement actions.

(8) *Payment in full and release of security.* Prior to releasing security instruments, FmHA or its successor agency under Public Law 103–354 must be certain that full payment has been received. Security instruments will be released in accordance with § 1965.90 (b) of subpart B of part 1965 of this chapter.

(9) *Sale to nonprofit organization or public agency at end of restrictive-use period.* Borrowers who are subject to the restrictive-use provisions contained in paragraph (A) or (B) of exhibit A–4 of this subpart are required to attempt to sell the project to a nonprofit organization or public agency at the end of the restrictive-use period. Advertising the project for sale will be carried out in the same manner and time period as required for sale to nonprofits or public agencies within the program as stated in § 1965.216 (b), (c), and (d) of this subpart. Advertising will be conducted for a minimum of 180 days beginning at least 6 months prior to the expiration of the restrictive-use period. If 6 months do not remain between the date of prepayment and the end of the restrictive-use period the project will be advertised for sale for a minimum of 180 days.

(f) *Denial, postponement, waiver, or withdrawal of prepayment request*—(1) *Denial of prepayment request.* Borrowers for whom there is no prohibition on prepayment will be denied a request to prepay if the conditions required for prepayment stated in paragraph (c) of this section and exhibit E of this subpart cannot be met, or if information submitted with the prepayment request to prepay, the Servicing Official will send a letter to the borrower stating the reasons for the denial and the right to appeal the rejection, in accordance with subpart B of part 1900 of this chapter and §§ 1965.213 and 1965.215 and exhibits D and E of this subpart. The letter denying the prepayment reuest may revise the original incentive offer if new information documenting the

loss the borrower may suffer if not allosed to prepay has been brought to the attention of the Servicing Office. If a letter is sent offering a revised incentive, rights to appeal the denial will not be included.

(2) *Postponement of prepayment requests.* Prepayment requests will be denied if the request was received less than 180 days in advance of the project prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant comments, verify information submitted with the prepayment report, and verify that all tenant leases are extended for a 180-day period from the date of the prepayment request and include current rents and conditions. Prepayment will be postponed if necessary to allow sufficient time for the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases are extended to the end of the 60 days, and at least 30 days has passed since the first notification letters were sent. The extension of tenant leases does not substitute for the insertion of restrictive-use provisions in the release documents or for allowing sufficient time for tenant comments.

(3) *Withdrawal or cancellation of prepayment requests.* Prepayment authorization will be cancelled if the prepayment is not received within 180 days of the final approval of the prepayment.

(g) *Borrower appeals of prepayment disapproval.* The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the rejection, in accordance with subpart B of part 1900 of this chapter. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending, given the right to send written testimony to the appeal officer, and have one representative at the appeal hearing. If the decision to deny prepayment is upheld or the incentive offer is modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based upon the borrower response and whether the loan is subject to restrictive-use provisions, the Servicing Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

§ 1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.

In instances where the borrower is not subject to restrictive-use provisions and no incentive agreement can be reached between FmHA or its successor agency under Public Law 103–354 and the borrower, and the prepayment cannot be accepted under § 1965.215 and exhibit E of this subpart because a need remains for the housing, the borrower will be required to offer to sell the project to a nonprofit organization or public agency. The following steps will be taken:

(a) *Determination of fair market value.* Within 60 days of the termination of any appeals or the decision to deny prepayment if no appeal was requested, the fair market value of the project as unsubsidized conventional housing will be determined. The value arrived at will result from two appraisals. One appraisal will be the appraisal contracted and paid for by FmHA or its successor agency under Public Law 103–354 that was used to establish the incentives previously offered. The second appraisal will be obtained and paid for by the borrower. Both appraisals will be conducted by qualified independent appraisers in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office). If the fair market values arrived at are within 10 percent of each other, the Servicing Office and the borrower will negotiate to arrive at a mutually acceptable value. If the values differ by more than 10 percent, the independent appraisers will be asked to review their appraisals to determine if the values can be reconciled to within 10 percent. If FmHA or its successor agency under Public Law 103–354 and the borrower

are unable to negotiate a mutually acceptable value or the appraisers are unable to reconcile their appraisals within 30 days of the completion of the appraisals, the State Office and the borrower will jointly select a third independent qualified appraiser whose appraisal will be binding on FmHA or its successor agency under Public Law 103–354 and the borrower. The third appraisal will be completed within 60 days of selection of the appraiser. The cost of the third appraisal shall be divided evenly between FmHA or its successor agency under Public Law 103–354 and the borrower.

(b) *Efforts to market and sell the project to nonprofit organizations or public agencies.* Once the fair market value of the project has been established, the borrower is to attempt to market the project to nonprofit organizations and public agencies. The following actions are to take place:

(1) The Servicing Official is to provide the borrower with a list of nonprofit organizations and public agencies which have notified FmHA or its successor agency under Public Law 103–354 of their interest in purchasing projects that are attempting to prepay. The list will include nonprofit organizations and public agencies that have notified the FmHA or its successor agency under Public Law 103–354 Servicing, State, and National Offices of their interest.

(2) The Servicing Official will instruct the borrower to contact each nonprofit organization and public agency on the list within 10 days of establishing project fair market value. The sequence of contacting nonprofit organizations and public agencies is set forth in paragraphs (b)(3) (i) and (ii) of this section. Materials notifying nonprofit organizations and public agencies of the project's availability will include sufficient information regarding the project and its operation for interested purchasers to make an informed decision. If an interested purchaser requests additional information concerning the project, the borrower shall promptly provide the requested materials.

(3) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. However, if the purchaser is determined to be ineligible, the borrower must resume advertising until a minimum of 180 days has passed. The borrower may satisfy the 180-day requirement by continuing advertising and sales efforts during the eligibility review of an interested purchaser. If additional offers are received during this time period, the offers will be reserved as back-up offers until the eligibility determination of the initial purchaser is completed.

(i) *Sales preference to local nonprofit organizations or public agencies.* The borrower will first advertise the project for sale to qualified local nonprofit organizations or public agencies as defined in § 1965.202 of this subpart. The Servicing Official will be responsible for determining that all appropriate means for contacting such organizations have been utilized including local media, and all necessary information provided. Exclusive advertising to local nonprofit organizations and public agencies must continue for a minimum of 60 days. If more than one qualified nonprofit corporation or public agency submits an offer to purchase the project, a local nonprofit organization or public agency must be given preference over a regional or nationwide organization, regardless of when offers to purchase are received.

(ii) *Advertising to regional or nationwide organizations.* If no qualified local nonprofit organization or public agency is found to purchase the housing within the first 60 days, the Servicing Official will authorize the borrower to advertise for an existing qualified national or regional nonprofit organization to purchase the housing. Advertising must begin between 60 and 120 days after advertising to local organizations began. Advertisements will be placed, as appropriate, in national housing publications and other media determined appropriate by the State Office or other designated office, including those serving minority groups exclusively.

(c) *Qualifications of nonprofit borrower to purchase.* Notwithstanding the requirements of § 1944.211(a)(10) of subpart E of part 1944 of this chapter, nonprofit

organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in § 1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by self management or through a management agent.

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the FmHA or its successor agency under Public Law 103–354 Administrator determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities. Generally, transfers between qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferor or a member of the nonprofit entity holds an ownership interest.

(3) Agree to obligate itself and successors in interest to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities, although no currently eligible moderate-income tenants will be required to move. The provision in exhibit A–2 of this subpart will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate.

(4) Show financial feasibility of the project including anticipated funding to be authorized in accordance with § 1965.217(d) of this subpart. Financial feasibility may also include any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of ownership or controlling interest, regardless of degree, except as management agent between:

(i) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such interest) in loans financed under section 515 that have been prepaid; and

(ii) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in the purchasing entity.

(6) Evidence compliance with paragraph (c)(5) of this section. An officer legally authorized to execute documents on behalf of the purchasing nonprofit entity shall execute the following statement:

> (Name of purchasing nonprofit entity) certifies that no officer or directorate of (name of purchasing nonprofit entity) has been a person or party with a material interest (or persons or parties related to any person or party with such interest) in any loans financed under section 515 that have been prepaid.

(d) *Priority between nonprofit organizations and public agencies.* If more than one qualified organization or public agency submits an offer to purchase the project, the following criteria, in descending order of importance, will be used to establish priority:

(1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;

(2) Nonprofit organizations and public agencies with the most successful experience in developing and managing subsidized housing; and

(3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

§ 1965.217 Processing applications for transfers to nonprofit corporations or public agencies.

(a) *Determining eligibility.* After an option to purchase is signed between a borrower and nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with § 1965.65 (f) of subpart B of this part. FmHA or its successor agency under Public Law 103–354 will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent

loan. Consolidation and reamortization of the loans will be considered when a transfer takes place.

(b) *Appeal rights when a purchaser is not selected.* If a nonprofit organization or public agency is not accepted by FmHA or its successor agency under Public Law 103–354 to purchase the project because the purchaser is found to be ineligible, the transfer is found to be not feasible or because the organization has lower priority than another applicant in accordance with § 1965.216 (b), (c), or (d) of this subpart, appeal rights will be given to the applicant organization in accordance with subpart B of part 1900 of this chapter.

(c) *Authorization for transfer.* When the transfer and loan(s) are ready to be obligated, the National Office will be notified in the format of FmHA or its successor agency under Public Law 103–354 Guide Letter 1965–E–1 (available in any FmHA or its successor agency under Public Law 103–354 office). If the loan will exceed the State Director's approval authority, the entire case file shall be sent to the National Office for review. The National Office will give approval authority and authorize funding for purchase of projects which have complied with the provisions outlined in this section. Subject to the nationwide maximum funding allowed, the authorizations will be issued in date order the complete prepayment request was received by the Servicing Office.

(d) *Special loans and grants available to nonprofit organizations and public agencies.* Loans and grants are available to nonprofit organizations and public agencies to purchase and assist in the purchase of prepaying projects and to pay first year operating expenses. Loans to nonprofit organizations and public agencies may not exceed 102 percent of the fair market value of the project. Grants for costs related to purchasing a project may not exceed $10,000.

(1) *Loans to nonprofit organizations and public agencies.* Loans to nonprofit organizations or public agencies will be approved in accordance with subpart E of part 1944 of this chapter for the following purposes:

(i) A loan sufficient to enable the nonprofit organization or public agency to purchase a project at the fair market value;

(ii) With proper justification, first year operating expenses not to exceed 2 percent of the project's appraised fair market value if current operating funds are not sufficient.

(2) *Special advances to nonprofit organizations or public agencies to cover costs related to purchasing a project.* A grant may be made to a nonprofit organization or public agency to cover any direct costs, other than the purchase price, incurred by the organization or agency in purchasing and assuming responsibility for a project and related facilities. To be eligible for grant funds, the organization or agency must be able to obtain an accepted purchase offer for a project offered for sale by a borrower under § 1965.216 of this subpart.

(i) *Grant purposes.* Eligible purposes of the grant include:

(A) Direct costs to the organization or agency that are based on written estimates for legal fees for purchasing the project, architectural fees, and/or other expenses as described in § 1944.222 of subpart E of part 1944 of this chapter and as authorized by the State Director. Legal fees for organizing the entity are not an eligible cost;

(B) Fees, for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the organization or agency in the packaging of the loan docket and project as well as legal, technical, and professional fees incurred. Legal fees for organizing the entity are not an eligible cost. The Agency will allow payments to eligible organizations packaging applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract. The packaging organization may not represent or be associated with anyone else, other than the purchasing nonprofit organization or public agency, who may benefit in any way in the proposed transaction.

(ii) *Administrative requirements.* The following policies and regulations apply to grants made under this section:

(A) The policies and regulations contained in subpart Q of part 1940 of this chapter apply to grantees under this subpart.

(B) The grantee will retain records for three years from the date Standard Form (SF)–269A, ''Financial Status Report,'' is submitted. The records will be accessible to Agency; and other Federal officials in accordance with 7 CFR part 3015.

(C) Annual audits will be required if the grantee has received more than $25,000 of Federal assistance in the year in which the grant funds were received. The audits will be due 13 months after the end of the fiscal year in which funds were received.

(*1*) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015, 3016 and 3019; and OMB Circular A–128.

(*2*) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A–133.

(iii) *Obtaining payment for costs.* To obtain advance funds or reimbursement of costs, the nonprofit organization or public agency must:

(A) Submit to the appropriate Servicing Office SF–270, ''Request for Advance or Reimbursement,'' for an amount not to exceed $10,000;

(B) Submit a copy of the accepted purchase offer or option to purchase and assume responsibility for a prepaying project and related facilities;

(C) As soon as possible after obtaining an accepted purchase offer or option, submit a complete transfer and loan package (if applicable), as described in § 1965.65 of subpart B of part 1965 of this chapter for transfers and subpart E of part 1944 of this chapter for loans to purchase the project;

(D) If less than $10,000 is advanced or reimbursed at the time of submittal of the grant application package and the applicant expects that further advances or reimbursements may be needed, additional funds may be requested so long as the total advanced or reimbursed does not exceed $10,000. SF–270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than the closing date of the transfer and loan and shall be submitted on SF–270;

(E) Fully document all requests for advances with line item estimates on SF–270. Requests for reimbursement shall be documented with itemized bills or receipts for each item listed on SF–270;

(F) Include SF–269A with the grant application if the entire amount of the grant is being requested at that time. If the grant will be advanced or reimbursed in more than one draw, SF–269A will be submitted with the final draw;

(G) Include a signed statement for all grant applications which states, ''Neither the organization nor any of its employees are associated with or represent anyone in this transaction other than the applicant.''

(iv) *Processing grants.* The following actions will be taken by FmHA or its successor agency under Public Law 103–354 when a grant application is received:

(A) The FmHA or its successor agency under Public Law 103–354 Approval Official will review each grant application package for the amount authorized. The FmHA or its successor agency under Public Law 103–354 Approval Official will execute and distribute Form FmHA or its successor agency under Public Law 103–354 1944–51, ''Multiple Family Housing Obligation Fund Analysis,'' in accordance with the Forms Manual Insert;

(B) The Servicing Official will be responsible for reviewing the eligibility of costs estimated to be incurred or submitted for reimbursement;

(C) A grant agreement, prepared in substantially the same format as exhibit F of this subpart and authorized by grant resolution, will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed in the casefile.

(D) A grant resolution authorizing the appropriate officers of the applicant to execute the grant agreement will be adopted by the applicant's board of directors or other form of governing body. A certified copy is to be submitted to FmHA or its successor

agency under Public Law 103–354 for the file.

(e) *Servicing Office actions when a transfer and subsequent loan is authorized.* When notified by the State Office that the National Office has authorized the transfer and subsequent loan, the Servicing Office will:

(1) Submit the assumption to the State Office for approval in accordance with § 1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the transferee in accordance with paragraph XV B 1 of exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. The notification should state that any rent increases resulting from the transfer and loan will be processed in accordance with § 1965.204 (b) of this subpart.

(4) Transfer all existing loans in the project on new rates and terms and consolidate and reamortize, if necessary, to maintain project feasibility and reduce rental subsidy payments.

(5) Ensure that all delinquent accounts are brought current, cost items paid in full, project accounts brought current and transferred with the project, and all taxes and liens paid or prorated at closing as applicable. Deferred maintenance identified in previous inspections must be acceptably completed before the transferor may retain any equity.

(6) Insert the restrictive-use provisions contained in exhibit A–2 of this subpart in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

(f) *Rental subsidies.* No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of exhibit E of subpart C of part 1930 of this chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

[58 FR 38931, July 21, 1993, as amended at 61 FR 39852, July 31, 1996]

§ 1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.

Borrowers not subject to restrictive-use provisions or prohibitions on prepayment may prepay without restrictions within 120 days of meeting either of the following requirements.

(a) *No offer to purchase.*

(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

(2) The project has been offered to regional and national organizations for at least a 60-day period of the 180 days;

(3) Documentation is provided showing that all organizations whose names were provided by the District or State Office were contacted in accordance with § 1965.216 (b) of this subpart and offered the housing for purchase;

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. Note: (An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on FmHA or its successor agency under Public Law 103–354 funding when no funding is available.); and

(5) Funds have been available for the purpose of carrying out a transfer/sale during this period.

(b) *Funds are not available.* A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have

been exhausted for a period of 15 months. This determination is not related to the length of time the particular project has been on the waiting list. The National Office will periodically advise State Offices of the status of the waiting list and the availability of funds.

§ 1965.219 FmHA or its successor agency under Public Law 103–354 processing of prepayment.

When a prepayment is accepted in accordance with § 1965.218 of this subpart, the Servicing Office will process the prepayment in accordance with the applicable provisions of § 1965.215 (e)(1), (2), (3), (4), and (8) of this subpart.

§§ 1965.220–1965.221 [Reserved]

§ 1965.222 Violations of restrictive-use provisions.

Should the Servicing Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use provisions set out in exhibit A–3 or A–4 of this subpart or the Restrictive-Use Agreements set out in exhibits G–1 thru 4 of this subpart by the owner of a previously FmHA or its successor agency under Public Law 103–354-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The Servicing Office or other designated office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should the preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report, and Servicing Office recommendation will be forwarded to the State Office or other designated office for review and action.

(c) If the State Office or other designated office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be notified. The State Office or other designated office will ask the OGC to provide advice in such cases and, if appropriate, refer the case to the Department of Justice or other appropriate agency for enforcement. A copy of any complaint requesting enforcement of the restrictive-use provisions submitted to the Department of Justice or other appropriate agency should also be forwarded to the Administrator.

§ 1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.

(a) *Acceleration of accounts.* Accelerations of accounts will be prepared in accordance with FmHA or its successor agency under Public Law 103–354 Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA or its successor agency under Public Law 103–354 office). Any FmHA or its successor agency under Public Law 103–354 loan made after December 21, 1979, prepaid in response to an acceleration of the account will be required to have the appropriate restrictive-use language inserted in the deed of release or satisfaction, as appropriate upon the advice of OGC. Any FmHA or its successor agency under Public Law 103–354 loan made on or before December 21, 1979, with payment-in-full made in response to an acceleration of the account, will be required to have the appropriate restrictive-use language inserted on the instrument recorded in the real estate records, as appropriate upon the advice of OGC, only if the payment occurs within 1 year after the borrower had initiated a request to prepay the loan(s). The restrictions used will be those contained in exhibit A–3 of this subpart for loans subject to restrictive-use provisions or prohibited from prepaying. The restrictive-use period will extend for the remaining term of the accelerated loan or length of the existing restrictive-use period, whichever is applicable.

(b) *Foreclosure.* If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be retained and added to the deed in accordance with exhibit A–3 or A–4 of this subpart and paragraph (a) of this section.

(c) *Inventory property.* Restrictive-use provisions will be retained for projects taken into or sold out of FmHA or its successor agency under Public Law 103–

354 inventory in accordance with exhibits A–1 through A–4 of this subpart and paragraph (a) of this section, unless a determination is made in accordance with § 1965.215 and exhibit E of this subpart that the restrictions may be released or that the property is determined non-program property. Tenants will receive all appropriate notifications as they would for prepaying projects not being accelerated.

(d) *Bankruptcy*. Bankruptcy proceedings will have no effect on contractual requirement for restrictive-use.

§ 1965.224 Prepayment of loans caused by advance payments on the account.

If the loan on a project, in which the last loan to build or acquire new units was obligated prior to December 15, 1989, reaches or falls below six remaining payments due to borrower voluntary advance payments or mandatory extra payments required by FmHA or its successor agency under Public Law 103–354 regulation or law, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. FmHA or its successor agency under Public Law 103–354 will inform the borrower that, by law, prepayment regulations must be followed for all loans requesting prepayment subsequent to enactment of the law. The borrower will be required to submit all applicable information required by § 1965.205 of this subpart and complete all applicable actions required by this subpart before a final payment can be accepted.

§§ 1965.225–1965.248 [Reserved]

§ 1965.249 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, adversely affect the accomplishment of the purposes of the RRH or LH programs, or result in undue hardship on the tenants by applying the requirements. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

§ 1965.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0155. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of 1.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB control number 0575–0155), Washington, DC 20503.

EXHIBITS TO SUBPART E

EXHIBIT A–1—REQUIRED CLAUSES FOR ACTIVE BORROWERS WITH PROJECTS SUBJECT TO RESTRICTIVE-USE PROVISIONS AS A RESULT OF SPECIFIC LOAN MAKING OR LOAN SERVICING ACTIONS

The following Multi-Family Housing projects are subject to restrictive-use provisions as set forth in their loan documents or security instruments:

(a) All loans approved between December 21, 1979, and December 15, 1989;

(b) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989;

(c) Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action (e.g., transfer, reamortization, consolidation) as described in subpart B of part 1965 of this chapter, or an incentive to deter

prepayment of the loan as described in this subpart.

All loans or servicing actions meeting the above criteria with prepayment incentives obligated or approved after the effective date of this regulation, will be subject to the following restriction. The restriction will be inserted in the deed, conveyance instrument, loan agreement/resolution, assumption agreement, interest credit agreement, or reamortization agreement, as appropriate. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed or made subject to such restrictions as a result of a servicing action or incentive to not prepay.

''The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, as amended, and FmHA or its successor agency under Public Law 103–354 regulations then extant during this 20 year period beginning (the date the last loan on the project is obligated, or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or incentive to not prepay the loan, authorized under this subpart or other subparts). Until (date), no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision, as well as the Government.''

EXHIBIT A–2—REQUIRED CLAUSES FOR PROJECTS MADE SUBJECT TO RESTRICTIVE-USE PROVISIONS WHEN A LOAN IS TRANSFERRED TO A NONPROFIT ORGANIZATION OR PUBLIC AGENCY TO AVERT PREPAYMENT

Multi-Family Housing projects made subject to restrictive-use provisions because of a transfer and subsequent loan to a nonprofit organization or public agency in order to avert prepayment of the loan as described in this subpart are subject to restrictions which are set forth in the loan instruments or security agreements. Loans meeting the preceding conditions with prepayment incentives obligated after the effective date of this regulation will be required to have the following restriction inserted in the deed, conveyance instrument, loan resolution, and assumption agreement, as applicable:

''The borrower and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in Farmers Home Administration or its successor agency under Public Law 103–354 regulations then extant during the remaining useful life of the project. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government. Throughout the remaining useful life of this project, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.''

The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project, unless the Government subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superceded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

EXHIBIT A–3—REQUIRED CLAUSES FOR PREPAID PROJECTS WHICH WERE SUBJECT TO RESTRICTIVE-USE PROVISIONS PRIOR TO THE PREPAYMENT

The required clauses contained in this exhibit pertain to the following multi-family projects, unless an exception to the restrictive-use provisions have been granted in accordance with this subpart:

(a) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989;

(b) Any loan made subject to restrictive-use provisions as a result of a transfer, consolidation, or reamortization as set forth in this subpart;

(c) Any loan made subject to restricitive-use provisions as a result of accepting an incentive to not prepay as set forth in this subpart;

(d) Any loan previously subject to restrictive-use provisions being accelerated.

The preceding projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–1 to this subpart.

''The owner and any successors in interest agree that the housing located on this property will be used only as authorized under section 514 or 515 of title V of the Housing Act of 1949, as amended, and 7 CFR part 1965, subpart E, or other regulations then extant until (insert date shown on existing restrictive-use provisions). A tenant or applicant for occupancy may seek enforcement of this provision as well as the Government. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupying will be set so that the effect will not differ from what would have been, had the project remained in the FmHA or its successor agency under Public Law 103–354 program. The owner agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for (insert ''low- and moderate-income'' or ''very low- and low-income'' as shown on existing restrictive-use provisions) tenants for the remainder of the restrictive-use period.''

The provisions provide protections to the same categories of tenants who were protected while the loan(s) were in effect, to the same extent that the tenants were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

EXHIBIT A–4—REQUIRED CLAUSES FOR PREPAID PROJECTS WHICH BECAME SUBJECT TO RESTRICTIVE-USE PROVISIONS AT THE TIME OF PREPAYMENT

Multi–Family Housing projects which were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979, that were not subsequently made subject to restrictive-use provisions as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions. The conditions for which restrictive-use provisions are not required are set forth in §1965.215 of this subpart.

(A) 20-year Restrictive-Use Provisions. These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) regulation upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–2 to this subpart.

''The owner and any successors in interest agree to use the housing as required in 7 CFR part 1965, subpart E or other regulations then extant during this 20-year period beginning (date of the last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the Government. Prior to (date period ends) no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA or its successor agency under Public Law 103–354 program. The owner also agrees to keep a notice posted as the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date), the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA or its successor agency under Public Law 103–354.''

(B) *Loans Over 20 Years Old.* These provisions are used when all loans were obligated and applicable servicing actions took place for the project over 20 years prior to the prepayment, and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public agency in accordance with §1965.216 of this subpart. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–3 of this subpart.

''The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration or its successor agency under Public Law 103–354.''

(C) *Current Tenants Restrictive-Use Provisions.* These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of the prepayment, for as long as the current tenants wish to remain at the project. The provisions may only be used if it is determined by FmHA or its successor agency under Public Law 103–354 that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–4 to this subpart.

''The owner and any successors in interest agree to use the housing for the purpose of housing eligible low- and moderate-income people occupying the project at the time the prepayment was accepted, as provided in 7 CFR part 1965, subpart E, and other applicable regulations then extant. No eligible person currently occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates for current tenants as of the date of the prepayment will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision as well as the Government.''

EXHIBIT B—REPORT ON PREPAYMENT [RESERVED]

EXHIBIT C—CHECKLIST FOR REPORTING PREPAYMENT [RESERVED]

EXHIBIT D—METHODOLOGY FOR DETERMINING PREPAYMENT INCENTIVES [RESERVED]

EXHIBIT D–1—WORKSHEET FOR INCENTIVE CALCULATIONS [RESERVED]

EXHIBIT E—ADMINISTRATION GUIDANCE FOR MAKING PREPAYMENT DETERMINATIONS [RESERVED]

EXHIBIT F—PREPAYMENT AND DISPLACEMENT PREVENTION GRANT AGREEMENT

This agreement dated _____

_____, 19____, between _____

which is organized and operating under

_____

_____

_____ herein call ''Grantee,''

(Authorizing Statute)

and the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture, herein called ''Grantor,'' Witnesseth:

WHEREAS:

Grantee has determined to undertake a project of acquisition of a multi-family housing project financed by the Grantor to house rural residents and has duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such project.

Grantor has agreed to grant the Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time it is determined that the Grantee has failed to comply with the conditions of the grant.

Now, therefore, In consideration of said grant by Grantor to Grantee, to be made pursuant to section 502 of the Housing Act of 1949 to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved, as defined by applicable Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) instructions.

Grantee agrees that grantee will: A. Attempt to acquire said project in accordance with FmHA or its successor agency under Public Law 103–354 regulations.

B. If acquired, either directly or through contract, manage, operate and maintain the project continuously in an efficient and economic manner.

C. Make services of said project available within its capacity to all eligible rural residents without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or national origin. For more specific requirements see 7 CFR part 15, subparts A and B.

D. Provide Grantor with such periodic reports as it may require and permit periodic inspections of its operations by a representative of the Grantor.

E. To execute Forms FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' and FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement,'' and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan or transfer being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

F. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant, thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made. For further provisions regarding enforcement see 7 CFR 3016.43.

G. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR 3016.20, which will include:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purposes.

4. accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR part 3016 prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Agree to account for and to return to Grantor interest earned on grant funds pending that disbursements for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

L. Except as specifically provided in this agreement, comply with the applicable provisions of USDA's general grant regulations set out in 7 CFR part 3016.

M. Comply with the requirements of 7 CFR part 3017, subpart F, relating to drug-free workplace requirements and 7 CFR part 3018 relating to restrictions on lobbying.

Grantor agrees that it: A. Will make available to Grantee for the purpose of this

Agreement not to exceed $_____ which it will advance to Grantee in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist grantee with such assistance as Grantor deems appropriate in acquiring the project.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement: This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph F of this exhibit or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

In Witness Whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized _____ and attested and its corporated seal affixed by its duly authorized

_____

Attest: _____
By _____
(Title) _____

By _____
(Title) _____

United States of America Farmers Home Administration or its successor agency under Public Law 103–354.

By _____
(Title) _____

EXHIBIT G–1—RESTRICTIVE-USE AGREEMENT

(To be used with exhibit A–3 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree that the (Name of Project), herein referred to as housing, will be used only as authorized under section 514 or 515 of title V of the Housing Act of 1949, as amended, and 7 Code of Federal Regulations (CFR) part 1965, subpart E, or other Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) regulations then in existence until (Date shown on existing restrictive-use provisions) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. During the restrictive period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set so that the effect will not differ from what would have been had the project remained in the FmHA or its successor agency under Public Law 103–354 program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA or its successor agency under Public Law 103–354 concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA or its successor agency under Public Law 103–354 Servicing Office or other designated office within 30 days of the beginning of each calendar year until (Date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth

certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA or its successor agency under Public Law 103–354 regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

EXHIBIT G–2—RESTRICTIVE-USE AGREEMENT

(To be used with paragraph (A) to exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, as required in 7 Code of Federal Regulations (CFR) part 1965, subpart E, or other Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) regulations then in existence during the 20-year period beginning (date of the last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to (date period ends) to eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions or occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA or its successor agency under Public Law 103–354 program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date) the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA or its successor agency under Public Law 103–354.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA or its successor agency under Public Law 103–354 concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertification, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA or its successor agency under Public Law 103–354 Servicing Office or other designated office within 30 days of the beginning of each calendar year until (date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA or its successor agency under Public Law 103–354 regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

EXHIBIT G–3—RESTRICTIVE-USE AGREEMENT

(To be used with paragraph (B) to exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public

Law 103–354) in accordance with the provisions of 7 Code of Federal Regulations (CFR) part 1965, subpart E. The owner agrees to use the housing as required in 7 CFR part 1965, subpart E, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to a sale to a nonprofit organization or public agency, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA or its successor agency under Public Law 103–354 program. The owner also agrees to keep a notice posted at the project for the remainder of the sales period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the sales period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930 C, specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA or its successor agency under Public Law 103–354 concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA or its successor agency under Public Law 103–354 Servicing Office or other designated office within 30 days of the beginning of each calendar year until a sale to nonprofit organization or public agency takes place:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA or its successor agency under Public Law 103–354 regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title) _____

EXHIBIT G–4—RESTRICTIVE-USE AGREEMENT

(To be used with paragraph (C) to exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required 7 Code of Federal Regulations (CFR) part 1965, subpart E, and other applicable Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions for these tenants such that the effect will not differ from what would have been, had the project remained in the FmHA or its successor agency under Public Law 103–354 program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant voluntarily vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision, as well as the United States.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the remaining useful life of the project or until the last existing tenant voluntarily vacates. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, least agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA or its successor agency under Public Law 103–354 concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA or its successor agency under Public Law 103–354 Servicing Office or other designated office within 30 days of the beginning of each calendar year until the last existing tenant voluntarily vacates:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA or its successor agency under Public Law 103–354 regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

PART 1980—GENERAL

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General

SOURCE: 48 FR 30947, July 6, 1983, unless otherwise noted

§ 1980.1 Purpose.

This subpart contains the general regulations and prescribed forms which are applicable to Community Programs Guaranteed Loans under subpart I of this part.

[64 FR 7402, Feb. 12, 1999]

§§ 1980.2–1980.5 [Reserved]

§ 1980.6 Definitions and abbreviations.

(a) *General definitions*. The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the subparts relating to the particular type of loan involved.

Assignment Guarantee Agreement (Form FmHA or its successor agency under Public Law 103–354 449–36). The signed agreement among FmHA or its successor agency under Public Law 103–354, the lender, and the holder, setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

Conditional Commitment for Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–14). FmHA or its successor agency under Public Law 103–354's advice to the lender that the material it has submitted is approved subject to the conditions and requirements set forth in ''Conditional Commitment for Guarantee.''

Conditional Commitment for Contract of Guarantee (Line of Credit) (Form FmHA or its successor agency under Public Law 103–354 1980.15). FmHA or its successor agency under Public Law 103–354's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in ''Conditional Commitment for Contract of Guarantee.''

Finance Office. The office which maintains the FmHA or its successor agency under Public Law 103–354 financial records. It is located at 1520 Market Street St. Louis, Missouri 63103.

FmHA or its successor agency under Public Law 103–354. The United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, an agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA or its successor agency under Public Law 103–354 offices or official should be read as prefaced by ''FmHA or its successor agency under Public Law 103–354.''

Guaranteed loan. A loan made and serviced by a lender for which FmHA or its successor agency has entered into a Form FmHA 449–35 ''Lender's Agreement,'' and for which FmHA or its successor agency has issued a Form FmHA 449–34, ''Loan Note Guarantee.''

Hazard insurance. Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Holder. The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a holder when Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement,'' is used.

Insured loans. A loan directly made and serviced by FmHA or its successor agency under Public Law 103–354 as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

Joint financing. Occurs when two or more lenders (or any combination of such lenders) makes separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA or its successor

agency under Public Law 103–354 financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate subpart. The lender is also the party requesting a guarantee.

Lender's Agreement (Form RD 449–35). The signed agreement between Rural Development and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–34). The signed commitment issued by FmHA or its successor agency under Public Law 103–354 setting forth the terms and conditions of the guarantee.

Market value. The amount for which property would sell for its highest and best use at voluntary sale.

NOTE: An evidence of debt. In those instances where FmHA or its successor agency under Public Law 103–354 makes an insured loan or guarantees a bond issue, ''note'' shall also be construed to include ''Bond'' or other evidence of indebtedness where appropriate.

Principals of borrowers. Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, ''liquidation'' and ''loan'' shall be construed to mean ''transfer and assumption,'' ''promissory note'' shall be construed to mean ''assumption agreement,'' and ''borrower'' shall be construed to mean ''assuming party'' or ''transferee.''

(b) *Abbreviations*. The following abbreviations are applicable:

CP— Community Programs.

EDA— Economic Development Administration.

EPA— Environmental Protection Agency.

EIS— Environmental Impact Statement.

FmHA or its successor agency under Public Law 103–354— Farmers Home Administration or its successor agency under Public Law 103–354.

FDAA— Federal Disaster Assistance Administration.

FIA— Federal Insurance Administration.

FMI— Forms Manual Insert.

OGC— Office of the General Counsel.

SBA— Small Business Administration.

SBIC— Small Business Investment Company.

USDA— United States Department of Agriculture.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39883, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42481, 42482, Oct. 17, 1989; 55 FR 11134, Mar. 27, 1990; 55 FR 19245, May 9, 1990; 58 FR 34306, June 24, 1993; 58 FR 48291, Sept. 15, 1993; 61 FR 67632, 67633, Dec. 23, 1996; 64 FR 7402, Feb. 12, 1999]

§§ 1980.7–1980.10 [Reserved]

§ 1980.11 Full faith and credit.

The Loan Note Guarantee constitutes obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. Generally, any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing.

Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or the Agency has requested the holder to surrender the evidence of debt for repurchase.

[60 FR 53255, Oct. 13, 1995, as amended at 64 FR 7402, Feb. 12, 1999]

§ 1980.12 [Reserved]

§ 1980.13 Eligible lenders.

(a) *Local lenders.* Local lenders may participate by using the various sources of capital and segments of the money market to meet the necessary financing requirement for guaranteed loan programs. Except in paragraphs (a)(1) and (2) this section, the Agency or its successor agency under Public Law 103–354 will require that a local lender be involved for each project. A local lender is a lender in or near a community where the project is or will be located who routinely provides loan services to such community. Although the project may involve other lenders, investors, or packagers, the local lender will be the lead lender and the lender for purposes of these regulations responsible for servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The Agency or its successor agency under Public Law 103–354 will use the lender as the point of contact for the administration of the program. The Agency or its successor agency under Public Law 103–354 may also permit a lender to be the lender for the loan without being local if:

(1) The lender normally makes loans in the region or geographic location in which the applicant's project being financed is located; or

(2) The lender has specific expertise in loans for the proposed project and provides evidence of such expertise to the satisfaction of the Agency or its successor agency under Public Law 103–354.

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency or an insurance company that is regulated by a State or National insurance regulatory agency. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located and the loan making and loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

(1) *Participation.* Lenders who are not eligible lenders are not barred from participating in loans made by eligible lenders.

(2) *Lender notification.* Each lender will inform the Agency or its successor agency under Public Law 103–354 whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA or its successor agency under Public Law 103–354 with such proofs as FmHA or its successor agency under Public Law 103–354 may require.

(3) *Lender location.* Each lender must maintain an office (either its main or branch office or that of an agent) near enough to the collateral's location so it can properly and efficiently discharge its loanmaking and loan servicing responsibilities.

(4) *Conflict of interest.* The Agency shall determine whether such ownership or business dealings are sufficient to result in a conflict of interest or an apparent conflict of interest. All lenders will, for each proposed loan, inform the Agency in writing and furnish such additional evidence as the Agency requests as to whether and the extent for those loans covered by Form RD 449–35, the lender or its principals or officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other.

(i) For those loans covered by Form FmHA or its successor agency under Public Law 103–354 449–35, the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other; or

(ii) For Farm Credit Programs loans covered by Form FmHA or its successor agency under Public Law 103–354 1980–38, the lender or its officers, directors, principal stockholders or other principal owners or the borrower or its officers, directors, stockholders or other owners have any business dealings with, or hold any stock or other evidence of ownership in, the other.

(5) *Debarment.* See subpart M of part 1940 (available in any Agency or its successor agency under Public Law 103–354 office).

(c) *Substitution of lenders.* With written concurrence of the Agency or its successor agency under Public Law 103–354, another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment provided the borrower, loan purposes, scope of project and loan terms remain unchanged.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 54 FR 14334, Apr. 11, 1989; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, Feb. 12, 1999]

§§ 1980.14–1980.19 [Reserved]

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. The Agency will set the percentage of guarantee. The maximum percentage of guarantee will be ninety percent. Also, the maximum loss covered by Form RD 449–34 (available in any Agency office) can never exceed the lesser of:

(1) The percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with the Agency or its successor agency under Public Law 103–354's authorization; or

(2) The percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

(b) The Agency or its successor agency under Public Law 103–354 will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Applicant's management.* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of applicant or applicant's principals if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan.

(5) *Trends and conditions.* Current trends and economic conditions.

[54 FR 1548, Jan. 13, 1989, as amended at 54 FR 42482, Oct. 17, 1989; 55 FR 137, Jan. 3, 1990; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996; 62 FR 9357, Mar. 3, 1997; 64 FR 7402, Feb. 12, 1999]

§ 1980.21 Guarantee fee.

The fee will be the applicable rate multiplied by the principal loan amount multiplied by the percent of guarantee, paid one time only at the

time the Loan Note Guarantee is issued.

(a) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(b) Guarantee fee rates are specified in exhibit K of RD Instruction 440.1 (available in any Rural Development Office).

[64 FR 7402, Feb. 12, 1999]

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees*. The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. ''Similar types of transactions'' means those transactions involving the same type of loan requested for which a nonguaranteed loan applicant would be assessed charges and fees.

(b) *Late payment charges*. Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) *Routine*. They are routinely made by the lender in all types of loan transactions.

(2) *Payments received*. Payment has not been received within the customary time frame allowed by the lender. The term ''payment received'' means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

(3) *Calculating charges*. The lender agrees with the applicant in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 58 FR 48291, Sept. 15, 1993; 64 FR 7402, Feb. 12, 1999]

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA or its successor agency under Public Law 103–354 will not guarantee any loan or line of credit made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any FmHA or its successor agency under Public Law 103–354 guaranteed loan or line of credit nor may an FmHA or its successor agency under Public Law 103–354 guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

(b) The only time FmHA or its successor agency under Public Law 103–354 may guarantee a loan or line of credit for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan or line of credit has at least a parity security position with the tax-exempt obligation.

[50 FR 39884, Sept. 30, 1985]

§§ 1980.24–1980.39 [Reserved]

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA or its successor agency under Public Law 103–354 approval official. The determination will be based upon FmHA or its successor agency under Public Law 103–354's completion of the appropriate environmental review and Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' when required as set forth in subpart G of part 1940 of this chapter and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA or its successor agency under Public Law 103–354 State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA or its successor agency under Public Law 103–354 is responsible for assuring that the requirements of section 102(2)(c) of

the National Environmental Policy Act of 1969 (NEPA), and subpart G of part 1940 of this chapter are met.

[54 FR 42482, Oct. 17, 1989]

§ 1980.41 Equal opportunity and nondiscrimination requirements.

(a) *Equal Credit Opportunity Act*. In accordance with title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA or its successor agency under Public Law 103–354 will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status or physical/mental handicap providing the applicant can execute a legal contract or because all or part of the applicant's income derives from any public assistance program or because the applicant in good faith, exercised any rights under the Consumer Protection Act. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

(b) *Forms and requirements*. In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable to certain cases involving construction as indicated. The borrower is responsible for seeing that the requirements of paragraphs (b)(1) through (5) of this section are met.

(1) *Compliance reports*. No prospective contractor or subcontractor will be eligible for a contract or subcontract financed with a guaranteed loan until he has filed all of the compliance reports required of him under any previous contracts.

(2) *Equal Opportunity agreement*. Before loan closing, each borrower whose loan involves a construction contract of more than $10,000 must execute Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement.''

(3) *Contract or subcontract in excess of $10,000*. If the contract or a subcontract exceeds $10,000.

(i) The contractor or subcontractor must submit Form FmHA or its successor agency under Public Law 103–354 400–6, ''Compliance Statement,'' before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract. This clause is incorporated in Form FmHA or its successor agency under Public Law 103–354 424–6, ''Construction Contract,'' which may serve as a guide.

(iii) With notification of the contract award, the contractor must receive:

(A) Form FmHA or its successor agency under Public Law 103–354 400–3, ''Notice to Contractors and Applicants,'' signed by the County Supervisor with an attached Equal Employment Opportunity Poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(B) Form AD–425, ''Contractor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375,'' if the contractor or subcontractor is subject to the requirements of paragraph (b)(5) of this section.

(4) *One hundred or more employees and contract or subcontract exceeds $10,000*. If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000.

(i) In addition to meeting the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must file Standard Form 100, ''Equal Employment Opportunity Employer Information Report EEO–1,'' with the Joint Reporting Committee within 30 days of the contract or subcontract award unless this report has already been submitted within the last 12 months.

(ii) An annual report must be filed on or before March 31, as long as the contractor or subcontractor holds a contract equal to $10,000 or more which is financed with a guaranteed loan.

Failure to file timely, complete and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, DC 20006.

(5) *Fifty or more employees and contract or subcontract exceeds $50,000*. If the contract or subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put it on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract. Form AD–425 provides guidelines for the contractor or subcontractor in developing such a program.

(6) *Compliance reviews*. Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or lender (when inspections are made), will be shown on Form FmHA or its successor agency under Public Law 103–354 424–12, ''Inspection Report.'' If there is any evidence of non-compliance, the borrower or lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, ATTN: Equal Opportunity Officer.

(7) *Employee complaints*. Any employee of or applicant for employment with such contractors or subcontactors may file a written complaint of discrimination with FmHA or its successor agency under Public Law 103–354.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by FmHA or its successor agency under Public Law 103–354 for good cause shown by the complainant.

[48 FR 30947, July 6, 1983, as amended at 49 FR 28039, July 10, 1984; 50 FR 39884, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 52 FR 6500, Mar. 4, 1987; 56 FR 11504, Mar. 19, 1991; 61 FR 67633, Dec. 23, 1996]

§ 1980.42 Flood or mudslide hazard area precautions.

(a) *Project location*. Projects located in special flood or mudslide hazard areas, as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development may be financed under this subpart only:

(1) If the community, as a result of such designation by FIA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) If the project location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan in paragraph (a)(1) of this section.

(3) The requirements of Subpart G of Part 1940 of this chapter have been met.

(b) *Flood insurance*. If project is located in a special flood or mudslide hazard area and if flood insurance is available it will be purchased by the borrower prior to loan closing. (See Part 1806, Subpart B of this chapter.) (FmHA or its successor agency under Public Law 103–354 Instruction 426.2.)

[48 FR 30947, July 6, 1983, as amended at 49 FR 3764, Jan. 30, 1984]

§ 1980.43 Clean Air Act and Water Pollution Control Act requirements.

(a) *Conditions*. As a condition for FmHA or its successor agency under Public Law 103–354's making or guaranteeing a loan in excess of $100,000 and unless otherwise exempted, an applicant for a loan will:

(1) Comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C–9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318) relating to inspection,

monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 16, 1975.)

(2) Notify the FmHA or its successor agency under Public Law 103–354 of the receipt of any communication from the EPA indicating that a facility to be utilized in the carrying out of the FmHA or its successor agency under Public Law 103–354 program loan purposes is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to the making of the loan.)

(3) Certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

(4) Include, or cause to be included, the criteria and requirements contained in this section in every nonexempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(5) Secure the service of a contractor who agrees to comply with the provisions in paragraph (a) of this section.

(b) *Solicitation*. Lender will cause to be included in all solicitation and contract provisions the stipulations contained in paragraph (a) of this section, provided the loan amount is $100,000 or more and not otherwise exempted.

(c) *Facility*. The term ''facility'', as used in this section only, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are located in one geographical area.

(d) *Exemptions*—(1) *Transactions $100,000 and under*. Any contracts, subcontracts, loans, and subloans not exceeding $100,000 are exempt.

(2) *Contracts and subcontracts for indefinite quantities*. With respect to contracts and subcontracts for indefinite quantities (including but not limited to time and material contracts, requirements contracts, and basic ordering agreements), this section shall be applicable unless the applicant or borrower has reason to believe that the amount to be ordered in any year under such contract will not exceed $100,000.

(3) *Authority of the Administrator*. When the Administrator of the FmHA or its successor agency under Public Law 103–354 determines that the paramount interest of the United States so requires, he may exempt any individual loan, contract or subcontract for a period of 1 year, and by rule or regulation any class of loans or contracts following consultation with EPA. In the case of an individual exemption, the Administrator shall notify the Director, Office of Federal Activities, EPA, as soon before or after granting the exemption as practicable. The justification for such an exemption or any renewal thereof shall fully describe the purpose of the loan or contract and shall indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(4) *Facilities located outside the United States*. This section shall not apply to the use of facilities outside the United States. The term ''United States'' as used herein includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

§ 1980.44 National Historic Preservation Act of 1966.

As a condition for FmHA or its successor agency under Public Law 103–354 making or guaranteeing a loan, the applicant will provide a written statement to FmHA or its successor agency under Public Law 103–354 of the effect,

if any, the project will have on any district, site, or building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Act includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. (See Part 1901 Subpart F of this chapter.)

§ 1980.45 Other Federal, State and local requirements.

In addition to the specific requirements of this subpart, proposals for facilities financed in whole or in part with an FmHA or its successor agency under Public Law 103–354 loan or guarantee will be coordinated with all appropriate Federal, State and local agencies in accordance with the following:

(a) *Compliance with special laws and regulations*. Applicants and/or lenders will be required to comply with any Federal, State or local laws, regulatory commission rules, ordinances, and regulations which are presently in existence or may be later adopted which affect the project including, but not limited to:

(1) Organization and authority to design, construct, develop, operate, and/or maintain the proposed facilities;

(2) Borrowing money, giving security therefor, and raising revenues for the repayment thereof;

(3) Land use zoning;

(4) Health, safety, and sanitation standards;

(5) Protection of the environment and consumer affairs.

(b) *In compliance*. The applicant and/or lender will be in compliance with this section effective with the date of issuance of the Loan Note Guarantee.

§ 1980.46 [Reserved]

§ 1980.47 Time frame for processing applications for loan guarantees.

All guaranteed loan applications must be approved or disapproved, and the lender notified in writing, not later than 60 days after receipt of a completed application, except as noted in paragraph (d) of this section.

(a) If an application is not complete, the lender will be notified, in writing, not later than 20 days after receipt of the application by FmHA or its successor agency under Public Law 103–354, of the reason(s) the application is incomplete.

(b) When an application is disapproved, the written notification to the lender will state the reasons(s) for disapproval.

(c) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA or its successor agency under Public Law 103–354 will notify the lender of such action within 15 days after the reversal/revision decision is made.

(d) Applications for Community Programs guaranteed loans that would otherwise be disapproved due to the lack of guarantee authority to make the loans will be placed in a pending status. The applications will remain in a pending status until guarantee authority becomes available. Within 60 days after guaranteed authority becomes available, FmHA or its successor agency under Public Law 103–354 will notify the applicants of the approval or disapproval of the loan.

[51 FR 6710, Feb. 25, 1986, as amended at 57 FR 6068, Feb. 20, 1992; 61 FR 67633, Dec. 23, 1996]

§ 1980.48 Seismic safety of new building construction.

(a) The guaranteed loan programs are subject to the provisions of Executive Order 12699 which requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(b) All new buildings shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of

the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(1) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(2) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(3) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(c) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications will be evidence of compliance with the seismic requirements of the appropriate building code.

[61 FR 65157, Dec. 11, 1996]

§§ 1980.49–1980.59 [Reserved]

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee.

(a) *Lender certification.* For Farmer Programs loans, Form FmHA or its successor agency under Public Law 103–354 449–34 or Form FmHA or its successor agency under Public Law 103–354 1980–27 will not be issued until the lender certifies to the applicable conditions below by executing Form FmHA or its successor agency under Public Law 103–354 1980–22, ''Lender Certification.'' Form 449–34 will not be issued until the lender certifies that:

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans and specifications. All costs have not exceeded the amounts approved by the lender and the Agency.

(3) Required hazard, flood, or prevention insurance, worker's compensation and personal life insurance when required is in effect.

(4) Truth in lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been or will be met at the appropriate time.

(6) The loan has been properly closed, and the required security instruments have been obtained, or will be obtained on any after acquired property that cannot be covered initially under State law.

(7) The borrower has marketable title to the collateral then owned by borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved in writing by FmHA or its successor agency under Public Law 103–354.

(8) When required, the entire amount of loan for working capital has been disbursed except in cases where the State Director has approved disbursement over an extended time.

(9) When required personal, partnership, or corporate guarantees have been obtained. Copies of the guarantees will be provided to FmHA or its successor agency under Public Law 103–354.

(10) All other requirements of the Conditional Commitment for Guarantee have been met.

(11) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(12) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on Form FmHA or its successor agency under Public Law 103–354 449–1, ''Application for Loan and Guarantee,'' or Form FmHA or its successor agency under Public Law 103–354 1980–10, ''Application for Loan and Guarantee'' (Community Programs). A copy of a detailed loan settlement statement of the lender will be attached to support this certification.

(13) Equity requirements have been met. A reconciliation of the borrower's net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(14) There has been no adverse change(s) in the borrower's financial condition nor any other adverse change in the borrower during the period of time from FmHA or its successor agency under Public Law 103–354's issuance

of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee or from the time of FmHA or its successor agency under Public Law 103–354's issuance of the Conditional Commitment for Contract of Guarantee to the issuance of the Contract of Guarantee. The lender's certification must address all adverse changes of the borrower and be supported by financial statements of the borrower and its guarantors not more than 60 days old at time of certification. For purposes of this paragraph, the term ''borrower'' includes additionally any parent, affiliate, or subsidiary of the borrower.

(b) *Inspections*. The lender will notify FmHA or its successor agency under Public Law 103–354 of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. FmHA or its successor agency under Public Law 103–354 may attend such field inspections. Any inspections or review conducted by FmHA or its successor agency under Public Law 103–354, including those with the lender, are for the benefit of FmHA or its successor agency under Public Law 103–354 only and not for other parties of interest. FmHA or its successor agency under Public Law 103–354 inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA or its successor agency under Public Law 103–354's inspections in any manner whatsoever.

(c) *Execution of form*. The lender has executed and delivered to FmHA or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 449–35.

(d) *Plans for marketing*. The lender advises FmHA or its successor agency under Public Law 103–354 of its plans to sell or assign any part of the loan as provided in Form FmHA or its successor agency under Public Law 103–354 449–35.

(e) *Additional requirements*. See also appropriate subpart for additional requirements.

[48 FR 30947, July 6, 1983, as amended at 49 FR 28039, July 10, 1984; 50 FR 39885, Sept. 30, 1985; 51 FR 6710, Feb. 25, 1986; 55 FR 11134, Mar. 27, 1990; 58 FR 34307, June 24, 1993; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, Feb. 12, 1999]

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

(a) *Lender's Agreement*. If FmHA or its successor agency under Public Law 103–354 finds that all requirements have been met:

(1) The lender and FmHA or its successor agency under Public Law 103–354 will execute Form FmHA or its successor agency under Public Law 103–354 449–35. The original will be delivered to FmHA or its successor agency under Public Law 103–354 and a signed duplicate original will be retained by the lender. There will be a Form FmHA or its successor agency under Public Law 103–354 449–35 executed for all loans and lines of credit guaranteed by FmHA or its successor agency under Public Law 103–354.

(2) In all cases, the lender's agreement will be executed no later than the time the Loan Note Guarantee is signed.

(b) *Loan Note Guarantee*. (1) Upon receipt of the Form FmHA or its successor agency under Public Law 103–354 449–35, and after all requirements have been met, FmHA or its successor agency under Public Law 103–354 will execute Form FmHA or its successor agency under Public Law 103–354 449–34. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of notes attached will be retained by FmHA or its successor agency under Public Law 103–354.

(2) In the event a lender has made a loan guaranteed by FmHA or its successor agency under Public Law 103–354 under previous regulations and has obtained a Form FmHA or its successor agency under Public Law 103–354 449–17, ''Contract of Guarantee,'' the lender

may request the State Director to substitute a Loan Note Guarantee governed in all respects by these regulations for the previously issued Contract of Guarantee. The State Director will review the lender's written request for substitution of guarantees and may authorize the issuance of the new Loan Note Guarantee in exchange for the Contract of Guarantee. The lender will:

(i) Prepare and submit to FmHA or its successor agency under Public Law 103–354 a written request for such substituted guarantee.

(ii) Certify to FmHA or its successor agency under Public Law 103–354 that there is no adverse change in the borrower's financial situation, the collateral and terms of the loan remain the same as under the original guarantee, and the loan is in good standing.

(iii) Pay the required guarantee fee.

(iv) Certify to FmHA or its successor agency under Public Law 103–354 the outstanding principal amount of the loan.

(v) Execute Form FmHA or its successor agency under Public Law 103–354 449–35.

(3) If a lender has selected the multinote system as provided in paragraph III A 2 of Form FmHA 449–35, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on Form FmHA or its successor agency under Public Law 103–354 449–34.

(4) If the lender requests a series of new notes to replace previously issued guaranteed notes as provided in paragraph III A (b) of Forms FmHA 449–35 the County Supervisor may reissue the new Loan Note Guarantee in exchange for the original Loan Note Guarantee.

(c) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provision of the applicable subpart, the lender, holder, and FmHA or its successor agency under Public Law 103–354 will execute Form FmHA or its successor agency under Public Law 103–354 449–36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA or its successor agency under Public Law 103–354. If the lender desires to assign a part(s) of the guaranteed loan to a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee.

(d) *Refusal to execute contract.* If FmHA or its successor agency under Public Law 103–354 determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, it will promptly inform the lender on Form FmHA or its successor agency under Public Law 103–354 449–13, ''Denial Letter,'' of the reasons, and give the lender a reasonable period within which to satisfy FmHA or its successor agency under Public Law 103–354 objections. If the lender is unable to satisfy FmHA or its successor agency under Public Law 103–354 objections, then the lender will be informed of the appeal rights as set out in § 1980.80 of this subpart. If the lender writes FmHA or its successor agency under Public Law 103–354 within the period allowed requesting additional time to satisfy the objections, FmHA or its successor agency under Public Law 103–354 may, in writing, grant such additional time as it considers necessary and reasonable under the circumstances. If the lender satisfies the objections with the time allowed and otherwise complies with these regulations, the guarantee will be issued.

(e) *Cancellation of obligations.* If the conditions for the loan or line of credit are rejected or cannot be met after completion of any appeal, FmHA or its successor agency under Public Law 103–354 will prepare and submit to the Finance Office, Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation.''

(f) *Payment of guarantee fee.* The lender will prepare and deliver a Form FmHA or its successor agency under Public Law 103–354 1980–19, ''Guaranteed Loan Closing Report,'' for each loan or line of credit to be guaranteed and deliver the guarantee fee to the FmHA or its successor agency under Public Law 103–354 representative who concurrently delivers the Loan Note Guarantee(s).

(g) *Authorized FmHA or its successor agency under Public Law 103–354 representatives to execute forms.* State Directors, District Directors, State Program Loan Chiefs, and County Supervisors are authorized to execute the Lender's Agreement (Form FmHA or its successor agency under Public Law 103–354 449–35, the Loan Note Guarantee, and/or the Assignment Guarantee Agreement.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39885, Sept. 30, 1985; 51 FR 6710, Feb. 25, 1986; 51 FR 29905, Aug. 21, 1986; 52 FR 6500, Mar. 4, 1987; 58 FR 34308, June 24, 1993; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, 7403, Feb. 12, 1999]

§ 1980.62 Lender's sale or assignment of guaranteed portion of loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA or its successor agency under Public Law 103–354 449–35. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA or its successor agency under Public Law 103–354 449–35, the lender will provide this information with the application of FmHA or its successor agency under Public Law 103–354.

[58 FR 34308, June 24, 1993, as amended at 64 FR 7403, Feb. 12, 1999]

§ 1980.63 Defaults by borrower.

(a) Refer to paragraph X of Form FmHA or its successor agency under Public Law 103–354 449–35.

(b) FmHA or its successor agency under Public Law 103–354 may be required to purchase the guaranteed portion of a loan(s) from holder(s) in the event of default or servicing problems. The County Supervisor will coordinate any requests from holder(s) located in close proximity to the local lender. If several holders are located outside the area, the State Director will handle the transaction and notify the County Supervisor. The County Supervisor will prepare a Form FmHA or its successor agency under Public Law 103–354 1980–37, ''FmHA or its successor agency under Public Law 103–354 Purchase of a Guaranteed Loan Portion,'' for each holder(s) and follow the instructions on the reverse of the form.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 34308, June 24, 1993; 61 FR 67633, Dec. 23, 1996; 64 FR 7403, Feb. 12, 1999]

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XI of Form FmHA or its successor agency under Public Law 103–354 449–35.

(b) *Lender's option.* If a lender has made a loan guaranteed by FmHA or its successor agency under Public Law 103–354 under previous regulations and the lender concludes that liquidation of the guaranteed loan is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure, the lender has the option of liquidate the loan under the provisions of this subpart, or under the provisions of previous regulations. The lender will notify the State Director in writing within 10 days after its decision to liquidate if it desires to proceed under this subpart.

(c) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, FmHA or its successor agency under Public Law 103–354 may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA or its successor agency under Public Law 103–354, and FmHA or its successor agency under Public Law 103–354 must agree, prior to the lender submitting any request for estimated loss payment.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39886, Sept. 30, 1985; 58 FR 34308, June 24, 1993; 64 FR 7403, Feb. 12, 1999]

§ 1980.65 Protection advances.

Refer to paragraph XII of Form FmHA or its successor agency under Public Law 103–354 449–35.

[58 FR 34308, June 24, 1993, as amended at 64 FR 7403, Feb. 12, 1999]

§ 1980.66 Additional loans or advances.

Refer to paragraph XIII of Form FmHA or its successor agency under Public Law 103–354 449–35.

[58 FR 34308, June 24, 1993, as amended at 64 FR 7403, Feb. 12, 1999]

§ 1980.67 Bankruptcy.

(a) *Reference*. Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Payments will be made in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations.

(b) *Lender's option*. If a lender has made a loan guaranteed by FmHA or its successor agency under Public Law 103–354 under previous regulations, and the borrower has filed for protection under a reorganization bankruptcy, the lender has the option of requesting an estimated loss payment under the provisions of this part.

[54 FR 1549, Jan. 13, 1989, as amended at 61 FR 67633, Dec. 23, 1996; 64 FR 7403, Feb. 12, 1999]

§ 1980.68 Lender's request to terminate Loan Note Guarantee.

If the Loan Note Guarantee has not automatically terminated the lender may request FmHA or its successor agency under Public Law 103–354 to terminate the Loan Note Guarantee(s), for any reason, provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA or its successor agency under Public Law 103–354 449–34.) The lender will provide the County Supervisor with a written notice that the loan(s) is (or are) paid in full and/or termination of the Loan Note Guarantee(s) enclosing the original Form(s) FmHA or its successor agency under Public Law 103–354 449–34 for cancellation.

[53 FR 26413, July 12, 1988. Redesignated at 54 FR 1549, Jan. 13, 1989, as amended at 61 FR 67633, Dec. 23, 1996; 64 FR 7403, Feb. 12, 1999]

§§ 1980.69–1980.79 [Reserved]

§ 1980.80 Appeals.

Only the borrower, lender and/or holder can appeal an FmHA or its successor agency under Public Law 103–354 decision. The borrower must jointly execute in the written request by either party for review of an alleged adverse decision made by FmHA or its successor agency under Public Law 103–354 and both must participate in the appeal. In cases where FmHA or its successor agency under Public Law 103–354 has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. A decision by a lender adverse to the borrower is not a decision by FmHA or its successor agency under Public Law 103–354, whether or not concurred in by FmHA or its successor agency under Public Law 103–354. Appeals will be handled in accordance with directions set out in subpart B of part 1900 of this chapter.

[53 FR 26413, July 12, 1988]

§ 1980.81 Access to records of lenders.

Upon request by FmHA or its successor agency under Public Law 103–354 the lender will permit representatives of FmHA or its successor agency under Public Law 103–354 (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the Lender pertaining to FmHA or its successor agency under Public Law 103–354 guaranteed loans. Such inspection and copying may be made during regular office hours of the lender, or any other time the lender and FmHA or its successor agency under Public Law 103–354 finds convenient.

§ 1980.82 State supplements to this regulation.

FmHA or its successor agency under Public Law 103–354 State Directors may supplement this regulation subject to National Office review to the extent necessary to properly implement the program in their States.

§ 1980.83 FmHA or its successor agency under Public Law 103–354 forms.

(a) *FmHA or its successor agency under Public Law 103–354 forms incorporated in this subpart*. Forms FmHA or its successor agency under Public Law 103–354 449–34, FmHA or its successor agency under Public Law 103–354 449–35 and

FmHA or its successor agency under Public Law 103–354 449–36 are incorporated in this subpart, made a part hereof, and appear as appendices A, B, and C in the FEDERAL REGISTER. Copies of the forms may be obtained from any FmHA or its successor agency under Public Law 103–354 office.

(b) [Reserved]

[48 FR 30947, July 6, 1983, as amended at 50 FR 39886, Sept. 30, 1985; 51 FR 6711, Feb. 25, 1986; 51 FR 29905, Aug. 21, 1986; 52 FR 6501, Mar. 4, 1987; 52 FR 22290, June 11, 1987; 54 FR 4, Jan. 3, 1989; 54 FR 42483, Oct. 17, 1989; 56 FR 8260, Feb. 28, 1991; 57 FR 6068, Feb. 20, 1992; 58 FR 34308, June 24, 1993; 60 FR 53256, Oct. 13, 1995; 64 FR 7403, Feb. 12, 1999]

§ 1980.84 Replacement of guaranteed loan documents.

(a) [Reserved]

(b) *Requirements*. When a Loan Note Guarantee, Contract of Guarantee, or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, who is requesting the replacement forms.

(ii) Legal name and address of lender of record.

(iii) Capacity of person certifying.

(iv) Full identification of the Loan Note Guarantee, or Assignment Guarantee Agreement including the name of the borrower, FmHA or its successor agency under Public Law 103–354 case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan or line of credit, percentage of guarantee and if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee, or Assignment Guarantee Agreement.

(vi) The holder shall present evidence demonstrating current ownership of the Loan Note Guarantee and note or Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be presented to FmHA or its successor agency under Public Law 103–354 (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to FmHA or its successor agency under Public Law 103–354 shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a State or Territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds must be issued and/or payable to the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save FmHA or its successor agency under Public Law 103–354 harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provisions of paragraph III(A)(2) of Form FmHA or its successor agency under Public Law 103–354 449–35, known as the ''Multi-Note System,'' FmHA or its successor agency under Public Law 103–

354 will not attempt to or participate in the obtaining of replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. (See paragraph III(A)(2)(b) of Form FmHA or its successor agency under Public Law 103–354 449–35 for general conditions for reissued notes.) If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before FmHA or its successor agency under Public Law 103–354 will replace any instruments.

ADMINISTRATIVE

A. State Directors will review all documents when presented by the lender to assure all requirements are met.

B. The State Director will contact the Regional OGC for assistance before new guarantee instruments are issued.

C. If the decision is to reissue Loan Note Guarantee(s), Contract of Guarantee(s), or Assignment Guarantee Agreement(s) the following procedure will be followed:

(1) *Multi-note system.* A new Form FmHA or its successor agency under Public Law 103–354 449–34 will be prepared using the original face amounts and amounts guaranteed (not outstanding loan balance). At the top of the form type ''This Loan Note Guarantee is issued to replace the original dated _____ which was (*insert ''lost, stolen, destroyed, defaced or mutilated.''*) Only execute an original for the Holder. Copies may be conformed for the lender and FmHA or its successor agency under Public Law 103–354 file.

If borrower notes are needed they must be obtained by the holder from the borrower. The indemnity bond must be kept in safekeeping.

(2) *Assignment Guarantee Agreement system.* A new Form FmHA or its successor agency under Public Law 103–354 449–36 will be prepared using the original amounts except the current principal amount of the loan outstanding should be inserted at item 1 on the face of the document. At the top of the form type ''This Assignment Guarantee Agreement is issued to replace the original dated _____ which was *lost, stolen, destroyed, defaced or mutilated.*'' Only execute an original for the Holder. Copies may be conformed for the lender and FmHA or its successor agency under Public Law 103–354. If a surety bond is isued, it must be kept in safekeeping.

(3) The lender must execute the replacement forms prior to FmHA or its successor agency under Public Law 103–354 execution of the same.

(4) Certificates of Incumbency may be provided.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39886, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 58 FR 34308, June 24, 1993; 60 FR 53256, Oct. 13, 1995; 64 FR 7403, Feb. 12, 1999]

§ 1980.85 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law, or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exception, must be in writing by the State Director and submitted through the appropriate Assistant Administrator. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. In addition, any request for an exception to § 1980.13(b) of this subpart must document that the lender involved has furnished acceptable evidence of regulation and supervision.

[54 FR 1549, Jan. 13, 1989]

§§ 1980.86–1980.99 [Reserved]

§ 1980.100 OMB control number.

The reporting requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0024. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 28 hours per response, with an average of 2.08 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

burden, to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0024), Washington, DC 20503.

[60 FR 53256, Oct. 13, 1995]

APPENDICES TO SUBPART A

APPENDIX A—LOAN NOTE GUARANTEE

USDA
Form FmHA 449–34
(Rev. 10–95)

Type of Loan _____

Applicable 7 C.F.R. part 1980

subpart _____
State _____
County _____
Date of Note _____
Borrower _____
Government Loan Identification Number __
Lender _____
Lender's IRS ID Tax Number _____
Lender's Address _____
Principal Amount of Loan _____

The guaranteed portion of the loan is $_____ which is _____ (_____ %)

percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note

_____ in the face amount of $_____
and is number _____ of _____.

Lender's identifying No.	Face amount	Percent of total face amount	Amount guaranteed
	$_____	_____	$_____
Total	$_____	100	$_____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farm Service Agency, Rural Business–Cooperative Service, Rural Utilities Service, or Rural Housing Service (herein called ''Government''), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961 Pub. L. 93–357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, Pub. L. 95–334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion and any capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Program loans but not exceeding statutory loan limits.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with Government's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

d. and, Capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Programs Loans and not exceeding statutory loan limits, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon and any capitalized interest resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

If Government conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date Government accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by Government.

Definition of Holder

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the Guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 449–36, ''Assignment Guarantee Agreement,'' is used.

Definition of Lender

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 C.F.R. part 1980. The Lender is also the party requesting a loan guarantee.

CONDITIONS OF GUARANTEE

1. Loan Servicing

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of subpart B of 7 C.F.R., part 1980, and request a determination of the Borrower's eligibility by Government. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for the payment of interest on interest, then this Loan Note Guarantee is void. However, in the case of the Farm Credit Programs loans, the capitalization of interest when restructuring loans will not void this Loan Note Guarantee. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which Government acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by Government in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by Government of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to Government any payment made by Government to Holder which if such Lender had held the guaranteed portion of the loan, Government would not be required to make.

5. Payments

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date

of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to Government. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and Government of its decision.

8. Government Purchase

If Lender does not repurchase as provided by paragraph 7 hereof, Government will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to Government from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from Government. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to Government or the original of the Assignment Guarantee Agreement properly assigned to Government without recourse including all rights, title, and interest in the loan. Government will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by Government, such proposed payment will not be later than 30 days from the date of demand.

The Government will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the Government with the information necessary for Government determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. Government will notify both parties who must resolve the conflict before payment by Government will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information. Government will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the Government Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations

Lender consents to the purchase by Government and agrees to furnish on request by Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by Government does not change, alter or modify any of the Lender's obligations to Government arising from said loan or guarantee nor does it waive any of Government's rights against Lender, and that Government will have the right to set-off against Lender all rights inuring to Government as the Holder of this instrument against Government's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or Government to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains Government written approval.

c. If the Lender does not repurchase the portion from the Holder(s), Government at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates

This Loan Note Guarantee will terminate automatically (a) upon full payment of the

guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to Government that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by Government.

13. Settlement

The amount due under this instrument will be determined and paid as provided in the applicable subpart of 7 CFR part 1980 in effect on the date of this instrument.

14. Loan Subsidy

*In addition to the interest rate of the note attached hereto, Government will pay a loan subsidy of _____ percent per year. Payments will be made annually.

15. Interest Capitalization

In the case of Farm Credit Programs loans, the Lender/Holder(s) may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the principal amount of the loan listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Loan Note Guarantee. Such capitalized interest will be covered by this loan Note Guarantee. References to ''principal and interest'' and ''principal advanced'' herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

Position 5

16. Notices

All notices will be initiated through the Government _____ for _____ (State) with mailing address at the day of this instrument:

_____

_____

*If not applicable delete paragraph prior to execution of this instrument.

UNITED STATES OF AMERICA

_____

(insert applicable agency)

By _____

Title _____

(Date) _____

Assumption Agreement by _____

dated _____, 19____

Assumption Agreement by _____

dated _____, 19____

[60 FR 53256, Oct. 13, 1995]

APPENDIX B—LENDER'S AGREEMENT

USDA-FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 *Position 5*

Form FmHA or its successor agency under Public Law 103–354 449–35
(Rev. 12–89)
FORM APPROVED
OMB No. 0575–0024

Type of Loan: _____

FmHA or its successor agency under Public Law 103–354 Loan Ident. No. _____

Applicable 7 CFR

Part 1980 Subpart _____

_____(Lender) of _____ has made a loan(s) to _____(Borrower) _____ in the principal

amount of $ _____ as evidenced by _____

note(s) (include Bond as appropriate)

described as follows: _____

_____

_____

_____

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has entered into a ''Loan Note Guarantee'' (Form FmHA or its successor agency under Public Law 103–354 449–34) or has issued a ''Conditional Commitment for Guarantee'' (Form FmHA or its successor agency under Public Law 103–354 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed_____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. *Full Faith and Credit*. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the

Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0024), Washington, D.C. 20503.

III. *Lender's Sale or Assignment of Guarantee Loan.*

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement.'' Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103–354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall suceed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee,'' attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees for B&I, FP only) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing.* Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103–354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103–354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103–354 449–34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA or its successor agency under Public Law 103–354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103–354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103–354 will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA or its successor agency under Public Law 103–354.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Community Programs and Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA or its successor agency under Public Law 103–354 program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103–354 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution will direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. The Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103–354 has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. *Servicing*.

A. The Lender will service the entire loan and will remain mortgagee and/or secured part of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103–354. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103–354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103–354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103–354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for

Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103–354's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. *Assuring that adequate insurance is maintained*. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage for Community Program Loans if required.

5. *Assuring that:* taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103–354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA or its successor agency under Public Law 103–354; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103–354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103–354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103–354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103–354 regulations.

10. Providing FmHA or its successor agency under Public Law 103–354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103–354 1980–41, ''Guaranteed Loan Status Report.'' For Farm Ownership, Soil and Water, and Operating loans, Form FmHA or its successor agency under Public Law 103–354 1980–41 will only be submitted annually as of December 31.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103–354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a Farm Ownership, Soil and Water or Operating loan is involved the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

X. *Default*.

A. The Lender will notify FmHA or its successor agency under Public Law 103–354 when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103–354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103–354 1980–44, ''Guaranteed Loan Borrower Default Status.'' A meeting will be arranged by the Lender with the Borrower and FmHA or its successor agency under Public Law 103–354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103–354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103–354's Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR Part 1980, Subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA or its successor agency under Public Law 103–354. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103–354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA or its successor agency under Public Law 103–354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103–354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public

Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee, nor does such purchase waive any of the FmHA or its successor agency under Public Law 103–354's rights against Lender, and FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 from the Holder against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee. To the extent FmHA or its successor agency under Public Law 103–354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103–354 repurchases from a Holder, FmHA or its successor agency under Public Law 103–354 will pay the Holder only the amounts due the Holder, FmHA or its successor agency under Public Law 103–354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103–354 and no such fee is collectible from FmHA or its successor agency under Public Law 103–354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. *Liquidation*. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103–354. When FmHA or its successor agency under Public Law 103–354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103–354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103–354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103–354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103–354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation*. Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103–354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103–354 with:

1. Such proof as FmHA or its successor agency under Public Law 103–354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I or CP loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I or CP loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103–354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103–354 and the Lender.

B. FmHA or its successor agency under Public Law 103–354's response to Lender liquidation plan. FmHA or its successor agency under Public Law 103–354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency

under Public Law 103–354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103–354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103–354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103–354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103–354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103–354 all rights and interest necessary to allow FmHA or its successor agency under Public Law 103–354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103–354.

2. FmHA or its successor agency under Public Law 103–354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103–354 include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration*. The Lender or FmHA or its successor agency under Public Law 103–354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the accelertion notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103–354 or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports*. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103–354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103–354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103–354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103–354 1980–43. ''Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103–354.'' When FmHA or its successor agency under Public Law 103–354 liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment*. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103–354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103–354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103–354. Payments will be made in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103–354 an estimate of loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103–354 will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103–354 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA or its successor agency under Public Law 103–354, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA or its successor agency under Public Law 103–354 regulations.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103–354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103–354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103–354 449–30 by the Lender to FmHA or its successor agency under Public Law 103–354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103–354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103–354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103–354 in making the investigation. If FmHA or its successor agency under Public Law 103–354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103–354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103–354 will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103–354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA or its successor agency under Public Law 103–354 when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA or its successor agency under Public Law 103–354 to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA or its successor agency under Public Law 103–354 conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA or its successor agency under Public Law 103–354 accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA or its successor agency under Public Law 103–354, except for Farm Ownership, Soil and Water, and Operating loans only, when the Lender files an estimated loss claim. For Farm Ownership, Soil and Water and Operating loans, only, when the Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA or its successor agency under Public Law 103–354. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA or its successor agency under Public Law 103–354 loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103–354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA or its successor agency under Public Law 103–354 449–30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103–354 in order to close out the files at the FmHA or its successor agency under Public Law 103–354 Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the lender (with FmHA or its successor agency under Public Law 103–354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103–354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties.

When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA or its successor agency under Public Law 103–354 within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.*

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA or its successor agency under Public Law 103–354 written authorization is required on all protective advances in excess of $500. Protective advances include but are not limited to advances made for taxes annual assessments, ground rent hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. *Additional Loans or Advances.*

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103–354 even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.*

After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103–354, any future funds which may be recovered by the Lender will be pro-rated between FmHA or its successor agency under Public Law 103–354 and the Lender. FmHA or its successor agency under Public Law 103–354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.*

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30, line 13 and 14.

XVI. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA or its successor agency under Public Law 103–354, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA or its successor agency under Public Law 103–354 with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the rorganization plan, the Lender will complete Form FmHA or its successor agency under Public Law 103–354 1980 44, ''Guaranteed Loan Borrower Default Status,'' and forward this form to the Finance Office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains

a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA or its successor agency under Public Law 103–354 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA or its successor agency under Public Law 103–354 servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA or its successor agency under Public Law 103–354 with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30.

XVII. *Debt Write-down*.

For Farm Ownership, Soil and Water, and Operating loans only, refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA or its successor agency under Public Law 103–354 449–30. ''Loan Note Guarantee Report of Loss,'' to request an estimated loss payment to receive is pro-rata share of any loss sustained.

XVIII. *Other Requirements*.

This agreement is subject to all the requirements of the applicable subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103–354 regulations not inconsistent with this agreement.

XIX. *Execution of Agreements*.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103–354 with respect to the execution of such contract. FmHA or its successor agency under Public Law 103–354 in no way warrants that such a contract has been or will be executed.

XX. *Notices*.

All notices and actions will be

initiated through FmHA or its successor agency under Public Law 103–354 for _____

(State) with mailing address at

the date of this instrument _____

XXI. The Lender will ensure that the borrower complies with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

Dated this _____ day of _____. 19____

LENDER:

ATTEST: _____ (SEAL)

By _____

Title _____

UNITED STATES OF AMERICA

Farmers Home Administration or its successor agency under Public Law 103–354

By _____

Title _____

[55 FR 11134, Mar. 27, 1990]

APPENDIX C—ASSIGNMENT GUARANTEE AGREEMENT

Position 5

USDA

Form FmHA 449–36

(Rev. 10–95)

Type of Loan _____

Government Loan Identification

Number _____

Applicable 7 CFR part 1980 subpart _____

_____ of _____

(Lender) has made a loan to _____

in the principal amount of $_____ as evidenced by a note(s) dated_____.

The United States of America, acting through the Farm Service Agency, Rural Business–Cooperative Service, Rural Utilities Service, or Rural Housing Service (herein called ''Government'') entered into a Loan Note Guarantee (Form FmHA 449–34) with the Lender applicable to such loan to guarantee the loan not to exceed _____% of the amount of the principal advanced and any interest (including any loan subsidy) due thereon and any capitalized interest, resulting from the restructuring of a Guaranteed Farm Credit Programs loan and not exceeding statutory loan limits, as provided therein.

_____ of _____ (Holder) desires to purchase from Lender _____% of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $_____. Lender hereby assigns to Holder _____% of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and Government certify to the Holder that the Lender has paid and Government has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The Lender will receive all payments on account of principal of, or interest (including any loan subsidy and any capitalized interest, resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only the Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all obligations under the Loan Note Guarantee and the program regulations found in the applicable subpart of 7 CFR part 1980 now in effect and future regulations not inconsistent with the provisions hereof.

5. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. Any Assignment Guarantee Agreement attached to or relating to a note which provides for capitalization of interest is void. Except in the case of Farm Credit Program loans, a note which provides for the payment of interest on interest as a result of restructuring the loan and not exceeding statutory loan limits, and any Assignment Guarantee Agreement attached to or related to such note is not void.

6. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder not withstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by Government of any rights its possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse Government for any payment made by Government to Holder which, if such Lender had held the guaranteed portion of the loan, Government would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 449–36 to effectuate the transfer.

7. Repurchase by the Lender (Defaults). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to Government. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender in encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable.

The Lender will notify the Holder(s) and Government of its decision.

8. Purchase by Government. If Lender does not repurchase as provided by paragraph 7, Government will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within 30 days after written demand to Government from the Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from Government. Such evidence will consist of each the original of the Loan Note Guarantee properly endorsed to Government or the original of the Assignment Guarantee Agreement properly assigned to Government without recourse including all rights, title, and interest in the loan. Government will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by Government, such proposed payment will not be later than 30 days from the date of demand.

The Government will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the Government with the information necessary for Government's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. Government will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information. Government will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the Government Finance Office of issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations. Lender consents to the purchase by Government and agrees to furnish on request by Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owned by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by Government does not change, alter or modify any of the Lender's obligations to Government arising from said loan or guarantee nor does it waive any of Government's right against Lender, and that Government shall have the right to set-off against Lender all rights inuring to Government as the Holder of this instrument against Government's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the lender or Government to the Holder(s) requesting the Holder(s) to tender their, guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains Government written approval.

c. If the Lender does not repurchase the portion from the Holder(s), Government at its option may purchase such guaranteed portions for servicing purposes.

11. Foreclosure. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. Reassignment. Holder upon written notice to Lender and Government may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. Interest Capitalization. In the case of Farm Credit Programs loans, the Lender may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the line of credit listed herein, buy may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this agreement. Such capitalized interest will be covered by this Assignment Guarantee Agreement. References to principal and interest herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Farm Credit Programs loans and not exceeding statutory loan limits.

14. Notices. All notices and actions will be initiated through the Government _____ for _____ (state) with mailing address at the date of this assignment: _____

_____

Dated this _____ day _____, 19____.

LENDER:
ADDRESS:
ATTEST:
_____*(SEAL)*

By _____
Title _____

HOLDER:
ADDRESS:
ATTEST:
_____*(SEAL)*

By _____
Title _____

UNITED STATES OF AMERICA

_____

(insert applicable agency)

ADDRESS _____

_____

By _____
Title _____

[60 FR 53258, Oct. 13, 1995]

Subparts B–C [Reserved]

Subpart D—Rural Housing Loans

SOURCE: 60 FR 26985, May 22, 1995, unless otherwise noted.

§ 1980.301 Introduction.

(a) *Policy*. This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing Service (RHS) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHS employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

(b) *Program objective*. The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in exhibit C of FmHA Instruction 1980–D (available in any RHS office).

(c) [Reserved]

(d) *Nondiscrimination*. Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental disability (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

§ 1980.302 Definitions and abbreviations.

(a) The following definitions are applicable to RH loans:

Agency: Rural Housing Service (RHS).

Applicant. The party applying to a Lender for a loan.

Approval official. An RHS employee with delegated loan approval authority under subpart A of part 1901 consistent with the amount and type of loan considered.

Borrower. Collectively, all parties who applied for and received a specific guaranteed loan from an eligible Lender.

Coapplicant. An adult member of the household who joins the applicant in applying to a lender for a loan.

Conditional commitment. RHS's notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the notice.

Development standard. The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in exhibit E to subpart A of part 1924 applicable to single family

residential construction or other similar codes adopted by RHS for use in the state.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede the person's ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living, and

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Displaced homemaker. An individual who is an adult; has not worked full-time full-year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled and is the applicant/borrower or the coapplicant/coborrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled persons who are living together, at least one of whom is the applicant/borrower or coapplicant/coborrower; or

(3) In the case of a family where a deceased borrower/coborrower or spouse was at least 62 years old or disabled, the surviving household members shall continue to be classified as an ''elderly family'' for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his/her death; and

(ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of death, the dwelling of the deceased family member was financed under title V of the Housing Act of 1949, as amended.

Eligible lender. A Lender meeting the criteria outlined in §1980.309 who has requested and received RHS approval for participation in the program.

Existing dwelling. A dwelling which has been completed for more than 1 year as evidenced by an occupancy permit or a similar document.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances,

could maintain separate households. A typical example is parents living with their adult children.

Federal National Mortgage Association (Fannie Mae) rate. The rate authorized in exhibit B of FmHA Instruction 440.1 (available in any RHS office).

Finance Office. The office which maintains RHS's financial records.

First-time homebuyer. Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse. This definition is used to determine RHS processing priority in accordance with § 1980.353.

Guaranteed loan. A loan made, held, and serviced by a Lender for which RHS has entered into an agreement with the Lender in accordance with this subpart.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

Interest assistance. Loan assistance payments made by RHS to the Lender on behalf of the borrower.

Lender. The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an RHS guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating, underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

Lender agreement. The signed master agreement between RHS and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

Lender record change. The Lender's notice to RHS of a change of Lender or a change of servicer.

Liquidation. Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party in order to avoid or cure a default situation with the prior approval of the Lender and RHS. In states providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

Liquidation expense. The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

Loan note guarantee. The signed commitment issued by RHS setting forth the terms and conditions of the guarantee.

Manufactured home. A structure built to the Federal Manufactured Home Construction and Safety Standards and RHS thermal requirements.

Master interest assistance agreement. The agreement among RHS, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

Minor. A person under 18 years of age. Neither the applicant, coapplicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

Net family assets. Include:

(1) The value of equity in real property, savings, individual retirement accounts (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

(i) Interests in Indian Trust land,

(ii) The value of the dwelling and a minimum adequate site,

(iii) Cash on hand which will be used to reduce the amount of the loan,

(iv) The value of necessary items of personal property such as furniture and

automobiles and the debts against them,

(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Net proceeds. The proceeds remaining from the property after it is sold or its net value as determined in accordance with this subpart. The determination of net proceeds depends upon whether the property is sold or acquired by the Lender. Net proceeds may be determined using the appraised value and subtracting authorized deductions when the Lender acquires the property.

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

Qualifying income. The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in § 1980.347(e).

Rural area. An area meeting the requirements of § 1980.312. Rural areas are designated on maps available in the RHS office servicing that area.

Single parent. An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

State Director. Director of RHS programs within a state office area.

Veteran. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable discharge including ''clemency discharges'' and who served on active duty in such forces:

(1) From April 6, 1917, through March 31, 1921;

(2) From December 7, 1941, through December 31, 1946;

(3) From June 27, 1950, through January 31, 1955; or

(4) For more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) The following abbreviations are applicable to this subpart:

Fannie Mae— Federal National Mortgage Association.

FCS— Farm Credit Service.

FHA— Federal Housing Administration.

Freddie Mac— Federal Home Loan Mortgage Corporation.

Ginnie Mae— Government National Mortgage Association.

HUD— Department of Housing and Urban Development.

IRS— Internal Revenue Service.

MCCs— Mortgage Credit Certificates.

PITI— Principal, Interest, Taxes, and Insurance.

RHS— Rural Housing Service.

URAR— Uniform Residential Appraisal Report.

VA— Department of Veterans Affairs.

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit.

The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee

or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the Lender conducts liquidation in an expeditious manner, in accordance with the provisions of § 1980.374, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

§ 1980.309 Lender participation in guaranteed RH loans.

(a) *Qualification*. The following Lenders are eligible to participate in the RHS guaranteed RH loan program upon presentation of evidence of said approval and execution of the RHS Lender Agreement.

(1) Any state housing agency;

(2) Any Lender approved by HUD as a supervised or nonsupervised mortgagee for submission of one to four family housing applications for Federal Housing Mortgage Insurance or as an issuer of Ginnie Mae mortgage backed securities;

(3) Any Lender approved as a supervised or nonsupervised mortgagee for the VA;

(4) Any Lender approved by Fannie Mae for participation in one to four family mortgage loans;

(5) Any Lender approved by Freddie Mac for participation in one to four family mortgage loans;

(6) An FCS institution with direct lending authority; and

(7) Any Lender participating in other RHS, Rural Business–Cooperative Service, Rural Utilities Service, and/or Farm Service Agency guaranteed loan programs.

(b) *Lender approval*. A Lender listed in paragraph (a) of this section must request a determination of eligibility in order to participate as an originating Lender in the program. Requests may be made to the state office serving the state jurisdiction or to the National office when multiple state jurisdictions are involved.

(1) The Lender must provide the following information to RHS:

(i) Evidence of approval, as appropriate, for the criteria under paragraph (a) of this section, which the Lender meets.

(ii) The Lender's Tax Identification Number.

(iii) The name of an official of the Lender who will serve as a contact for RHS regarding the Lender's guaranteed loans.

(iv) A list of names, titles, and responsibilities of the Lender's principal officers.

(v) An outline of the Lender's internal loan criteria for issues of credit history and repayment ability and a copy of the Lender's quality control plan for monitoring production and servicing activities.

(vi) An executed certification regarding debarment, suspension, or other matters—primary covered transactions. The certification will be obtained using a form prescribed by RHS.

(2) The Lender must agree to:

(i) Obtain and keep itself informed of all program regulations and guidelines including all amendments and revisions of program requirements and policies.

(ii) Process and service RHS guaranteed loans in accordance with Agency regulations.

(iii) Permit RHS employees or its designated representatives to examine

or audit all records and accounts related to any RHS loan guarantee.

(iv) Be responsible for the servicing of the loan, or if the loan is to be sold, sell only to an entity which meets the provisions of paragraph (a) of this section.

(v) Use forms which have been approved by FHA, Fannie Mae, Freddie Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an RHS Lender was based on approval by HUD, VA, Fannie Mae, or Freddie Mac including maintaining the minimum allowable net capital, acceptable levels of liquidity, and any required fidelity bonding and/or mortgage servicing errors and omissions policies required by HUD, VA, Fannie Mae, or Freddie Mac, as appropriate.

(vii) Operate its facilities in a prudent and business-like manner.

(viii) Assure that its staff is well trained and experienced in loan origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the necessary origination and servicing functions.

(ix) Notify RHS in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for RHS eligibility;

(B) Becomes insolvent;

(C) Has filed for bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(D) Has taken any action to cease operations or discontinue servicing or liquidating any or all of its portfolio of RHS guaranteed loans;

(E) Has any change in the Lender name, location, address, or corporate structure;

(F) Has become delinquent on any Federal debt or has been debarred, suspended, or sanctioned by any Federal agency or in accordance with any applicable state licensing or certification requirements.

(c) [Reserved]

(d) *Handling applications for Lender eligibility*. Upon determination of a Lender's eligibility to originate loans, RHS and the Lender will execute the RHS Lender Agreement. The Lender Agreement establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of RHS single family mortgage loans. The Lender Agreement shall be in effect until terminated by either the Agency or the Lender in accordance with the terms of the Lender Agreement and this subpart.

(e) *Lender sale of guaranteed loans*. Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section or directly to Fannie Mae or Freddie Mac. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The selling Lender is responsible for reporting the sale of any loan to RHS within 30 days using a reporting form provided by RHS. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with RHS. The purchasing Lender shall succeed to all rights, title, and interest of the Lender under the loan note guarantee. Any necessary or convenient assignments or other instruments relating to the loan and any other actions necessary or convenient to perfect or record such transaction are the responsibility of the purchasing Lender. The purchasing Lender assumes the obligations of, and will be bound by and will comply with, all covenants, agreements, terms, and conditions contained in any note, security instrument, loan note guarantee, and of any outstanding agreements in connection with such loan purchased. The purchasing Lender shall be subject to any defenses, claims, or setoffs that RHS would have against the Lender if the Lender had continued to hold the loan.

(f) *Lender responsibility*. The Lender will be responsible for the processing, servicing, and liquidation (if necessary) of the loan. The Lender may use agents, correspondents, branches, financial experts, or other #institutions in carrying out its responsibilities. Lenders are fully responsible for their own actions and the actions of those acting on the Lender's behalf.

(1) *Processing*. The Lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The Lender will obtain, complete, and submit to RHS the items required in § 1980.353(c). The Lender may utilize the services of a non-RHS approved lender for originating residential loans. The RHS approved lender is responsible for the loan underwriting and for obtaining the RHS conditional commitment. The agent may close the loan in its name provided the loan is immediately transferred to the approved lender to whom the guarantee will be issued.

(2) *Servicing*. Lenders are fully responsible for servicing and protecting the security for all guaranteed loans. When servicing is carried out by a third party, the Lender will inform RHS of the name and address of the servicer.

(3) *Liquidation*. The Lender will complete any liquidation of loans guaranteed under the provisions of the Lender Agreement. Loss claims will be submitted on the RHS Loss Report form. The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan. The Lender shall also effect collection of the debt from other assets of the borrower to the extent practicable.

(4) *Counseling*. Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by RHS or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(g) *Monitoring a Lender's processing and servicing of loans*. If RHS determines that the Lender is not fulfilling the obligations of the Lender Agreement or that the Lender fails to maintain the required criteria, the Lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them. If the Lender fails to make the required corrections, RHS will proceed as provided in paragraph (h) of this section.

(1) *Loan processing review for new Lenders*. RHS may review loans developed by an eligible Lender to assure compliance with, and understanding of, Agency regulations.

(2) [Reserved]

(3) [Reserved]

(h) *Termination of Lender eligibility*. The Lender remains eligible as long as the Lender meets the criteria in paragraph (a) of this section unless that Lender's status is revoked by RHS or by another Federal agency. RHS shall revoke the eligible Lender status of any Lender who fails to comply with requirements of paragraph (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of the Lender Agreement, fails to properly service any guaranteed loan, or fails to adequately protect the interests of the Lender and the Government. If the Lender is determined to be no longer eligible, the Lender will continue to service any outstanding loans guaranteed under this subpart which are held by the Lender or RHS may require the Lender to transfer the servicing of the loan. In addition to revocation of eligible Lender status, the Lender may be debarred by RHS.

§ 1980.310 Loan purposes.

The purpose of a loan guaranteed under this subpart must be to acquire a completed dwelling and related facilities to be used by the applicant as a primary residence. The loan may be to purchase a new dwelling or an existing dwelling. The guaranteed loan may be for ''take out'' financing for a loan to construct a new dwelling or improve an existing dwelling when the construction financing is arranged in connection with the loan package. The loan may include funds for the purchase and installation of necessary appliances, energy saving measures, and storm cellars. Incidental expenses for tax monitoring services, architectural, appraisal, survey, environmental, and other technical services may be included. Subject to § 1980.311, eligible loan purposes also include:

(a) Necessary related facilities such as a garage, storage shed, walks, driveway, and water and/or sewage facilities including reasonable connection fees

for utilities which the buyer is required to pay.

(b) Special design features or equipment necessary to accommodate a physically disabled member of the household.

(c) The cost of establishing an escrow account for real estate taxes and/or insurance premiums.

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants only, loan discount points to reduce the note interest rate from the rate authorized in § 1980.320 not exceeding the amount typical for the area.

(e) Provide funds for seller equity and/or essential repairs when an existing guaranteed loan is to be assumed simultaneously.

§ 1980.311 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* Conditional commitments will not be issued if loan funds are to be used for:

(1) Payment of construction draws.

(2) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with § 1980.310.

(3) Refinancing RHS debts, debts owed the Lender (other than construction/development, financing incurred in conjunction with the proposed loan), or debts on a manufactured home.

(4) Purchase or improvement of income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or to buy or build buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise.

(5) Payment of fees, charges, or commissions, such as finder's fees for packaging the applications or placement fees for the referral of a prospective applicant to RHS.

(6) Improving the entry of a homestead entryman or desert entryman prior to receipt of patent.

(7) Purchase a dwelling with an inground swimming pool.

(b) *Limitations.* The principal purpose of the loan, except for a subsequent loan to an existing borrower, must be to buy or build a dwelling. The loan may include additional funds in accordance with § 1980.310. The amount of the loan may not exceed the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702).

(1) A loan for the acquisition of a newly constructed dwelling that meets the requirements of § 1980.341(b) of this subpart may be made for up to 100 percent of the appraised value or the cost of acquisition and any necessary development including those purposes in § 1980.310, whichever is less.

(2) A loan for the acquisition of an existing dwelling and development, if any, in conjunction with the acquisition of an existing dwelling may be made for up to 100 percent of the appraised value or the cost of acquisition and necessary development including those purposes in § 1980.310, whichever is less.

(3) A loan for the acquisition of a newly constructed dwelling (a dwelling that does not meet the definition for an existing dwelling) that does not meet the requirements of § 1980.341(b) is limited to 90 percent of the present market value.

(c) *Subdivisions.* Housing units may be financed in existing subdivisions approved by local, regional, state, or Federal government agencies before issuance of a conditional commitment. The subdivision must meet the requirements of § 1901.203. An existing subdivision is one in which the local government has accepted the subdivision plan, its principal developments and right-of-ways, the construction of streets, water and water/waste disposal systems, and utilities; is at a point which precludes any major changes; and provisions are in place for continuous maintenance of the streets and the water and water/waste disposal systems. A dwelling served by a homeowners association (HOA) may be accepted when the project has been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac.

§ 1980.312 Rural area designation.

A rural area is an area which is identified as rural by RHS in accordance with § 1944.10. Current county maps

showing ineligible areas are available in RHS field offices.

§ 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as identified in § 1980.312. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surface or all-weather surface.

(c) *Water and water/waste disposal system.* A nonfarm tract on which a loan is to be made must have an adequate water and water/waste disposal system and other related facilities. Water and water/waste disposal systems serving the site must be approved by a state or local government agency. When the site is served by a privately owned and centrally operated water and water/waste disposal system, the system must meet the design requirements of the State Department of Health or comparable reviewing and regulatory agency. Written verification must be obtained from the regulatory agency that the private water and water/waste system complies with the Safe Drinking Water Act (42 U.S.C. 300F *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*), respectively. A system owned and/or operated by a private party must have a binding agreement which allows interested third parties, such as the Lender, to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

(d) [Reserved]

(e) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing and be modest in cost. A dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702) is considered modest. Generally, the value of the site must not exceed 30 percent of the total value of the property. When the value of the site is typical for the area, as evidenced by the appraisal, and the site cannot be subdivided into two or more sites, the 30 percent limitation may be exceeded.

(f) *Thermal standards.* Dwellings financed shall meet the standards outlined in exhibit D of subpart A of part 1924 except for an existing dwelling, if documentation is provided to establish that the actual cost of heating and cooling is not significantly greater than those costs for a dwelling that meets RHS's thermal standards. If the dwelling is excepted, only the perimeter of the house at the band beam and the heat ducts in unheated basements or crawlspace must be insulated.

(g) *Existing dwelling.* An existing dwelling financed must be cost effective to the applicant including reasonable costs of utilities and maintenance for the area. Loan guarantees may be made on an existing manufactured home when it meets the provisions of paragraph (i)(2)(i) of this section.

(h) *Repairs.* Any dwelling financed with an RHS guarantee must be structurally sound, functionally adequate, and placed in good repair prior to issuance of the Loan Note Guarantee except as provided in § 1980.315.

(i) *Manufactured homes.* New units that meet the requirements of exhibit J of subpart A of part 1924 and purchased through RHS approved dealer-contractors may be considered for a guaranteed loan under this subpart. The Lender may obtain a list of RHS approved models and dealer-contractors from any RHS office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit and related site development work on a site owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314.

(ii) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a Section 502 RH direct or guaranteed loan, is being sold from RHS inventory, or is being sold from the Lender's inventory provided the Lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. Items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items may be financed.

(vii) Any unit not constructed to the RHS thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

§ 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the Lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the Lender determines and certifies to RHS that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term (term plus option to renew) of at least 40 years from the date of approval.

§ 1980.315 Escrow accounts for exterior development.

When proposed exterior development work cannot be completed because of weather and the work remaining to be done does not affect the livability of the dwelling, an escrow account *for exterior development only* may be established by the originating lender if the following conditions are met:

(a) A signed contract and bid schedule is in effect for the proposed exterior development work.

(b) The contract for development work must provide for completion within 120 days.

(c) The Lender agrees to obtain a final inspection report and advise RHS when the work has been completed.

(d) The escrow account must be funded in an amount sufficient to assure the completion of the remaining work. This figure should be 150 percent of the cost of completion but may be higher if the Lender determines a higher amount is needed.

§ 1980.316 Environmental requirements.

The requirements of subpart G of part 1940 apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with RHS in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to RHS. RHS may require that Lenders and/or applicants obtain information for completing environmental assessments when necessary. The RHS approval official will utilize adequate, reliable information in completion of environmental review. Sources of information include, but are not limited to, the State Natural Resource Management Guide (available in any RHS office) and, as necessary, the technical expertise available within the Agency as well as other agencies and organizations to assist in the completion of the environmental review.

§ 1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.

(a) *Compliance.* Loans guaranteed under this subpart are subject to the provisions of various civil rights statutes. RHS and the Lender may not discriminate against any person in making guaranteed housing loans available, or impose different terms and conditions for the availability of these loans based on a person's race, color, familial status, religion, sex, age, physical or mental disability, or national origin, provided the applicant possesses the capacity to enter into a legal contract for services. These requirements will

be discussed with the applicant, builder, developer, and other parties involved as early in the negotiations as possible.

(b) *Reporting*. If there is indication of noncompliance with these requirements, the matter will be reported by the borrower, Lender, or RHS personnel to the Administrator or the Director, Equal Opportunity Staff. Complaints and compliance will be handled by RHS in accordance with subpart E of part 1901.

(c) *Forms and requirements*. In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable when the loan guarantee involves a construction contract between the borrower and the contractor that is more than $10,000. The Lender is responsible for seeing that the requirements of paragraphs (c)(1) through (c)(5) of this section are met:

(1) *Equal Opportunity Agreement*. Before loan closing, each borrower whose loan involves a construction contract of more than $10,000 must execute the RHS Equal Opportunity Agreement or the equivalent HUD form.

(2) *Construction contract or subcontract in excess of $10,000*. If the contract or a subcontract exceeds $10,000:

(i) The contractor or subcontractor must submit the Agency Compliance Statement before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract.

(iii) With notification of the contract award, the contractor must receive the Agency Notice to Contractors and Applicants signed by RHS, with an attached Equal Employment Opportunity poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(iv) Under Executive Order 11246 and Executive Order 11375, the contractor or subcontractor, subject to the requirements of paragraph (c)(5) of this section, is prohibited from discriminating because of race, color, religion, sex, or national origin to ensure equality of opportunity in all aspects of employment.

(3) *One hundred or more employees and construction contract or subcontract exceeds $10,000*. If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000, in addition to the requirements of paragraph (c)(2) of this section, a report must be filed annually on or before March 31. Failure to file timely, complete, and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, D.C. 20006.

(4) *Fifty or more employees and construction contract or subcontract exceeds $50,000*. If the contract or subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c)(2) of this section, each such contractor or subcontractor must be informed that the contractor or subcontractor must develop a written affirmative action compliance program for each of the contractor's or subcontractor's establishments and put it on file in each of the personnel offices within 120 days of the commencement of the contract or subcontract.

(5) [Reserved]

(6) *Employee complaints*. Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with RHS.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time

for filing is extended by RHS for good cause shown by the complainant.

§ 1980.318 Flood or mudslide hazard area precautions.

RHS policy is to discourage lending in designated flood and mudslide hazard areas. Loan guarantees shall not be issued in designated flood/mudslide hazard areas unless there is no practical alternative.

(a) *Dwelling location.* Dwellings and building improvements located in special flood or mudslide hazard areas, as designated by the Federal Emergency Management Agency (FEMA) may be financed under this subpart only if:

(1) The community, as a result of such designation by FEMA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) The dwelling location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan (see paragraph (a)(1) of this section).

(3) Potential environmental impacts and feasible alternatives have been fully considered by RHS in accordance with the requirements of subpart G of part 1940.

(4) The first floor elevation is above the 100 year flood zone elevation.

(b) *Flood insurance.* If the dwelling is located in a special flood or mudslide hazard area, flood insurance must be purchased by the borrower prior to loan closing and maintained thereafter. See subpart B of part 1806 (FmHA Instruction 426.2).

§ 1980.319 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart, on all proposals financed with an RHS guarantee, Lenders and/or applicants must coordinate with all appropriate Federal, state, and local agencies. Applicants and/or Lenders will be required to comply with any Federal, state, or local laws, regulatory commission rules, ordinances, and regulations which exist at the time the loan guarantee is issued which affect the dwelling including, but not limited to:

(a) Borrowing money and giving security therefore;

(b) Land use zoning;

(c) Health, safety, and sanitation standards; and

(d) Protection of the environment and consumer affairs.

§ 1980.320 Interest rate.

The interest rate must not exceed the established applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the lender's published rate for VA first mortgage loans with no discount points or the current Fannie Mae rate as defined in § 1980.302(a), whichever is higher. The lender must document the rate and the date it was determined.

§ 1980.321 Terms of loan repayment.

(a) *Note.* Principal and interest shall be due and payable monthly.

(b) *Term.* The term for final maturity shall be not less than 30 years from the date of the note and not more than 30 years from the date of the first scheduled payment.

§ 1980.322 Loan guarantee limits.

The amount of the loan guarantee is 90 percent of the principal amount of the loan.

(a) The maximum loss payment under the guarantee of Single Family Housing loans is the lesser of:

(1) Any loss of an amount equal to 90 percent of the principal amount actually advanced to the borrower, or

(2) Any loss sustained by the Lender of an amount up to 35 percent of the principal amount actually advanced to the borrower, plus 85 percent of any additional loss sustained by the Lender of an amount up to the remaining 65 percent of the principal amount actually advanced to the borrower.

(b) Loss includes only:

(1) Principal and interest evidenced by the guaranteed loan note;

(2) Any loan subsidy due and owing; and

(3) Any principal and interest indebtedness on RHS approved protective advances for protection and preservation of security.

(c) Interest (including any subsidy) shall be covered by the loan note guarantee to the date of the final loss settlement when the Lender conducts liquidation in an expeditious manner in accordance with the provisions of § 1980.376.

§ 1980.323 Guarantee fee.

The Lender will pay a nonrefundable fee which may be passed on to the borrower. The amount of the fee is determined by multiplying the figure in exhibit K of FmHA Instruction 440.1 (available in any RHS office) times 90 percent of the principal amount of the loan.

§ 1980.324 Charges and fees by Lender.

(a) *Routine charges and fees.* The Lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late charges may be made only if:

(1) *Maximum amount.* The maximum amount does not exceed the percentage of the payment due as prescribed by HUD or Fannie Mae or Freddie Mac.

(2) *Routine.* They are routinely made by the Lender in similar types of loan transactions.

(3) *Payments received.* Payments have not been received within the customary time frame allowed by the Lender. The term ''payment received'' means that the payment in cash, check, money order, or similar medium has been received by the Lender at its main office, branch office, or other designated place of payment.

(4) *Calculating charges.* The Lender does not change the rate or method of calculating the late payment charges to increase charges while the loan note guarantee is in effect.

(5) *Interest-assisted loans.* The Lender will not penalize or charge any fee to the borrower when the only delinquency is a loan subsidy payment, which the Lender is entitled to but has not received.

§ 1980.325 Transactions which will not be guaranteed.

(a) *Lease payments.* Payments made on a lease will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude guarantees of loans made by an FCS institution with direct lending authority. This also does not preclude loans made by state or local government agencies assisted by a Federal agency.

§§ 1980.326–1980.329 [Reserved]

§ 1980.330 Applicant equity requirements.

A loan to purchase a new or existing dwelling may be made up to the appraised market value of the security.

§ 1980.331 Collateral.

(a) *General.* The entire loan must be secured by a first lien on the property being financed (second lien when the loan is for a subsequent loan to an existing borrower or there is a transfer and assumption of an existing loan) and the Lender will maintain this lien priority. The Lender is responsible for assurance that proper and adequate security interest is obtained, maintained in existence, and of record to protect the interests of the Lender and RHS.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no adverse claims or liens against the property or the borrower, and that there are no suits pending or anticipated that would affect the property or the borrower.

(c) *All collateral must secure the entire loan.* The Lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loss not covered by the guarantee.

§ 1980.332 [Reserved]

§ 1980.333 Promissory notes and security instruments.

(a) *Loan instruments.* The Lender may use its own forms for promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are

no provisions that are in conflict or otherwise inconsistent with the provisions of § 1980.309(b)(2)(v). The Lender is responsible for determining that the security instruments are adequate and are properly maintained of record.

(b) *Interest assistance instruments.* When the loan guarantee is authorized from interest assisted funds, RHS will provide the Lender with the necessary forms and security instruments related to the interest assistance. The Lender will complete the Master Interest Assistance Agreement, assure that the closing agent properly records a junior mortgage or deed of trust which grants RHS a lien on the property in order to protect RHS's equity share subject only to the first mortgage or deed of trust to the Lender or other authorized prior lien, and forward the agreements and recorded instruments to RHS.

§ 1980.334 Appraisal of property serving as collateral.

An appraisal of all property serving as security for the proposed loan will be completed and submitted to RHS for review with the request for loan guarantee. The Lender may pass the cost of the appraisal on to the borrower. The appraisal must have been completed within 6 months of the date the request for a conditional commitment is submitted to RHS.

(a) *Qualified appraiser.* The Lender will use an appraiser that is properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with the criteria set forth by the Appraiser Qualification Board (AQB) of the Appraisal Foundation regardless of the amount of the loan. Appraisers may not discriminate against any person in making or performing appraisal services because of race, color, familial status, religion, sex, age, disability, or national origin.

(b) *Appraisal report.* Residential appraisals will be completed using the sales comparison (market) and cost approach to market value.

(1) *URAR.* The appraiser will use the most recent revision of the URAR.

(i) The ''Estimated Reproduction Cost-New of Improvements'' section of the form must be completed when the dwelling is less than 1 year old.

(ii) Not less than three comparable sales, which are not more than 12 months old, will be used unless the appraiser provides documentation that such comparables are not available in the area. Comparable sales should be located as close as possible to the subject dwelling. When the need arises to use a comparable sale that is a considerable distance from the subject, the appraiser must use his or her knowledge of the area and apply good judgment in selecting comparable sales that are the best indicators of value for the subject property.

(2) *Supporting documentation.* A narrative explanation supporting unusual adjustments must be attached to the appraisal.

(3) *Photographs.* The appraisal report must include photographs which clearly provide front, rear, and street scene views of the subject property, and a front view for each comparable sale used in the completion of the appraisal.

(c) *RHS acceptance.* The Lender will be required to correct or complete any appraisal returned by RHS for corrective action.

§§ 1980.335–1980.339 [Reserved]

§ 1980.340 Acquisition, construction, and development.

(a) *Acquisition of property.* The Lender is responsible for seeing that the property to be acquired with loan funds is acquired as planned and that the required security interest is obtained.

(b) *New construction.* A new dwelling financed with a guaranteed loan must:

(1) Have been built in accordance with building plans and specifications that contain approved building code certifications (eligible certifiers are listed in § 1924.5(f)(1)(iii)).

(2) Conform to RHS thermal standards (exhibit D of subpart A of part 1924).

(i) The builder may certify conformance with RHS thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924.

(ii) A qualified, registered architect or a qualified, registered engineer must certify conformance with RHS thermal standards contained in paragraph IV C of exhibit D of subpart A of part 1924.

(c) *Development*. The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to;

(2) Drawings and specifications are certified and complied with;

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained;

(4) Equal opportunity and nondiscrimination requirements are met, (see § 1980.317); and

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

§ 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors*. Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender. A qualified inspector is one that a reasonable person would hire to perform an inspection of his/her own dwelling.

(b) *Inspections*. Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Meets the current requirements of HUD Handbooks 4150.1 and 4905.1 (available from the HUD Ordering Desk 1–800–767–7468).

(ii) Meets the thermal standards per § 1980.313(f).

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to backfilling.

(ii) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the builder supplies an insured 10 year warranty plan acceptable under the requirements of exhibit L of subpart A of part 1924.

(c) *Water and water/waste disposal*. The Lender will see that the water and water/waste disposal systems have been approved by a state or local government agency.

§§ 1980.342–1980.344 [Reserved]

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

Applicants who meet the requirements of this section are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation.

(a) *Eligible income*. The applicant's adjusted annual income determined in accordance with § 1980.348 may not exceed the applicable income limit contained in exhibit C of FmHA Instruction 1980–D (available in any RHS office) at the time of issuance of the conditional commitment. Adjusted annual income is used to determine eligibility for the RHS loan guarantee.

(b) *Adequate and dependable income*. The applicant (and coapplicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of RHS assistance.

(c) *Determining repayment ability*. In considering whether the applicant has adequate repayment ability, the Lender must calculate a total debt ratio. The applicant's total debt ratio is calculated by dividing the applicant's monthly obligations by gross monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a state or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support, and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

(i) *Cosigned obligations*. Debts which have been cosigned by the applicant for another party must be considered unless the applicant provides evidence (usually canceled checks of the co-obligor or other third party) that it has not been necessary for the applicant to make any payments over the past 12 months.

(ii) *Liability on a previous mortgage*. When the applicant has disposed of a property through a sale, trade, or transfer without a release of liability, the debt must be considered unless the applicant provides evidence (usually canceled checks of the new owners) that the new owners have successfully made all payments over the past 12 months.

(2) Income, for the purpose of determining the total debt ratio, includes the total qualifying income of the applicant, coapplicant, and any other member of the household who will be a party to the note.

(i) An applicant's qualifying income may be different than the ''adjusted annual income'' which is used to determine program eligibility. In considering qualifying income, the Lender must determine whether there is a historical basis to conclude that the income is likely to continue. Typically, income of less than 24 months duration should not be included in qualifying income. If the applicant is obligated to pay child care costs, the amount of any Federal tax credit for which the applicant is eligible may be added to the applicant's qualifying income.

(ii) In considering income that is not subject to Federal income tax, the amount of tax savings attributable to the nontaxable income may be added for use with the repayment ratios. Adjustments for other than the applicable tax rate are not authorized. The Lender must verify that the income is not subject to Federal income tax and that the income (and its nontax status) is likely to continue. The Lender must fully document and support any adjustment made.

(3) The applicant meets RHS requirements for repayment ability when the applicant's total debt ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) Applicants who do not meet the requirements of this section will be considered ineligible unless another adult in the household has adequate income and wishes to join in the application as a coapplicant. The combined incomes and debts then may be considered in determining repayment ability.

(5) If the applicant's total debt ratio and/or PITI ratio exceed the maximum authorized ratio, the Lender may request RHS concurrence in allowing a higher ratio based on compensating factors. Acceptable compensating factors include but are not limited to the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, when added to the applicant's housing expense and shows a capacity to make payments on the proposed loan. A low total debt ratio, by itself, does not compensate for a high PITI.

(d) *Credit history*. The applicant must have a credit history which indicates a

reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) ''No history'' of credit transactions by the applicant.

(ii) A bankruptcy in which applicant was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed more than 12 months before the date of application.

(3) The Lender may consider mitigating circumstances to establish the borrower's intent for good credit when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(e) *Previous RHS loan.* RHS shall determine whether the applicant has had a previous RHS debt which was settled, or is subject to settlement, or whether RHS otherwise suffered a loss on a loan to the applicant. If RHS suffered any loss related to a previous loan, a loan guarantee shall not be issued unless RHS determines the RHS loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The loan approval official will check HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. The Lender will clearly document both its CAIVRS identifying number and the borrower and coborrower's CAIVRS access code near the signature line on the mortgage application form. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the Lender will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides the Lender with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan guarantee until the judgment is paid in full or

otherwise satisfied. RHS loan guarantee funds may not be used to satisfy the judgment. If the judgment remains unsatisfied or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the Lender will reject the applicant.

§ 1980.346 Other eligibility criteria.

The applicant must:

(a) Be a person who does not own a dwelling in the local commuting area or owns a dwelling which is not structurally sound, functionally adequate;

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary conventional credit without an RHS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation and have reached the legal age of majority in the state or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis. Because of the probability of their moving after graduation, full-time students will not be granted loans unless:

(1) The applicant intends to make the home his or her permanent residence and there are reasonable prospects that employment will be available in the area after graduation, and

(2) An adult member of the household will be available to make inspections if the home is being constructed.

§ 1980.347 Annual income.

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by any applicant/borrower and all adult members of the household, including any coapplicant/coborrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or if interest assistance is involved, during the term of the Interest Assistance Agreement.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by IRS regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered ''zero'' in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm,

or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business, or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction for verified business expenses, such as for lodging, meals, or fuel, for overnight business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1980.302(a), in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings; such as unemployment, disability and worker's compensation, and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) Any amount of educational grants or scholarships or VA benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or coapplicant/coborrower, whether or not that family member lives in the unit.

(10) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 3 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following are not included in annual income but may be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse are not considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic, or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances; capital gains; insurance payments from health, accident, hazard, or worker's compensation policies; and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for the aforementioned purposes and

are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Any funds that a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits. (Listed in exhibit F of FmHA Instruction 1980–D, available in any RHS office.)

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

§ 1980.348 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.347 less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or coapplicant, who is:

(1) Under 18 years of age;

(2) Eighteen years of age or older and is disabled as defined in § 1980.302(a); or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1980.302(a).

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family (as defined in § 1980.302(a)). This includes medical expenses for any household member the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance (e.g., dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, home nursing care, monthly payments on accumulated major medical bills, and full-time nursing or institutional care which cannot be provided in the home for a member of the household); and

(2) Reasonable attendant care and auxiliary apparatus expenses for each disabled member of any household to the extent necessary to enable any member of such household (including such disabled member) to be employed.

§§ 1980.349–1980.350 [Reserved]

§ 1980.351 Requests for reservation of funds.

Upon receipt of a viable loan application and prior to loan underwriting, the Lender may request a reservation of loan guarantee funds for the loan application. The request should be made as follows:

(a) The Lender must have a complete application on file that clearly indicates the borrower has sufficient qualifying income and an adequate credit history.

(b) The reservation shall be valid for 60 days. The Lender must submit a request for a loan guarantee on or before the expiration date of the reservation. *Substitutions of borrowers or dwellings are not authorized.*

(c) Reservations may be granted only when adequate funding authority is available. Reservations are subject to the availability of funds. Reservations will not exceed 90 percent of the funds available during that quarter.

(d) [Reserved]

(e) All reservations will expire at the end of 60 days or no later than the pooling date published in subpart L of part 1940 whichever occurs first.

(f) [Reserved]

§ 1980.352 [Reserved]

§ 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by RHS in the order received from Lenders authorized

to participate in the program except as provided in paragraph (b) of this section.

(b) *Preference.* Preference is considered when there is a shortage of funds and there is more than one request for a conditional commitment or reservation of funds ready for approval. Applications for guarantees on loans to first-time homebuyers or veterans, their spouses, or children of deceased servicemen who died during one of the periods described in the definition of ''Veteran'' in § 1980.302(a) will be given preference by RHS. Displaced homemakers and single parents are first-time homebuyers even though they previously owned or resided in a dwelling with a spouse.

(c) *Applications.* If, upon completion of the loan underwriting process of an application, the Lender concludes that the application can be considered for an RHS guarantee, the Lender will provide written documentation addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion in the applicant's file. The Lender will submit a request for the guarantee using a Form FmHA 1980–21, ''Request for Single Family Housing Loan Guarantee.'' The form should contain or be supplemented with all of the following information:

(1) Name, address, telephone number, social security number, age, citizenship status of the applicant, and number of persons in the household.

(2) Amount of loan request and proposed use of loan funds.

(3) Name, address, contact person, and telephone number of the proposed Lender.

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae or VA rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320.

(5) Statement from the Lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(6) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(7) The applicant's sex, race, and veteran status and whether applicant is a first-time homebuyer.

(8) An appraisal report including information about the dwelling location with respect to neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(9) Credit report obtained by the Lender.

(10) An equal opportunity agreement supplied by RHS for construction contracts costing more than $10,000.

(11) Evidence of compliance with the Privacy Act of 1974.

(12) Lender's loan underwriting (repayment ability, creditworthiness, and security value).

(13) A certification from the borrower regarding debarment, suspension, ineligibility, and voluntary exclusion from Federal programs using a form supplied by RHS.

(14) A statement signed by the borrower acknowledging that the borrower understands that RHS approval of the guarantee is required and is subject to the availability of funds.

(15) A copy of a valid verification of income for each adult member of the household.

(16) A copy of the purchase agreement or bid for construction contract.

(d) [Reserved]

(e) *Verifying information provided.* Written documentation from third parties is the preferred method of verifying information. Verifications must pass directly from the source of information to the Lender and shall not pass through the hands of a third party or applicant.

(1) *Income verification.* Employment verifications and other income verifications obtained in accordance with this paragraph are valid for 120 days (180 days for proposed new construction). Income verifications must be valid at the time the conditional commitment is issued.

(i) An RHS approved form or the equivalent HUD/FHA/VA or Fannie Mae form will be used to verify employment income of the loan applicant

except when the applicant is self-employed. The form will be signed by the applicant or borrower or accompanied by an authorization for a release of information form signed by the applicant or borrower and sent directly to the employer by the Lender. The Lender should also obtain copies of the three most recent paycheck stubs. The information in the employer verification should be compared to the information in the paycheck stubs for consistency.

(ii) Income information that cannot be obtained by use of this form will be obtained in writing from third parties to the extent possible.

(iii) Alimony and/or child support payments will be verified by obtaining a copy of the divorce decree or other legal document indicating the amount of the payments. When the applicant states that less than the amount awarded is received, the Lender will request documentation from the official entity through which payments are received or other third party able to provide the verification when payment is not made through an official entity indicating the amounts and dates of payments to the applicant during the previous 12 months.

(iv) When it is not feasible to verify income in paragraph (e)(1)(iii) of this section through third parties, the Lender is authorized to accept an affidavit from the applicant stating the effort made to collect the amount awarded and the amounts and dates of payments received during the previous 12 months.

(v) Applicants and borrowers deriving their income from a farming or business enterprise will provide current documentation of the income and expenses of the operation. In addition, historic information from the previous fiscal year must be presented.

(vi) Social Security, pension, and disability income may be verified by obtaining a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. This verification will be considered valid only for 1 year from the date of the award or benefit letter.

(2) *Verification of disability*. An RHS supplied form will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability.

(3) *Verification of alien status*. Aliens are required to present documentation of their status. Section 1944.9 outlines the acceptable forms of documentation.

(4) *Verification of credit history and current debt*. The Lender shall determine all liabilities of all parties responsible for repayment of the proposed loan. Credit reporting information must pass directly between the Lender and the credit reporting agency or source.

(i) Mortgage credit reports shall be used to determine creditworthiness unless the applicant resides in a remote rural area and conclusive or sufficient information would not be available. Information relative to judgments, garnishments, foreclosures, and bankruptcies must be obtained when a credit report is not obtained.

(ii) The credit report must be the most recent revision of the Residential Mortgage Credit Report form and meet the standards prescribed by Fannie Mae, Freddie Mac, HUD, VA, or RHS.

§ 1980.354 [Reserved]

§ 1980.355 Review of requirements.

Upon the Lender's review of the conditional commitment, the Lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions*. Immediately after reviewing the conditions and requirements in the conditional commitment and the options listed on the back of the form, the Lender may proceed with loan closing. If the conditions cannot be met, the Lender and borrower may propose alternate conditions to RHS.

(b) *Canceling commitment*. If the Lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the Lender should immediately advise the RHS approval official.

§§ 1980.356–1980.359 [Reserved]

§ 1980.360 Conditions precedent to issuance of the loan note guarantee.

(a) *Lender certification*. The Lender must certify to RHS that:

(1) No major changes have been made in the Lender's loan conditions and requirements since the issuance of the conditional commitment, except those approved in writing by RHS. In the event the interest rate has not been fixed at the time the conditional commitment is issued, and the interest rate increases between the time of issuance of the conditional commitment and loan closing, the Lender should note the change when submitting the package to RHS for loan guarantee. If either or both of the underwriting ratios are exceeded as a result of the interest rate increase, the Lender should list the compensating factors that demonstrate that sufficient repayment ability still exists.

(2) All planned property acquisition has been completed and:

(i) All development has been completed; or

(ii) An escrow account has been established in accordance with § 1980.315.

(3) Required insurance coverage is in effect and an escrow account has been established for the payment of taxes and insurance.

(4) Truth-in-lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been met.

(6) The loan has been properly closed by a party skilled and experienced in conducting loan closings and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner.

(7) The borrower has a marketable (clean and defensible) title to the property then owned by the borrower, subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by RHS.

(8) Lien priorities are consistent with the requirements of the conditional commitment.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the conditional commitment.

(10) There has been no adverse change in the borrower's situation since the conditional commitment was issued by RHS.

(11) All other requirements of the conditional commitment have been met.

(b) *Inspections*. The Lender will certify to RHS that inspections in accordance with § 1980.341 have been completed.

(c) *Lender agreement*. There must be a valid lender agreement on file.

(d) *Lender file*. The Lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

§ 1980.361 Issuance of loan note guarantee.

(a) When the Lender has certified that all requirements have been met, delivered a completed Loan Closing Report, and paid the guarantee fee, the RHS approval official will concurrently execute the loan note guarantee. The original will be provided to the Lender and be attached to the note.

(b)–(c) [Reserved]

§ 1980.362 [Reserved]

§ 1980.363 Review of loan closing.

The Lender must provide RHS with documentation that all of the closing conditions have been met within 10 days of issuance of the loan note guarantee. The Lender is responsible for deficiencies regardless of whether RHS discovers them in the loan closing review and/or notifies the Lender at that time. RHS reviews do not constitute any waiver of fraud, misrepresentation, or failure of judgment by the Lender.

§§ 1980.364–1980.365 [Reserved]

§ 1980.366 Transfer and assumption.

(a) *General*. Lenders may, but are not required to, permit a transfer to an eligible applicant. A transfer and assumption must be approved by RHS in writing. Transfers without assumption are not authorized. Transfers and assumptions under this subpart are subject to the RHS guarantee fee.

(b) *Eligible transferee*. An eligible transferee is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural. Loans made and guaranteed under this subpart prior to March 29, 1989, may be transferred to an applicant meeting all eligibility requirements of this subpart except the applicant's adjusted annual income may exceed the maximum income for the area by not more than 10 percent.

(c) *Determinations by the Lender*. Before the transfer and assumption can be approved with the guarantee remaining in force, the Lender must determine that all of the following conditions can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will assume the total remaining debt and acquire all of the property securing the guaranteed loan balance.

(3) The transfer and assumption would not be made without the continuation of the loan guarantee.

(4) The market value of the security being acquired by the transferee is at least equal to the secured indebtedness against it.

(5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.

(6) Proper hazard insurance will be obtained.

(7) The transfer and assumption can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate.

(8) The transferor acknowledges continued liability for the debt in writing.

(d) *Changes in the promissory note or security instrument*. If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the present debtors since they will remain liable for the debt. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart and cannot exceed the interest rate on the initial loan. The debt must not exceed the amount remaining due on the original loan. The term of the loan may cover a period of up to 30 years from the date of transfer and assumption. The Lender's request for approval to RHS will be accompanied by:

(1) An explanation of the reasons for the proposed change in the rates and terms.

(2) A statement that the Lender's determinations required by paragraph (c) of this section can be made.

(e) *Release of liability*. The Lender may not release the transferor of liability.

(f) *Forms and case numbers*. The assumption may be made on the Lender's assumption agreement form. The assumption agreement must contain the RHS case numbers of the transferor and the transferee.

(g) *Lender's application to RHS*. The Lender must submit the items outlined in § 1980.353(e) of this subpart to RHS, in addition to items required in this section.

(h) *Notations and notices*. The Lender must notify RHS whether the loan and security can be properly assumed and transferred. The Lender shall assure that the conveyance instruments are properly filed, registered, or recorded, as appropriate. Upon completion of the transfer and assumption, the Lender must provide RHS a copy of the transfer and assumption agreement. The Lender may present the loan note guarantee to RHS if it desires RHS to note the transfer and assumption on the loan note guarantee. If a new note is obtained, it will also be attached to the loan note guarantee.

(i) *Interest assistance*. The original borrower's Master Interest Assistance Agreement may be transferred to an eligible transferee. Equity sharing, if any, owed by the transferor must be determined and collected at the time the loan is assumed and title to the property is transferred. See § 1980.391.

(j) *Closing the transfer and assumption*. As soon as the Lender has obtained RHS approval, the Lender may proceed with closing the transaction. The closing must include, but need not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(k) *Loan note guarantee*. The existing loan note guarantee will continue to be

in effect. RHS will note the transfer and assumption on the original loan note guarantee by completing the Assumption Agreement block by inserting the name of the assuming party.

(l) *Material furnished to RHS after closing*. Immediately after closing, the Lender must furnish to RHS:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *Notification of Lender*. The RHS approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The Lender may proceed with the transfer and assumption upon obtaining RHS approval.

§ 1980.367 Unauthorized sale or transfer of the property.

RHS consent is required to continue with the RHS guarantee in the event of a sale or transfer of the property in accordance with § 1980.366. If the property is transferred without RHS consent, the Lender must take one of the following actions:

(a) Obtain RHS consent if the conditions of § 1980.366 can be met;

(b) Satisfy the RHS guarantee and continue with the loan without the loan note guarantee; or

(c) Notify the borrower and the transferee of the default and service the loan in accordance with § 1980.371.

§§ 1980.368–1980.369 [Reserved]

§ 1980.370 Loan servicing.

RHS encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan servicing should be approached as a preventive action rather than a curative action. Prompt followup by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing*. The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even if the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due and proper application of payments to principal and interest and escrow accounts for taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement (if any), security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements*. Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in Agency regulations.

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written RHS concurrence. Reamortization shall not change the amount of the loan guarantee.

(d) *Lender reporting to RHS.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by RHS identifying each borrower with a loan that is more than 30 days delinquent.

(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHS.

(e) [Reserved]

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan. In order to assure that a protective advance over $500 will be included in the loss payment, Lenders are encouraged to obtain prior RHS approval.

§ 1980.373 [Reserved]

§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHS of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as

bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the state in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like services in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation.

(d) *Servicing plan.* The Lender must submit a servicing plan to RHS when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency. RHS encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. Although prior approval is not required in all cases, the Agency may reject a plan that does not protect the Government's interest.

(1) *Continuation with the borrower.* The Lender may continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success and make this information available to RHS upon request.

(2) *Voluntary liquidation.* RHS may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in line with its market value (if there is not already a bona fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* The Lender may take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost to the Government in excess of that expected for foreclosure.

(4) *Other methods.* RHS may accept a proposal submitted by the Lender that is not specifically addressed in but is consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The property is sold at or prior to foreclosure for an amount exceeding the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

§ 1980.375 Reinstatement of the borrower's account.

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under state law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain RHS concurrence.

§ 1980.376 Loss payments.

Settlement of the guarantee will be processed in accordance with this section.

(a) *Loss payment.* Loss payments will be made within 60 days of the Lender's properly filed claim. The Lender must submit its loss claim within 30 calendar days of loan liquidation. The

claim may include interest on the unpaid principal accrued to final loss settlement. RHS will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the property will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the property is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the property is conveyed to the Lender, then the Lender must prepare and submit a property disposition plan to RHS for RHS concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan. The Lender is allowed up to 6 months from the date the property is acquired to sell the property. Upon the Lender's written request, RHS will authorize one extension not to exceed 30 days to close the sale of a purchase offer accepted near the end of the 6-month period. Net proceeds will be based on the net proceeds received for the property when the sale is conducted in accordance with the plan as approved by RHS. If no sale offer is accepted within the 6-month period, then the RHS approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in exhibit D of FmHA Instruction 1980–D (available in any RHS office), from the current market value.

(iii) If a deficiency judgment is obtained, the Lender must enforce the judgment against the borrower before loss settlement if the current situation provides a reasonable prospect of recovery. A loss payment will be made when the Lender holds a deficiency judgment but there are not current prospects of collection, even if there may be in the future.

(2) *Payment procedure.* RHS will pay losses on the loan according to the terms of the loan note guarantee unless RHS has determined there is cause for reduction of the loss amount. See § 1980.377 for future recovery by the Lender.

(i) If there is no dispute between RHS and the Lender regarding the amount of the loss and the Lender's eligibility for payment of loss, RHS will pay the loss within the limits of the guarantee.

(ii) If RHS and the Lender do not agree on the amount of the loss, or RHS has determined that part of the loss is not payable to the Lender under the terms of the loan note guarantee, RHS will pay the undisputed portion. The disputed portion of the claim will be treated as an adverse decision and the Lender may appeal.

(iii) When RHS has cause to believe that Lender fraud or other lender actions negating the guarantee exist, no loss payment may be made unless the situation is resolved.

(3) The RHS approval official will conduct an audit of the account and review the loan in its entirety to determine why the loan failed and whether any reason exists for reducing or denying the loss claim. This information will be documented in the RHS casefile.

(4) If a Lender's loss claim is denied or reduced, the RHS approval official will notify the Lender of all of the reasons for the action within 10 days of the decision and the Lender may appeal in accordance with § 1980.399 and subpart B of part 1900.

(5) The RHS approval official is authorized to approve loss payments in amounts of up to 50 percent of his/her delegated loan approval authority in accordance with exhibit D of FmHA Instruction 1901–A (available in any RHS office).

(b) *Denial or reduction of loss claims.* The RHS approval official will fully document any loss claim which is denied or reduced including an analysis of how the amount of the reduction was determined. A connection must be made between the Lender's action or failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. This information will be made available to the Lender upon request. A Lender's loss claim may be denied or reduced by RHS when:

(1) The Lender has committed fraud. (Denial of claim.)

(2) The Lender claims items not authorized under RHS regulations. (Reduced by amount of unauthorized claim.)

(3) The Lender violated usury laws. (Reduction for amount of loss caused by the violation.)

(4) The Lender failed to obtain required security or maintain the security position. (Reduction for loss attributed to failure.)

(5) Loan funds were used for unauthorized purposes. (Reduction by unauthorized amount.)

(6) The Lender was negligent in loan servicing. Negligent servicing is a failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes a failure to act, a failure to act in a timely manner, or acting in a manner contrary to that in which a reasonably prudent Lender would act. (Reduction for loss amount attributable to Lender negligence.) Examples of negligent servicing include:

(i) A failure to contact the borrower in a timely manner when the borrower's account goes into default.

(ii) A failure to pay real estate taxes or hazard insurance when due.

(iii) A failure to notify RHS within required time limits when the borrower defaults on the loan.

(iv) A failure to request loan subsidy when the borrower was eligible for loan subsidy and loan subsidy was available (subsidized loans only).

(v) A failure to protect security during the liquidation phase.

(7) The Lender delayed filing the loss claim. (Reduction in claim for interest accrued because the claim was not filed.)

§ 1980.377 Future recovery.

The proceeds of any amounts recovered shall be shared in proportion to the amount of loss borne between RHS and the Lender. Although the Lender's actual loss may be different than the amount on which loss settlement was based, the proportion of recovery sharing must be based on the loss percentage upon which the loss payment calculation was based.

§§ 1980.378–1980.389 [Reserved]

§ 1980.390 Interest assistance.

In order to assist low-income borrowers in the repayment of the loan, RHS is authorized to provide interest assistance payments subject to the availability of funds. Regardless of what date a borrower's loan payment is due each month, interest assistance payments will be made by RHS directly to the Lender on or before the 15th day of the month in which the borrower's payment is due.

(a) *Policy.* It is the policy of RHS to grant interest assistance on guaranteed loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities as long as the borrower remains eligible for payments when funds are available for interest assistance. Interest assistance must be established for the borrower at the time the loan guarantee is authorized.

(b) *Processing interest assistance agreements.* The Lender will process the interest assistance agreement and submit it to RHS for approval.

(1) RHS will reimburse the Lender in the amounts authorized in exhibit D of FmHA Instruction 1980–D (available in any RHS office) for the cost of processing the agreement. The fee will be paid upon receipt of a valid agreement which has been coded as requiring a processing fee payment. The processing fee is payable when:

(i) A new agreement is made with the borrower except at the time of loan closing.

(ii) The borrower had an agreement for the previous year and a new agreement is made for the current year.

(iii) The borrower is eligible for but not presently on interest assistance and enters into a new interest assistance agreement.

(iv) The borrower has a change in circumstances which requires a revision to the current agreement. When the change in circumstances results in an agreement with less than 90 days remaining, the agreement for the subsequent year will be prepared at the same time. This action is considered one agreement.

(2) A processing fee will not be paid when the revision to an existing agreement is required due to an error on the part of the Lender or the borrower.

(c) *Amount of interest assistance.* (1) The amount of interest assistance granted will be the difference between the monthly installment due on the promissory note eligible for interest assistance and the amount the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as outlined in the master interest assistance agreement.

(2) The basis for the amount of interest assistance for each loan is determined by the amount of interest assistance authorized to the Agency as shown in exhibit D of FmHA Instruction 1980–D (available in any RHS office) and the note interest rate.

(3) A borrower receiving a loan in a high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower up to the maximum rate in exhibit D of FmHA Instruction 1980–D (available in any RHS office).

(i) The Administrator may designate an area as a high cost area for interest assistance purposes. Such designation may be granted when the State Director makes a written request for it and provides documentation that low-income borrowers in the area could not afford to purchase a dwelling under the interest assistance table in exhibit D of FmHA Instruction 1980–D (available in any RHS office). The area must also be designated by HUD as a high cost area. The amount of additional interest assistance for high cost areas is 1 percent; however, in no case will more interest assistance be granted than the amount necessary to reach the lowest floor rate in exhibit D of FmHA Instruction 1980–D (available in any RHS office).

(ii) The change in a designation to (or from) a high cost area will not affect existing loans. An individual's loan eligibility for high cost designation is determined at the time of issuance of the conditional commitment for loan guarantee.

(d) *Shared equity.* Prior to loan closing, the Lender will advise the applicant that interest assistance is subject to equity sharing.

(e) *Eligibility.* To be eligible for interest assistance, a borrower must personally occupy the dwelling and must meet the following additional requirements:

(1) *Initial loans.* Interest assistance may be granted at the time the loan note guarantee is issued, or an assumption is processed in accordance with § 1980.366, when:

(i) The borrower's adjusted income at the time of loan guarantee approval did not exceed the applicable low-income limit, the loan guarantee was funded from interest assisted guaranteed loan funds, and a master interest assistance agreement was completed at closing if the borrower is ever to receive interest assistance.

(ii) The borrower's net family assets do not exceed the maximum allowable amount as per exhibit D of FmHA Instruction 1980–D (available in any RHS office) unless an exception is authorized. The calculation of net family assets will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and personal automobiles and the debts against them. The Lender may request an exception at the time the initial application is submitted to RHS for a loan guarantee. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest assistance.

(iii) The loan was approved as a subsidized guaranteed loan on or after April 17, 1991.

(iv) The amount of interest assistance will be $20 or more per month in accordance with the provisions of paragraph (c)(1) of this section. Interest assistance in amounts of less than $20 per month will not be granted.

(2) *Existing loans.* Interest assistance may be granted at any time after loan closing if:

(i) The requirements of paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) of this section are met.

(ii) The borrower's adjusted annual income does not exceed the low-income limit.

(iii) The borrower requests interest assistance through the Lender or the Lender determines that interest assistance is needed to enable the borrower to repay the loan.

(iv) The Lender processes the interest assistance agreement and submits it to RHS for approval.

(f) *Processing interest assistance.* The Lender will process interest assistance agreements in accordance with this section. The interest assistance agreement will be executed by the Lender and borrower and forwarded to RHS for approval.

(1) *Amount of interest assistance.* The amount of interest assistance for which a borrower is eligible will be determined by use of the interest assistance agreement as outlined in paragraph (c) of this section.

(i) *Determination of income.* The Lender is responsible for determining the borrower's annual and adjusted annual income as outlined in §§1980.347 and 1980.348 of this subpart. Income of all persons occupying the dwelling will be verified in accordance with §1980.347 of this subpart.

(ii) *Effective period.* Annual interest assistance agreements will be for a 12-month period.

(2) *Interest assistance agreements.* The master interest assistance agreement will be executed for each qualifying loan at loan closing provided funds are available for interest assistance at the time the guarantee is issued. This agreement establishes the conditions and maximum amounts of interest assistance for the life of the loan. Each year, an annual interest assistance agreement will be used to determine the amount of interest assistance for the coming 12 months.

(i) The Lender will determine the borrower's adjusted annual income, document the calculations, and complete the interest assistance agreement form.

(ii) The borrower will review the interest assistance agreement form and sign the form signifying that all information is correct as shown.

(iii) If the information contained on the interest assistance agreement appears correct, RHS will approve the agreement and make monthly payments to the Lender on behalf of the borrower.

(iv) When the borrower's income is within the low-income limits but the provisions of paragraphs (e)(1)(ii) or (e)(1)(iv) of this section preclude granting interest assistance, the master interest assistance agreement must be executed if the borrower desires to be considered for interest assistance at a later date due to a change in circumstances.

(g) *Interest assistance modification.* A change in the borrower's circumstances after the effective date of the Annual Interest Assistance Agreement will be handled as follows:

(1) *RHS required modifications before expiration.* The borrower is responsible for reporting any increases in income exceeding $100 per month to the Lender. The Lender is not responsible for monitoring the borrower's income. The Lender must process a revised interest assistance agreement when a reported increase in the borrower's income results in the need for less interest assistance in accordance with paragraph (c) of this section.

(2) *Additional interest assistance before expiration.* The borrower may request and the Lender may process a modification of the interest assistance agreement and submit the modified agreement to RHS when:

(i) The borrower's adjusted annual income decreases by more than $100 per month;

(ii) The interest assistance calculation per paragraph (c) of this section indicates that the borrower is eligible for an additional $20 interest assistance per month; and

(iii) There are interest assistance funds available if the amount needed by the borrower exceeds the initial floor rate established at the time the loan was closed per paragraph (c) of this section.

(3) *Other changes in the borrower's circumstances.* When one coborrower has left the dwelling, interest assistance based on the remaining coborrower's income may be extended if:

(i) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(ii) The remaining coborrower certifies as to who lives in the house;

(iii) Separation is not due only to work assignment or military orders; and

(iv) The remaining coborrower is informed and agrees that should the coborrower begin to live in the dwelling, that coborrower's income will then be counted toward annual income and interest assistance may be reduced or canceled.

(4) *Effect of modification.* An interest assistance agreement modified as per paragraph (g)(1), (g)(2), or (g)(3) of this section is valid for the remainder of the agreement period.

(5) *Correction of interest assistance agreement.* When an error by RHS or the Lender resulted in too little interest assistance being granted, a corrected agreement will be prepared effective the date of the error if the error results in granting $20 or more per month less interest assistance than the borrower was eligible to receive. The Lender must return any overpayment made by the borrower unless an agreement is reached to apply the funds to the loan as an extra payment.

(h) *Eligibility review.* Borrowers receiving interest assistance will be reviewed annually within 30 to 60 days prior to the anniversary date of the loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than $20 per month.

(1) The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household and conduct the review.

(i) *Borrower responsibility.* The borrower will:

(A) Report the income of each adult member of the household to the Lender;

(B) Assure that each household member has provided sufficient information on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) [Reserved]

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if the RHS approval official determines failure to renew was the fault of RHS or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless RHS receives and approves a new interest assistance agreement form.

(i) *Cancellation of interest assistance.* (1) An existing interest assistance agreement will be canceled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be canceled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to RHS.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment*. When the Lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify RHS.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to RHS will be reached.

(k) *Unauthorized use of loan funds*. When RHS becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be promptly repaid by the Lender. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals*. All applicants/borrowers and Lenders may appeal adverse determinations in accordance with § 1980.399 when RHS denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance*. The RHS approval official may authorize reinstatement of the borrower's interest assistance if it was canceled because the loan was accelerated and if the acceleration was withdrawn with RHS approval.

§ 1980.391 Equity sharing.

The policy of RHS is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any of the events described in paragraph (a) of this section occur, if any equity exists in the security.

(a) *Determining the amount of shared equity*. The RHS approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with § 1980.374(e).

(1) *How to calculate*. The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, principal reduction, and value added by any capital improvements.

(i) *Market value*. Market value of the property as of the date the loan is to be paid in full or the date the borrower ceases to occupy and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and RHS approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section are not available, another current appraisal, if readily available, when the appraiser meets the qualifications of § 1980.334.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender or RHS can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The RHS

approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) RHS appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include, but are not limited to, expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current RHS debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the RHS approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and are not considered capital improvements.

(2) *Other considerations.* (i) *Overpayments of interest assistance.* When RHS has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan is not subject to shared equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions—(1) Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the RHS approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a state or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from RHS. Proposals that deviate from this subpart must be reviewed and approved in the National office prior to issuance of the loan note guarantee.

§1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.

(a) *MCCs.* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive a Federal tax credit for a percentage of their mortgage interest payment. They may be used by RHS guaranteed RH borrowers to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based

on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any ''gain'' realized on the property when sold within 10 years after purchase. If the loan is also an RHS interest assisted loan, RHS shall receive priority for shared equity repayment. Income taxes are complex issues; RHS employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in an MCC program the amount of the tax credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W–4, ''Employee's Withholding Allowance Certificate,'' along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W–4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts*. A funded buydown account is a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted when the Lender obtains prior RHS concurrence. RHS will consider buydown accounts when there are compensating factors which indicate the borrower's ability to meet the expected increases in loan payment. The seller, Lender or other third party must place funds in an escrow account with monthly releases scheduled directly to the Lender to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a state or federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 12 months for each 1 percent of the buydown.

§§ 1980.393–1980.396 [Reserved]

§ 1980.397 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Requests for exception must be made in writing accompanied by the borrower's casefile in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.398 Unauthorized assistance and other deficiencies.

(a) *Unauthorized assistance*. Unauthorized assistance includes, but is not limited to, issuance of a loan note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390.

(b) *Initial determination of unauthorized assistance*. The reasons for unauthorized assistance being received by the Lender may include:

(1) Submission of false or inaccurate information by the Lender;

(2) Submission of false or inaccurate information by the borrower;

(3) Error by RHS personnel; or

(4) Error by the Lender.

(c) [Reserved]

(d) [Reserved]

(e) *Categories of unauthorized assistance*—(1) *Minor deficiency*. A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents will be brought to the Lender's attention in writing. Examples of minor deficiencies include improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those significant deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency*. A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by Agency regulations. Such cases may result in probation or withdrawal of the Lender's approval for program participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation*. A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed may, in addition to any criminal and civil penalties, result in a withdrawal of RHS approval, or debarment. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, and omitting conditions relating to the health and safety of a property.

(f) *Borrower noncompliance*. When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan. More serious violations will be viewed on a case-by-case basis by the National office.

(g) *RHS error oversight*. When the borrower receives unauthorized assistance solely due to an error or oversight by RHS, the Lender may continue with the guaranteed loan.

§ 1980.399 Appeals.

The borrower and the Lender respectively can appeal an RHS administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this paragraph even if RHS concurrence is required before the Lender can proceed. Appeals will be conducted in accordance with the rules of the National Appeals Division, USDA.

(a) *Appealable decisions*. (1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by RHS. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where RHS has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions*. (1) The Lender's decision as to whether to make a loan is not subject to appeal.

(2) The Lender's decision to deny servicing relief is not subject to appeal.

(3) The Lender's decision to accelerate the account is not subject to appeal.

§ 1980.400 [Reserved]

Subpart E—Business and Industrial Loan Program

SOURCE: 52 FR 6501, Mar. 4, 1987, unless otherwise noted.

§ 1980.401 Introduction.

(a) Direct Business and Industry (B&I) loans are disbursed by the Agency under this subpart. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 and subpart B of part 4287 of this title. Any processing or servicing activity conducted pursuant to

this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of part 1900 subpart D of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

(b) The purpose of the B&I program is to improve, develop or finance business, industry and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to ''bail out'' lenders having such loans.

(c) This subpart and its appendices (especially appendix I and appendix K) also contain regulations for Drought and Disaster (D&D) and Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387) and section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82). D&D loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and are limited to a guarantee of principal only. DARBE loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and within certain parameters guarantee both principal and interest.

(d) The B&I loan program is administered by the Administrator through a State Director serving each State. The State Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other FmHA or its successor agency under Public Law 103–354 employees.

(e) Throughout this subpart there appear Administrative provisions for the State Director, District Director, and County Supervisor. These provisions establish the internal duties, responsibilities and procedures to carry out the requirements of the program. These provisions are identified as ''Administrative'' and follow appropriate sections of this subpart.

(f) This subpart and its appendices also contains regulations for Business and Industry Disaster (BID) loans under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. This program provides B&I guarantees for loans needed as a result of natural disasters. Some of the requirements of this subpart are waived or altered for BID loans. The waivers and alterations are provided in § 1980.498 of this subpart.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989; 54 FR 42483, Oct. 17, 1989; 55 FR 19245, May 8, 1990; 57 FR 45969, Oct. 5, 1992; 58 FR 229, Jan. 5, 1993; 61 FR 67633, Dec. 23, 1996]

§ 1980.402 Definitions.

The following general definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of subpart A of this part.

Area of high unemployment. An area in which a B&I Loan Guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

Borrower. A borrower may be a cooperative, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State;

or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock or damage to building structures from a microburst wind occurrence in calendar year 1992.

Community facilities. For the purpose of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

Development cost. These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights-of-way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially appendix K, containing additional regulations for these loans.

Drought and Disaster guaranteed loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

Letter of conditions. Letter issued by FmHA or its successor agency under Public Law 103–354 to a borrower setting forth the conditions under which FmHA or its successor agency under Public Law 103–354 will make a direct (insured) loan from the Rural Development Insurance Fund.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight-line wind damage.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Public body. A municipality, political subdivision, public authority, district, or similar organization.

Rural area. Includes all territory of a State that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Seasoned loan. A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to insure there will be no loss on the B&I guaranteed loan.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

Working capital. The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988; 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989; 55 FR 19245, May 8, 1990; 57 FR 45969, Oct. 5, 1992]

§ 1980.403 Citizenship of borrowers.

Loans to individuals will be made or guaranteed only to those who are citizens of the United States or reside in the United States after being legally admitted for permanent residence. At least 51 percent of the outstanding interest in any corporation or organization-type applicant must be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1980.404 [Reserved]

§ 1980.405 Rural area determinations.

FmHA or its successor agency under Public Law 103–354 will determine if any area is rural for purposes of the Guaranteed or Insured loan program. The following will be used by FmHA or its successor agency under Public Law 103–354 in making area eligibility determinations when it is not clear from the geographical location of the applicant:

(a) Urbanized area immediately adjacent to a city having a population of 50,000 or more: An urbanized area immediately adjacent to a city having a population of 50,000 or more is an area constituting for general social and economic purposes a single community having a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and will extend from the contiguous boundary(ies) to the recognizable open country, less densely settled areas or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities or public parks will be disregarded. Outer boundaries of an incorporated community will extend at least to its legal boundaries. Cities which may have a contiguous border with another city but are located across a river from such city and recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area as defined in this section are not in a nonrural area.

(b) Urbanizing area: An urbanizing area is one defined as a community which is not now or within the foreseeable future not likely to be clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community will be considered as ''separate from'' when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities or public

parks will be disregarded. A community will be considered as ''independent of'' when its social and economic structure (e.g., government, education, health and recreational facilities; business, industry, tax base and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

(c) The State Director will proceed as follows in rural area determinations: When the FmHA or its successor agency under Public Law 103–354 State Director determines an area to be urbanizing, he must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide him/her with the correct density figure. All such density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census. In making the density calculations, there will be excluded large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses and cemeteries or land set aside for such purposes.

§§ 1980.406–1980.410 [Reserved]

§ 1980.411 Loan purposes.

Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(a) *Private entrepreneurs.* Loans may be for improving, developing or financing business, industry and employment and improving the economic and environmental climate, including pollution and abatement control, of rural areas, and may include but not be limited to:

(1) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization of development cost.

(2) Purchasing and development of land, easements, rights-of-way, buildings, facilities, leases or materials.

(3) Purchasing of equipment, leasehold improvements machinery or supplies.

(4) Pollution control and abatement including those in connection with farming and ranching operations.

(5) Transportation services incidential to industrial development.

(6) Startup costs and working capital.

(7) The financing of housing development sites located in open country or cities, towns or villages with populations not in excess of those eligible for FmHA or its successor agency under Public Law 103–354 rural housing loans, provided the community demonstrates a need for additional housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(8) Loans, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Loans may not be guaranteed for agricultural production as defined in § 1980.412(e); however, applicants who are in the business of processing, marketing or packaging of agricultural products, as well as agricultural production, may be eligible for loan assistance for that portion of the business other than agricultural production provided the agricultural production aspect is separate from the rest of the business; i.e., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such a manner as to clearly identify the use of and future accounting of the loan proceeds and operation of the business.

(9) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(10) Feasibility studies.

(11) *Debt refinancing.* Lenders and FmHA or its successor agency under Public Law 103–354 must provide as part of their loan analysis the reasons for refinancing and the file must be documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the lender and FmHA or its successor agency under Public Law 103–354 that it is necessary to create new or save existing jobs. FmHA or its successor agency under Public Law 103–354 will consider any lender's exposure as

it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

(i) It is necessary to spread substantial debt payment over a longer period of time thereby improving the business' net cash flow and working capital position consistent with the useful life of the asset(s) being refinanced, or

(ii) For payment of short-term debt when required in situations customarily financed over long periods of time (e.g., financing the purchase of real estate, machinery, or equipment with short-term debt or cash expenditures, when lenders would not extend reasonable longer terms to the business), or

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project.

(12) Reasonable fees and charges only as specifically listed below and disclosed on Form FmHA or its successor agency under Public Law 103–354 449–1, ''Application for Loan and Guarantee,'' or on an addendum to the application at the time the request is submitted to FmHA or its successor agency under Public Law 103–354 for processing. Authorized fees include professional fees rendered by professionals generally licensed by individual State or accreditation Associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA or its successor agency under Public Law 103–354 449–1 and are subject to FmHA or its successor agency under Public Law 103–354 review and approval before the application is presented to the FmHA or its successor agency under Public Law 103–354 State Loan Review Board for action. The above approved fees and charges may be funded out of loan proceeds.

(13) FmHA or its successor agency under Public Law 103–354 guarantee fee.

(14) Acquisition of membership and/or stocks, bonds, or debentures necessary to obtain a loan from Production Credit Associations, Banks for Cooperatives, Small Business Investment Companies, and other lenders, provided such acquisition is required of all their borrowers. However, a lender which requires membership fees in such organization or the purchase of securities issued by such organization will not use such proceeds to acquire, lease or improve property which does not benefit its members.

(15) Aquaculture including conservation, development and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned and regulated stock of fish.

(b) *Public bodies.* See §§ 1980.481 and 1980.488.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 54 FR 28022, July 5, 1989]

§ 1980.412 Ineligible loan purposes.

Loans may *not* be made or guaranteed if the funds are used:

(a) To pay off a creditor in excess of the value of the collateral.

(b) For distribution or payment to the owner, partners, shareholders or beneficiaries of the applicant or members of their families when such persons will retain any portion of their equity in the business.

(c) For projects in which such assistance exceeds $1 million and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts

business operations unless there is reason to believe that such explanation is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(d) For projects in which such assistance exceeds $1 million and when direct employment increased more than 50 employees which is calculated to or likely to result in an increase in the production of goods, materials or commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(3) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(4) Loans for livestock and poultry processing as identified under eligible purposes.

(5) The growing of mushrooms or hydroponics.

(f) For the transfer of ownership of a business unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(g) For financing community antenna television services or facilities.

(h) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(i) For lending and investment institutions and insurance companies.

(j) For assistance to government employees and military personnel who are directors, officers or have a major ownership of 20 percent or more in the business.

(k) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(l) For any illegal business activity.

(m) For hotels, motels, tourist homes, or convention centers.

(n) For any tourist, recreation or amusement facility.

(o) For any line of credit.

Administrative

Par (c) and (d). The FmHA or its successor agency under Public Law 103–354 State Director will review the criteria in § 1980.412(c) and (d) and make a written determination with supporting data and reasons as to the determinations. Such review must be independent of the Department of Labor certification. The State Director will make sure the loan file contains these determinations as part of the loan analysis prior to the issuance of the Conditional Commitment for Guarantee.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

§ 1980.413 Transactions which will not be guaranteed.

(a) The following transactions will not be guaranteed by FmHA or its successor agency under Public Law 103–354:

(1) The guarantee of lease payments.

(2) The guarantee of loans made by other Federal agencies. This does not preclude the guaranteeing of loans made by the Bank for Cooperatives, Federal Land Bank, or Production Credit Association.

(3) The guarantee or making of any B&I loans(s), to any one borrower, when the total amount of the B&I loans(s) requested plus the outstanding

balance of any existing B&I loan(s) is in excess of $10 million.

(b) Guaranteeing of loans involved in tax-exempt obligations under § 1980.23 of Subpart A of this Part.

Administrative

The State Director will consider the overall State allocations of funding authority in recommending loans for processing. Loan requests which fall within Small Business Administration (SBA) authority should continue to be referred to SBA. If the State Director decides to process SBA size loans, the loan file must be fully documented as to the reasons for such actions.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

§ 1980.414 Fees and charges by lender and others.

[See Subpart A, § 1980.22]

(a) All fees and charges must be specifically documented and justified on the Form FmHA or its successor agency under Public Law 103–354 449–1 or on an addendum to the application at the time the loan request is submitted to FmHA or its successor agency under Public Law 103–354 for processing. Allowable fees will be those reasonably and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103–354 review and approval.

(b) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the project through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount of the loan up to $1 million and on all amounts over $1 million, an additional one-fourth percent up to total maximum fee of $50,000. Packaging fees, investment banker fees and and other fees and charges not specifically provided for in this section are permitted subject to FmHA or its successor agency under Public Law 103–354 review and approval. Loan proceeds may be used to pay fees as specifically authorized under §§ 1980.411(a)(12) and (13). Packaging fees, investment banker fees, and any other fees or charges shall not be paid from loan proceeds.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

§§ 1980.415–1980.418 [Reserved]

§ 1980.419 Eligible lenders.

[See Subpart A, § 1980.13.]

Administrative

A. *Par (a) of Subpart A, § 1980.13* requires National Office approval for any variations.

B. *Par (b)(4) of Subpart A, § 1980.13,* State Director submits information to National Office with recommendations.

C. With prior written approval of the FmHA or its successor agency under Public Law 103–354 National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form FmHA or its successor agency under Public Law 103–354 1980–42. ''Notice of Substitution of Lender.''

§ 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and FmHA or its successor agency under Public Law 103–354.

(a) For loans of $2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over $2 million but not over $5 million, the maximum percentage of guarantee is 80 percent.

(c) For loans in excess of $5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. FmHA or its successor agency under Public Law 103–354 informs lenders and borrowers in writing on Form FmHA or its successor agency under Public Law 103–354 449–14 of any percentage of guarantee less than proposed by the lender and borrower, and the reasons

therefore. FmHA or its successor agency under Public Law 103–354 determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Borrower's management*. The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services;

(2) *Collateral*. Collateral for the loan;

(3) *Financial condition*. Financial condition of borrower or borrower's principals, if appropriate;

(4) *Lender's exposure*. The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority; and

(5) *Trends and conditions*. Current trends and economic conditions.

[53 FR 40401, Oct. 17, 1988]

§§ 1980.421–1980.422 [Reserved]

§ 1980.423 Interest rates.

(a) *Guaranteed loans*. Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103–354 review and approval. Should any part of the loan(s) be sold by the lender, FmHA or its successor agency under Public Law 103–354, in its analysis, will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. The variable interest rate may be adjusted at different intervals during the term of the loan but the adjustments may not be more often than quarterly. The intervals between interest rate adjustments will be specified in the Loan Agreement. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(2) Under a Memorandum of Understanding between FmHA or its successor agency under Public Law 103–354 and the Farm Credit Administration dated September 25, 1974, the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs.

(3) Any change in the interest rate between the date of issuance of the Form FmHA or its successor agency under Public Law 103–354 conditional Commitment For Guarantee,'' and before the issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA or its successor agency under Public Law 103–354 449–14.

(4) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(i) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(ii) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(5) When multi-rates are used, the lender will provide FmHA or its successor agency under Public Law 103–354 with the overall effective interest rate for the entire loan.

(6) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate of their B&I guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA or its successor agency under Public Law 103–354 must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by

FmHA or its successor agency under Public Law 103–354, then FmHA or its successor agency under Public Law 103–354 is a holder and must affirm or reject interest rate change proposals. When FmHA or its successor agency under Public Law 103–354 is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA or its successor agency under Public Law 103–354 that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money, whether continuing with the loan would realistically promote or enhance rural development and employment in rural areas, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable, or allowing the borrower to continue at a reduced interest rate, and whether an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA or its successor agency under Public Law 103–354 will reflect the documentation of the interest rate change decision.

(i) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(ii) Variable rates can be changed to reduced fixed rates. In a final loss settlement, when qualifying rate changes were made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate can never exceed the amount which would have been eligible for claim had the variable interest remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest changes by an allonge attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(7) No increases in interest rates will be permitted under the B&I loan guarantee except the normal fluctuations in approved variable interest rate loans.

(b) *Insured loans.* (1) Loans for other than those in paragraph (b)(2) of this section will bear interest at a rate prescribed by FmHA or its successor agency under Public Law 103–354, and will be announced periodically. The interest rate for insured loans will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

(2) Loans to public bodies, nonprofit associations and Indian Tribes used to finance community facilities will bear interest at the rate prescribed in FmHA or its successor agency under Public Law 103–354 Instruction 440.1, Exhibit B (available in any FmHA or its successor agency under Public Law 103–354 Office).

Administrative

Par (a)(6) and (a)(7). (Added 4–26–85, SPECIAL PN.) The Director will notify the Finance Office of any interest rate reduction by using Form FmHA or its successor agency under Public Law 103–354 1980–47, ''Guaranteed Loan Borrower Adjustments.'' The State Director will make corrections to the Rural Community Facility Tracking System (FCFTS) reflecting the interest rate change. The FmHA or its successor agency under Public Law 103–354 loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the State Director to reflect any change in the interest rate.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989]

§ 1980.424 Term of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the promissory note except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the normal note rate on the guaranteed loan(s) will not

be guaranteed by FmHA or its successor agency under Public Law 103–354. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within three years from the date of the promissory note and at least annually thereafter. Interest will be due at least annually from the date of the note. Ordinarily, monthly payments will be expected, except for seasonal-type businesses.

(b) The maximum time allowable for final maturity for an FmHA or its successor agency under Public Law 103–354 guaranteed B&I loan will be limited to thirty (30) years for land, buildings and permanent fixtures; the usable life of the machinery and equipment purchased with loan funds, but not to exceed fifteen (15) years; and seven (7) years for the working capital portion of the loan. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(c) The maximum time allowable for final maturity of an FmHA or its successor agency under Public Law 103–354 insured loan for community facilities will not exceed forty (40) years.

(d) FmHA or its successor agency under Public Law 103–354 will not guarantee any loan in which the promissory note or any other document provides for the payment of interest upon interest.

Administrative

It is permissible for lenders to structure the borrower's financial proposal under the multi-note option as provided for in paragraph III A.2. of Form FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement,'' in the following ways:

A. To treat the entire financial package of the borrower as one loan (i.e., loan purposes may include one or any combination of working capital, machinery and equipment or real estate) provided:

1. The loan is amortized to provide repayment of the working capital portion within the 7 years, the machinery and equipment portion within useful life or 15 years, whichever is less, and real estate portion within 30 years.

2. One note represents the unguaranteed portion of the loan. It is permissible to issue as many as 10 notes or the guaranteed portion of the loan.

3. A Form FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee,'' is attached to all notes, including the unguaranteed note.

4. One interest rate (either variable or fixed) is used for the entire loan or one interest rate is used on the guaranteed portion and a different interest rate is used on the unguaranteed portion, subject to the requirements and conditions found in §1980.423 of this subpart.

5. One of each of the following Forms: FmHA or its successor agency under Public Law 103–354 449–14, FmHA or its successor agency under Public Law 103–354 1940–3, ''Request for Obligation of Funds—Guaranteed Loans,'' FmHA or its successor agency under Public Law 103–354 449–35, and FmHA or its successor agency under Public Law 103–354 1980–19, ''Guaranteed Loan Closing Report,'' is used.

B. To treat the financial package of the borrower as separate loans that are processed as a single application provided:

1. A separate loan is made for each purpose (i.e., working capital, machinery and equipment or real estate). As an example, a working capital loan could be structured as follows:

One note for $XXXX at X% interest due in 7 years representing the unguaranteed portion of the loan, and

Up to 10 notes for $XXXX at X% interest due in 7 years representing the guaranteed portions of the loan.

2. A Form FmHA or its successor agency under Public Law 103–354 449–34 is attached to all notes, including the unguaranteed note.

3. A different interest rate may be used on the guaranteed and unguaranteed portions of the loan, subject to the requirements and conditions found in §1980.423 of this subpart.

4. Separate Forms FmHA or its successor agency under Public Law 103–354 449–14, 1940–3, 449–35, and 1980–19 are required for each loan. If you have two loans, one for working capital and another for real estate, then a set of these forms will be required for each loan.

C. Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement,'' will never be used when the multi-note option is utilized.

D. Par. (b). The State Director will assure that the loan officer reviewing the application fully evaluates the useful life of the collateral offered for the loan when determining maturities for the loan. Loan requests for the maximum maturities could result in collateral obsolescence prior to full repayment of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

[52 FR 6501, Mar. 4, 1987, as amended at 56 FR 8271, Feb. 28, 1991]

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this subpart.

(b) To be eligible for an insured loan under this subpart, the borrower must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the borrower's location(s) for loans for similar purposes and period of time. The borrower's inability to obtain such credit elsewhere will be determined in accordance with subpart A of part 1942 of this chapter.

§ 1980.426–1980.431 [Reserved]

§ 1980.432 Environmental requirements.

[See subpart A, § 1980.40 and subpart G of part 1940 of this chapter.]

Administrative

When required by subpart G of part 1940 of this chapter, the approving official will review Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' submitted by the borrower and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment when required. If the approving official determines that an EIS is required, he/she will notify the borrower and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

(See subpart A, § 1980.42.)

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to subpart B of part 1806 of this chapter [FmHA or its successor agency under Public Law 103–354 Instruction 426.2].

§ 1980.434 Equal opportunity and nondiscrimination requirements.

(See subpart A § 1980.41.)

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of noncompliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA or its successor agency under Public Law 103–354 Official in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1980.435–1980.440 [Reserved]

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for insured loans at loan closing or at the time the Loan Note Guarantee is issued for guaranteed loans. However, balance sheet equity in the amount of at least 20–25 percent will be required under the following circumstances:

(1) For new businesses since they do not have a history of proven operations and such businesses generally experience unforeseen startup expenses which may deplete the available cash resources.

(2) For businesses where the borrower does not or cannot offer a limited or full personal or corporate guarantee as required in § 1980.443 and thereby weakens the financial soundness of the loan.

(3) For energy related businesses since these types of projects may be technically feasible, but in many instances are more susceptible to higher risk. A higher equity position will assure management's commitment to the project.

(b) FmHA or its successor agency under Public Law 103–354 may also require more than a 10 percent equity investment in projects other than those in paragraphs (a)(1), (2) and (3) of this section if the reviewing official makes a written determination that special circumstances necessitate this course of action. Special circumstances are limited to credit factors which negatively affect the financial soundness of

the loan, the chances of the project's success or the repayment ability of the borrower. Such determination will be in writing by the reviewing official and explain fully what the special circumstances are and how FmHA or its successor agency under Public Law 103–354 decided upon the percentage of equity investment to be required in the individual case.

(c) FmHA or its successor agency under Public Law 103–354 will require the borrower to contribute all of the equity requirement in the form of either cash or tangible earning assets injected into the business and reflected on the balance sheet. Appraisal surplus and/or subordinated debt cannot be used in the calculation of the equity requirements.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 40039, July 27, 1993]

§ 1980.442 Feasibility studies.

A feasibility study by a recognized independent consultant will be required for all loans, except as provided in this paragraph. The cost of the study will be borne by the borrower and may be paid from funds included in the loan. The loan approval official may make an exception to the requirement of a feasibility study for loans to existing businesses when the financial history of the business, the current financial condition of the business, and guarantees or other collateral offered for the loan are sufficient to protect the interest of the lenders and FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 will thoroughly document the justification for the exception to the feasibility study for such businesses. An acceptable feasibility study should include but not be limited to:

(a) *Economic feasibility*. Information related to the project site, availability of trained or trainable labor; utilities; rail, air and road service to the site; and the overall economic impact of the project.

(b) *Market feasibility*. Information on the sales organization and management, nature and extent of market area, marketing plans for sale of projected output, extent of competition and commitments from customers or brokers.

(c) *Technical feasibility*. Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities and/or processes as are proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use, including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income and/or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided the principals of the firm or any individual of the firm who participates in the technical feasibility report does not have a financial interest in the project, and provided further that no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function.

(d) *Financial feasibility*. An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business and the adequacy of raw material and supplies.

(e) *Management feasibility*. Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

Administrative

FmHA or its successor agency under Public Law 103–354 loan approval officials will be selective in approving borrowers for new

business ventures involved in unproven products, services, or markets. Should such businesses be considered, additional equity will usually be required.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 40039, July 27, 1993]

§ 1980.443 Collateral, personal and corporate guarantees and other requirements.

(a) *Collateral.* (1) The lender is responsible for seeing that proper and adequate collateral is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA or its successor agency under Public Law 103–354.

(2) Collateral must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and applicant's prospective earnings. Collateral may include, but is not limited to the following: Land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities and cash surrender value of life insurance. Collateral may also include assignments of leases or leasehold interest, revenues, patents, and copyrights.

(3) All collateral must secure the entire loan. The lender will not take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(4) Release of collateral of a going concern is based on a complete analysis of the proposal.

(i) Release of collateral prior to payment-in-full of the FmHA or its successor agency under Public Law 103–354 guaranteed debt must be requested by the lender and concurred with by the State Director as prescribed in § 1980.469 Administrative D.2 of this subpart subject to the following conditions:

(A) Collateral taken initially or subsequently may not be released prior to the payoff, in full, of the loan balance without adequate consideration for the value of that collateral. Adequate consideration may include, but is not limited to:

(*1*) Application of the net proceeds from the sale of the collateral to the note in inverse order of maturity. All or part of the total proceeds, if approved by the Administrator, may be applied to the payment of current or delinquent principal and interest on the note; or

(*2*) Use of the net proceeds from the sale of collateral to purchase collateral of equal or greater value for which the lender will obtain a first lien position; or

(*3*) Application of net proceeds from the sale of collateral to the borrower's business operations in such a manner that enhancement of the borrower's debt service ability can be clearly demonstrated; for example, the payoff or reamortization of the loan as the result of a large extra payment which reduces subsequent installments on the loan; or

(*4*) Assurance to FmHA or its successor agency under Public Law 103–354 that the release of collateral will contribute to the project's success thereby furthering the goals of the B&I program to show why the release of collateral will contribute to the success of the borrower and repayment of the loan; and

(B) FmHA or its successor agency under Public Law 103–354 must not be adversely affected by the release of collateral; and

(C) If the release of collateral does not involve a reduction of the FmHA or its successor agency under Public Law 103–354 guaranteed debt equal to the net proceeds of the disposition of the collateral, then it must be determined that the remaining collateral is sufficient to provide for the recovery of the FmHA or its successor agency under Public Law 103–354 guaranteed loan(s).

(ii) Sale of collateral of a going concern to the borrower, borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's-length transaction with the concurrence of FmHA or its successor agency under Public Law 103–354.

(b) *Personal and corporate guarantees.* (1) Unconditional personal/corporate

guarantees (i.e., absolute guarantees of full and punctual payment and performance by the borrower) from owners or major stockholders as determined by FmHA or its successor agency under Public Law 103–354 and all partners of partnerships (except for limited partnerships) unless restricted by law *will* be required unless exempted as provided for in paragraph (b)(2) of this section. Guarantees of parent, subsidiaries, or affiliated companies and/or secured guarantees may also be required. FmHA or its successor agency under Public Law 103–354 is not a co-guarantor with the personal or corporate guarantors. The personal and corporate guarantees are part of the collateral for the loan.

(2) An exception to the requirement for personal or corporate guarantees may be made by FmHA or its successor agency under Public Law 103–354 when requested by the lender and if:

(i) The borrower has a satisfactory and current (not over 90 days old) credit report, proven management, evidence of the market necessary to support projections, profitable historical performance of no less than 3 years, abundant collateral to protect the lender and FmHA or its successor agency under Public Law 103–354, sufficient cash flow to service its debts and meets key industry standards such as those of Robert Morris Associates, Dunn and Bradstreet or the like; or

(ii) The borrower's stock is widely enough held so that no one individual can exercise control. Examples of control would include but are not limited to: Holding sufficient proxies and maintaining sufficient family or special interest voting blocks; or

(iii) A borrower which has a parent, subsidiary, or affiliate which is legally restricted from guaranteeing, or if the guarantee would conflict with existing contractual obligations. Examples of existing contractual obligations include but are not limited to restrictions in loan agreements or in credit lines which may preclude guaranteeing.

(3) No guarantees are required from any partners in a limited partnership.

(4) As a general rule, stockholders of publicly traded corporations will not be required to guarantee. However, such guarantees can be required from some of the stockholders where such guarantees are determined necessary to adequately protect the interest of the Government.

(5) If the guarantee would conflict with existing contractual restrictions, the Administrator will have the authority to grant exceptions to the above restrictions upon a finding by the Administrator that such a guarantee is not necessary to adequately protect the Government's interest. Relief would only be granted as to contractual restrictions existing at the time the lender filed an application with FmHA or its successor agency under Public Law 103–354.

(6) Unsecured personal guarantees, while collateral, will not be considered for purposes of adequacy of security. Personal guarantees will be secured by collateral when business collateral offered is determined by FmHA or its successor agency under Public Law 103–354 to be insufficient or when the borrower's credit does not meet the program's normal requirements or anytime the lender deems such security should be taken.

(7) Guarantors of borrowers will:

(i) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing), signed by the guarantors, which make a clear disclosure of community or homestead property.

(ii) in the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing), certified by an officer of the corporation.

(iii) When applicable, provide written evidence to FmHA or its successor agency under Public Law 103–354 of their inability to provide a guarantee because of existing contractual arrangements or legal restrictions.

(c) *Other requirements.* (1) The lender will ascertain that no claim or liens of laborers, material men, contractors, subcontractors, suppliers of machinery and equipment or other parties are against the collateral of the borrower, and that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide or any other hazard insurance that may be required to protect the collateral.

(3) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the borrower and will be assigned or pledged to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(4) Workman's compensation insurance is required in accordance with State law.

Administrative

A. Par (a)(2). FmHA or its successor agency under Public Law 103–354's credit analysis of collateral will consist of the following:

1. Little or no value will be assigned to unsecured personal or corporate guarantees.

2. A maximum of 80 percent of current market value will be given to real estate. Special purpose real estate should be assigned less value.

3. FmHA or its successor agency under Public Law 103–354 at its option may permit a maximum of 60 percent of book value to be assigned to acceptable accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts and other accounts deemed, by the FmHA or its successor agency under Public Law 103–354 official, not to be collateral will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borrower's most recent financial statement.

4. A maximum of 60 percent of book value will be assigned to inventory.

5. Collateral value assigned to machinery and equipment, furniture and fixtures will be based upon its marketability, mobility, useful life and alternative uses, if any.

B. Par (b). The State Director will assure that the collateral values and personal and corporate guarantees are fully reviewed, analyzed and the loan file is documented as to the facts and reasons for decisions reached.

§ 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral. In the case of loans two million dollars or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made.

(b) The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals. The lender will consult with FmHA or its successor agency under Public Law 103–354 for its recommendations before having the appraisal made.

(c) The lender will determine that the fees or charges of appraisers are reasonable.

(d) Independent appraisals will be made in accordance with the accepted format of the industry and those prepared by the lender in accordance with its policy and procedures. All appraisals will become part of the application. (See § 1980.541(i)(6) of this subpart.)

(e) If a subsequent loan request is made within 3 years from the date of the most recent borrower's appraisal report, and there is no significant change in collateral, then the FmHA or its successor agency under Public Law 103–354 State Director in his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of having a new appraisal prepared.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

§ 1980.445 Periodic financial statements and audits.

All borrowers will be required to submit periodic financial statements to the lender. Lenders must forward copies of the financial statements and the lender's analysis of the statements to the Agency.

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year of more than $1 million, must submit annual audited financial statements. The audit must be performed in accordance with generally accepted accounting principles (GAAP). In addition, the audits are also to be performed in accordance with approriate Office of Management and Budget (OMB) circulars and any Agency requirements specified in this subpart.

(b) *Unaudited financial statements.* For borrowers with a loan balance (principal plus interest at year-end) of $1 million or less, the Agency will require annual financial statements which may be statements compiled or reviewed by an accountant qualified in accordance with the publication ''Standards for Audit of Governmental Organizations, Programs, Activities and Functions'' instead of audited financial statements.

(c) *Internal financial statements.* The Agency may require submission of financial statements prepared by the borrower at whatever frequency is determined necessary to adequately monitor the loan. Quarterly financial statements will be required on new business enterprises or those needing close monitoring.

(d) *Minimum requirements.* This section sets out minimum requirements for audited and unaudited financial statements to be submitted to the Agency. If specific circumstances warrant, the Agency may require audited financial statements or independent unaudited financial statements in excess of the minimum requirements. For example, loans that depend heavily on inventory and accounts receivable for collateral will normally be audited, regardless of the size of the loan. Nothing in this section shall be considered an impediment to the lender requiring financial statements more frequently than required by the Agency or requiring audited financial statements when the Agency would accept unaudited financial statements.

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions of this section, any public body or nonprofit corporation that receives a guarantee of a loan that meets the thresholds established by OMB Circular A–128 or A–133 for coverage under such circular, must provide an audit in accordance with the applicable OMB Circular A–128 or A–133 for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit, in accordance with the applicable circular, will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circular A–128 or A–133 will be considered adequate to meet the requirements of this section for that year. OMB Circulars are available from the Office of Management and Budget, EOP Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

[61 FR 18494, Apr. 26, 1996]

§§ 1980.446–1980.450 [Reserved]

§ 1980.451 Filing and processing applications.

(a) *Borrowers' and lenders' contact.* Borrowers and lenders desiring FmHA or its successor agency under Public Law 103–354 assistance as provided in this subpart may file preapplications or applications with the County Supervisor or District Director servicing the area in which the project is to be located. In either case, the requirements of § 1980.46 of Subpart A of this part must be met. The County Supervisor or District Director receiving the request for assistance will promptly notify the State Director of the nature and facts of the request. The FmHA or its successor agency under Public Law 103–354 State Director will promptly arrange an early meeting with the borrower and lender representatives to discuss assembly, preparation and processing of preapplications and applications. The State Director may call upon the County Supervisor and District Director to assist the State Office in any way necessary.

(b) *Applications from cooperatives.* Borrowers eligible for loans from the Bank

for Cooperatives will be encouraged to obtain guaranteed loans from that source since the Bank for Cooperatives is experienced in making and servicing such loans and can provide substantial counsel to the applicant. Applications must be submitted to the Bank for Cooperatives as a test for credit elsewhere when an insured loan is being considered. (See FmHA or its successor agency under Public Law 103–354 Instruction 2000–Q available in any FmHA or its successor agency under Public Law 103–354 office for Memorandum of Understanding between FmHA or its successor agency under Public Law 103–354 and Farm Credit Administration.)

(c) *Borrowers eligible for Small Business Administration (SBA) assistance.* All borrowers for loan guarantees eligible for SBA assistance will be advised by FmHA or its successor agency under Public Law 103–354 at the time of receipt of the preapplication of the availability of such assistance and will be encouraged to apply to that agency. (See FmHA or its successor agency under Public Law 103–354 Instruction 2000–P available in any FmHA or its successor agency under Public Law 103–354 office for Memorandum of Understanding between SBA and FmHA or its successor agency under Public Law 103–354).

(d) *Loan Priorities.* Applications and preapplications received by FmHA or its successor agency under Public Law 103–354 will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, FmHA or its successor agency under Public Law 103–354 will compare an application to other pending applications.

(1) FmHA or its successor agency under Public Law 103–354 will cooperate fully with appropriate State agencies in guaranteeing and insuring loans in a manner which will assure maximum support of the State's strategies for development of its rural areas.

(2) When applications on hand otherwise have equal priority, the applications from a veteran will have preference. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(i) During the period April 6, 1917, though March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955; or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975. Discharges under conditions other than dishonorable include ''clemency discharges.''

(3) Priorities will be assigned by FmHA or its successor agency under Public Law 103–354 to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part-time job impact, and leveraging of FmHA or its successor agency under Public Law 103–354 assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds or guarantee authority. The priorities described in this paragraph will be used by FmHA or its successor agency under Public Law 103–354 to score projects. A copy of the calculation of the score should be placed in the case file for future reference.

(i) *Location priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, its receives no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent, full-time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than

25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in farming or ranching as operators or employees (35 points).

(ii) *Jobs priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points)

(iii) *Job cost priorities.* The priority score for the project's cost per job is the score for the highest-ranked category in which the project fits. First, divide the amount of the FmHA or its successor agency under Public Law 103–354 guaranteed loan by the number of jobs created or saved. This will result in the cost per job. Count only full-time jobs. Part-time jobs may be reduced to a fraction of a full-time job and counted. For example, a 20-hour-per-week job, or a job that is full-time for six months per year, is one-half of a job. Second, determine the State's nonmetropolitan household income as described in §1980.451(d)(3)(vi). Third, divide the cost per job by the State's nonmetropolitan household income. For example, if the cost per job is $10,000 and the State's nonmetropolitan household income is $20,000, the result will be 0.5. The categories, and their point scores are:

(A) Loans on which the result is greater than 1.5 but less than 2.0 (5 points).

(B) Loans on which the result is from 1.0 to 1.5 (15 points).

(C) Loans on which the result is less than 1.0 (25 points).

If the result exceeds 2.0, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA or its successor agency under Public Law 103–354 guaranteed loan is less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full-time jobs, create a significant number of part-time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part-time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under §1980.451(d)(3) (i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unforeseen exigencies, emergencies, benefits to other FmHA or its successor agency under Public Law 103–354-assisted projects (including the limiting of financial risks affecting FmHA or its successor agency under Public Law 103–354 loans and loan guarantees) or the loss of financing if FmHA or its successor agency under Public Law 103–354 funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic development strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project

score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to 20 points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, FmHA or its successor agency under Public Law 103–354 will consider State development strategies. Funds (guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs.

(vi) *Indexation*. When current, annual data are not available to determine a State's nonmetropolitan household income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of census data is necessary. The State Director will use the figure from the most recent decennial census of the United States, increased by a factor representing the increase since the year of that census in the Consumer Price Index (''CIP–U''). That factor shall be furnished annually by the National Office, FmHA or its successor agency under Public Law 103–354.

(e) *Filing preapplications and applications*. Borrowers or lenders may file preapplications described in paragraph (f) of this section if they desire an expression of FmHA or its successor agency under Public Law 103–354 interest prior to assembling the complete application and request for Loan Note Guarantee or they may present the complete application, in one package, including the material required in paragraphs (f), (i), (j), and (k) of this section.

(f) *Preapplications*. Applicants may file preapplications with the County, District, or State Office including:

(1) A letter prepared by the borrower and the lender which shall include:

(i) Borrower's name, address, contact person and telephone number.

(ii) Amount of loan request.

(iii) Name of the proposed lender, address, contact person, and telephone number.

(iv) Brief description of the projects, products and services provided.

(v) Type and number of employment opportunities and unemployment rate where the project will be located.

(vi) Amount of borrower's equity and guarantees offered.

(vii) Anticipated loan maturity and interest rates.

(viii) Availabiity of raw materials and supplies.

(ix) If a corporation, names and addresses of borrower's parent, affiliates and/or subsidiary firms and a brief description of relationship, products and ownership among borrower, parent, affiliates and subsidiary firms.

(2) Form FmHA or its successor agency under Public Law 103–354 449–22, ''Certification of Non-Relocation and Market and Capacity Information Report.''

(3) Form FmHA or its successor agency under Public Law 103–354 449–4, ''Statement of Personal History,'' for a proprietor (owner), each partner, officer, director, key employee and stockholders holding 20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if required by FmHA or its successor agency under Public Law 103–354. Forms FmHA or its successor agency under Public Law 103–354 449–4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA or its successor agency under Public Law 103–354's not making or guaranteeing the loan. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form FmHA or its successor agency under Public Law 103–354 449–4.

(4) A record of any pending or final regulatory or legal (civil or criminal)

action against the borrower, parent, affiliate, proposed guarantors, subsidiaries, principal stockholders, officers and directors.

(5) For existing businesses, a current balance sheet, and latest profit and loss statement (not more than 60 days old) and financial statements including parent, affiliate and subsidiary firms, for at least the last 3 years or more if necessary for a thorough evaluation.

(6) A detailed projection of gross revenue, net earnings and cash flow statements for 3 years including assumptions upon which such forecasts are based.

(7) Sales projections indicating the percent of the national and local market the business expects to obtain.

(8) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015, Subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' See FmHA or its successor agency under Public Law 103–354 Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 Office.

(g) *Preliminary determination by FmHA or its successor agency under Public Law 103–354.* If preparation information indicates the project will not meet FmHA or its successor agency under Public Law 103–354's minimum credit standards for a sound loan, is ineligible, does not have sufficient priority or that funds or guarantee authority are not available for the project, FmHA or its successor agency under Public Law 103–354 will so inform the lender. The lender will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible and loan guarantee authority is available, FmHA or its successor agency under Public Law 103–354 will inform the lender and borrower in writing and request that they complete the application.

(h) *Department of Labor certifications.* FmHA or its successor agency under Public Law 103–354 will submit Form FmHA or its successor agency under Public Law 103–354 449–22 to the Department of Labor for the necessary certification that the proposal will not be in conflict with § 1980.412(c) and (d).

(i) *Content of Applications:*

(1) Form FmHA or its successor agency under Public Law 103–354 449–1.

(2) Form FmHA or its successor agency under Public Law 103–354 449–2.

(3) Form FmHA or its successor agency under Public Law 103–354 1940–20, when required by Subpart G of Part 1940 of this chapter.

(4) Architectural or engineering plans, if applicable.

(5) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(6) Appraisal reports.

(7) For existing businesses a pro forma balance sheet at startup and for at least three additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last three years, or more (if available); and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The business should submit a current balance sheet with a debt schedule of any debts to be refinanced and an income statement to FmHA or its successor agency under Public Law 103–354, through the lender, every 90 days from the time the application is filed with the lender to the time of issuance of the Loan Note Guarantee. If debt refinancing is requested, a debt schedule is prepared (correlated to the latest balance sheets) reflecting the debts to be refinanced including the name of the creditor, the original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secured such loans.

(8) For new businesses, a pro forma balance sheet at startup and for the next three years, project cash flow (monthly first year, quarterly for two additional years) and projected earnings statements for three years supported by a list of assumptions showing the basis for the projections.

(9) Any credit reports obtained by the lender or FmHA or its successor agency under Public Law 103–354 on the borrower, its principals and parent, affiliate and subsidiary firms.

(10) Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' if construction costing more than $10,000 is involved.

(11) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(12) Personal and corporate financial statements of those guarantors named in § 1980.443.

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449–35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include the Agency requirements as set forth in the Form FmHA 449–14 including the requirements for periodic financial statements in accordance with § 1980.445. The loan agreement must also include, but is not limited to, the following:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restrictions on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitations on compensation of officers and owners.

(v) Minimum working capital requirements.

(vi) Maximum debt to net worth ratio.

(vii) Restrictions concerning consolidations, mergers or other circumstances.

(viii) Limitations on selling the business without concurrence of the lender and FmHA or its successor agency under Public Law 103–354.

(ix) Repayment and amortization of the loan.

(x) List of collateral for the loan including a list of persons and/or corporations guaranteeing the loan with a schedule for providing the lender and FmHA or its successor agency under Public Law 103–354 with personal and/or corporate financial statements. (See § 1980.443)

(14) A complete feasibility study when required. (See § 1980.442)

(15) Any additional information required by FmHA or its successor agency under Public Law 103–354.

(16) For companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations, a copy of Form 10–K, ''Annual Report Pursuant to section 13 or 15 D of the Act of 1934.''

(17) Documented evidence that the project is located within or without special flood or mudslide hazard areas.

(18) Notices of compliance with the Privacy Act of 1974.

(i) If the borrower is acting in a personal capacity and not as an entrepreneur for such entities as proprietorships, partnerships, or corporations, and FmHA or its successor agency under Public Law 103–354 solicits personal information for him/her, the individual will be provided Form FmHA or its successor agency under Public Law 103–354 410–9, ''Statement Required by the Privacy Act.''

(ii) If FmHA or its successor agency under Public Law 103–354 desires to obtain information concerning an individual from any source, FmHA or its successor agency under Public Law 103–354 will provide such source with Form FmHA or its successor agency under Public Law 103–354 410–10, ''Privacy Act Statement to References.''

(19) On any request for refinancing of existing loan(s) as authorized under § 1980.411(a)(11), the lender is required, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). Additional collateral will be required by FmHA or its successor agency under Public Law 103–354 when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary strengthening of the firm's current position.

(j) *Use of forms.* FmHA or its successor agency under Public Law 103–354 numbered forms will be used where shown in both preapplications and applications. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of the subpart.

(k) *Certificate of need*. If the loan request is for health care facilities (e.g., hospitals or nursing homes), a ''Certificate of Need'' will be obtained by the borrower from the appropriate regulatory or other agency having jurisdiction over the project and submitted to FmHA or its successor agency under Public Law 103–354 by the lender. If a significant part of the project's income will be from third party payors, (e.g., medicare or medicaid), the project will be designed and operated in a manner necessary to meet the requirements of the third-party payors.

Administrative

A. The State Director:

1. Determines if material and information submitted is completed and signed by the appropriate party in the appropriated capacity.

2. May request the comments and recommendations of the County Supervisor and District Director. Such comments will include but are not limited to the following: Community attitude toward project; a summary of comments regarding the proposal by the lender, county leaders and other interested parties; whether the project is likely to result in the need for additional community facilities such as schools, water, sewer and health care services, and if so, the community's plan for providing such facilities; availability of any required additional labor force and training plans for such force, if needed; an economic forecast of the effect on the community should the project fail, if financed.

3. Will furnish all individuals acting in a personal capacity at the time of filing a preapplication or application and two copies of Form FmHA or its successor agency under Public Law 103–354 410–9. The individual will sign both copies, retaining one and providing FmHA or its successor agency under Public Law 103–354 with the other copy which becomes a part of the loan file.

4. Will provide any source whom FmHA or its successor agency under Public Law 103–354 obtains information concerning an individual with two copies of Form FmHA or its successor agency under Public Law 103–354 410–10. The source will sign both copies, retain one and provide FmHA or its successor agency under Public Law 103–354 with the other copy which becomes a part of the loan file.

5. Will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consists of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Loan/Grant Request (LGR) sets. There are multiple screens for the BOR and LGR sets. The State Director may, if he/she so desires, prepare a Form FmHA or its successor agency under Public Law 103–354 2033–34, ''Management System Card—Business and Industry,'' in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2033–F.

6. Will forward immediately to the National Office on all projects.

(a) Form FmHA or its successor agency under Public Law 103–354 449–22 (7 copies) for loans over $1 million and when direct employment increases more than 50 employees.

(b) For insured loans where the borrower leases facilities to another, submit Form FmHA or its successor agency under Public Law 103–354 449–22 for such borrower. The lessor(s) will also be required to provide Form FmHA or its successor agency under Public Law 103–354 449–22. Subsequent loan requests require resubmission of Form FmHA or its successor agency under Public Law 103–354 449–22.

(c) A local, national or regional credit report and Form FmHA or its successor agency under Public Law 103–354 449–4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

NOTE: Forms FmHA or its successor agency under Public Law 103–354 449–22 and FmHA or its successor agency under Public Law 103–354 449–4 should *only* be processed if a *complete* preapplication or application has been received.

B. Miscellaneous Administrative provisions:

1. *Par (f)*. Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the borrower and lender.

2. *Par (g)*. Upon receipt of all preapplications in excess of $5 million, the State Director will transmit to the National Office the material required under paragraph (f)(1), (f)(4) and (f)(5) of this section together with recommendations and observations an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review the proposed project in relation to objectives, priorities and intent of the program and will advise the State Director. After receiving the National Office advice or for loans less than $5 million, the State Director will inform the borrower of the decision.

3. *Par (i)*. State Director submits a transmittal letter with recommendations on loan applications requiring National Office review. Included are:

(a) Loan file.

(b) Form FmHA or its successor agency under Public Law 103–354 449–29, ''Project Summary—Business Industrial Loan Division,'' including State Director's a spread sheets, financial history and projections (use

attachments to Project Summary if necessary).

(c) Proposed Form FmHA or its successor agency under Public Law 103–354 449–14.

(d) Copy of FmHA or its successor agency under Public Law 103–354 State Loan Review Board Minutes.

(e) Notification of required financial and other reports, their frequency, due dates and fiscal yearend.

4. *Par (i)(9), Credit reports.*

(a) The National Office has a contract to provide credit reports for preapplications, applications, and in instances after the loan(s) is made, where a credit report is needed.

(b) States should first try to have the lender provide such a report because credit reports are the responsibility of the lender.

(c) Any state needing a credit report should telephone the National Office, Director, B&I, and give the name of the business and the city and State location. The report will be mailed to the State the same day, if possible.

5. *File documentation.* Applications will be organized in a loan file in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office.) An 8-position folder with tabs will be utilized.

The State Director may supplement the Position Guides to include specific legal requirements within their State. If the lender prepares a complete application package, it may accompany the docket provided the docket is organized in a binder, indexed and tabbed. Feasibility studies should be kept separate. It is the responsibility of FmHA or its successor agency under Public Law 103–354 employees who work on applications or servicing actions to add to the correspondence section of the loan file (also known as the running record) a written report of any field visits, meetings, telephone conversations and memorandums covering decisions or reasons for FmHA or its successor agency under Public Law 103–354's actions on the cases. Particular attention must be given to this requirement on cases that become delinquent or problems in order that FmHA or its successor agency under Public Law 103–354 position will be defensible in the event of an adverse action.

6. *Par (i), (13), Audit agreements and requirements.* FmHA or its successor agency under Public Law 103–354 urges the use of a written agreement between the lender and borrower to assure that there is no misunderstanding concerning FmHA or its successor agency under Public Law 103–354 audit requirements.

7. *Par (i), Forms and documents found in loan docket.* The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8 position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

		Filing position
AD–425	Contractor's Affirmative Action Plan For Equal Employment Opportunity	1
FmHA or its successor agency under Public Law 103–354 400–1.	Equal Opportunity Agreement	6
FmHA or its successor agency under Public Law 103–354 400–3.	Notice to Contractors and Applicants	6
FmHA or its successor agency under Public Law 103–354 400–4.	Assurance Agreement	3
FmHA or its successor agency under Public Law 103–354 400–6.	Compliance Statement	6
FmHA or its successor agency under Public Law 103–354 410–8.	Applicant Reference Letter	3
FmHA or its successor agency under Public Law 103–354 410–9.	Statement Required by the Privacy Act	3
FmHA or its successor agency under Public Law 103–354 410–10.	Privacy Act Statement to References	3
FmHA or its successor agency under Public Law 103–354 424–12.	Inspection Report	6
FmHA or its successor agency under Public Law 103–354 1940–3.	Request for Obligation of Funds—Guaranteed Loans; Filing Position 2	2

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE—Continued

		Filing position
FmHA or its successor agency under Public Law 103–354 1940–22.	Environmental Checklist for Categorical Exclusion, or	3
FmHA or its successor agency under Public Law 103–354 1940–21.	Environmental Assessment for Class I Action, or	3
Exhibit H, Subpart G of Part 1940.	Environmental Assessment for Class II Action	3
	Environmental Impact Statement	3
FmHA or its successor agency under Public Law 103–354 440–57.	Acknowledgement of Obligated Funds/Check Request	2
FmHA or its successor agency under Public Law 103–354 449–1.	Application for Loan and Guarantee	3
FmHA or its successor agency under Public Law 103–354 449–2.	Statement of Collateral	5
FmHA or its successor agency under Public Law 103–354 449–4.	Statement of Personal History	3
FmHA or its successor agency under Public Law 103–354 1940–20.	Request for Environmental Information	3
FmHA or its successor agency under Public Law 103–354 449–14.	Condition Commitment for Guarantee	2
FmHA or its successor agency under Public Law 103–354 449–22.	Certification of Non-relocation and Market and Capacity Information Report	3
FmHA or its successor agency under Public Law 103–354 449–29.	Project Summary—Business Industrial Loan Division	3
FmHA or its successor agency under Public Law 103–354 449–34.	Loan Note Guarantee	2
FmHA or its successor agency under Public Law 103–354 449–35.	Lender's Agreement	2
FmHA or its successor agency under Public Law 103–354 449–36.	Assignment Guarantee Agreement	2
FmHA or its successor agency under Public Law 103–354 1980–19.	Guaranteed Loan Closing Report	2
	Annual Audit Report	1
	Borrower Financial Statements	3
	Chattel Security Instruments	1
	Report—Exhibit B, FmHA or its successor agency under Public Law 103–354 Instruction 2015—C.	1
	Borrower's Certification of Indebtedness	1
	Lender's Loan Agreement	2
	Promissory Notes	2
	Bond (specimen) Bond Ordinances, Bond Transcripts or Similar Items	2
	Running Case Record	3
	Market Analysis Information (feasibility study)	3
	Borrower's and Lender's Preapplication Letters	3
	Lender's Evaluation and Recommendations	3
	Cost Estimates and Forecast for Contingency Funds	6
	Dun and Bradstreet Reports	3
	Corporate or Personal Financial Statements of Guarantors	3
	S.E.C. 10–K Report	3
	Pro-forma Balance Sheet	3
	Current Profit and Loss Statements	3
	Projection of Gross Revenues and Net Earnings	3
	Cash Flow Statements, 3 Years with Assumptions	3
	Appraisal Reports	8

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE—Continued

		Filing position
	Documentation for Considering Refinancing	3
	Financial Statements for last 3 years	3
	Complete Debt Schedule	3
	Interim Financial Statements	3
	Aging and Turnover of Receivables and Inventory	3
	Credit Reports	3
	Records of any Pending or Final Regulatory Litigation	3
	Comments on any State Development Strategies.	3
	Flood or Mudslide Hazard Area Statement	3
	National Historic Preservation Act Statement	3
	State Review Board Minutes	3
	Certificate of Need (Health Care Facilities)	3
	Clean Air and Water Pollution Control Act Requirements Statement	3
	Correspondence (excluding closing instruments)	4
	Department of Labor Certification	4
	Mortgagee Title Insurance Policy	5
	Title Opinions	5
	By-Laws, Resolutions, or Regulations and Amendments	5
	Articles of Incorporation, By-laws and Regulations or Charter	5
	Lender Security agreements and Financing Statements	5
	Lender Mortgages and Notes	5
	Advice of Office of General Counsel from Review of Docket	5
	Partnership Agreements	5
	Other Documents used in Loan Closing	5
	Schedule of Stock Ownership	5
	Franchise Agreement	5
	Construction Contracts and Compliance Statements	6
	Lender's Approval of Plans and Specifications	6
	Engineer's Certification of Satisfactory Completion in Accordance with Plans and Specifications.	6
	Lender's Audit of Expenditures and Project Costs	6
	Evidence of Concurrence and compliance with Construction Requirements of State, County, and Municipal Government (including building permits).	6
	Lender's Closing Certification	6
	Lender's Loan Servicing Plan	6
	Loan Closing Opinion of Lender's Legal Counsel	6

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988; 53 FR 45258, Nov. 9, 1988; 55 FR 26199, June 27, 1990; 56 FR 8271, Feb. 28, 1991; 61 FR 18495, Apr. 26, 1996]

§ 1980.452 FmHA or its successor agency under Public Law 103–354 evaluation of application.

FmHA or its successor agency under Public Law 103–354 will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity and the proposed loan complies with all applicable statutes and regulations. If FmHA or its successor agency under Public Law 103–354 determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA or its successor agency under Public Law 103–354 is able to guarantee the loan, it will provide the lender and the borrower with Form FmHA or its successor agency under Public Law 103–354 449–14, listing all requirements for such guarantees. FmHA or its successor agency under Public Law 103–354 will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA or its successor agency under Public Law 103–354 449–1. The Conditional Commitment for Guarantee may not be issued on any loan until the State Director has been notified by the National Officer that the Statements of Personal History(s) have been processed and cleared. FmHA or its successor agency under Public Law 103–354 State Directors are the only persons authorized to execute Form FmHA or its successor agency under Public Law 103–354 449–14.

Administrative

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405 of this subpart.)

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.

2. Employment impact upon the community.

3. Availability of skilled and unskilled labor and permanency of employment opportunities.

4. Vocational and educational facilities to provide skilled labor, if applicable.

5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(11) of this subpart and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully rather than merely guaranteeing an unsound loan.

(a) Obtain a borrower's complete debt schedule. Schedule should agree with borrower's latest balance sheet.

(b) Determine from lender if the borrower's present loan(s) is on the lender's regulatory examiner's report and if so determine the loan classification.

(c) Analyze lender's liability ledger on the borrower, individual customer credit file, installment Loan Ledger Card or Computer printouts and other credit reports.

(d) The percentage of guarantee should be adjuted to assure that the lender does not bring its previously existing unguaranteed exposure under the guarantee.

(e) Any special servicing requirements should be identified and included in the Conditional Commitment for Guarantee.

D. Applications will be analyzed by an FmHA or its successor agency under Public Law 103–354 State Loan Review Board before execution of Form FmHA or its successor agency under Public Law 103–354 449–14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90 percent is appropriate when the loan has sufficient strength to warrant further participation by the private sector or refinancing of existing lender debts to the borrower is involved. Ordinarily, B&I loan guarantees should be structured so that the lender bears a significant portion of the risk of loss from a default. ''Significant'' means equal to or greater than 20 percent of the loss stemming from default. All review board meetings will be fully documented, including the review and decision concerning the guarantee percentage, and will be signed by those FmHA or its successor agency under Public Law 103–354 employees serving on the board. A copy of such documentation will be retained in the loan file.

1. Generally, the review board consists of the State Director as Chairperson, Community and Business Program Chief or the Business and Industry Chief (Loan Specialist) and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate.

2. The State Director may wish to contact non-FmHA or its successor agency under Public Law 103–354 sources for expertise, such as banker or other lenders, industrial development specialists from state commissions, academicians, certified public accountants, tax attorneys, successful business and professional lenders, management consultants and officials from other Federal agencies. Outside resource consultants may be reimbursed only for their travel costs (transportation and subsistence). (See FmHA or its successor agency under Public Law 103–354 Instruction 2036–A which is available in any FmHA or its successor agency under Public Law 103–354 Office).

3. The Rural Housing Loan Chief will be a member of the FmHA or its successor agency under Public Law 103–354 State Loan Review Board if a site development loan (see § 1980.411(a)(7) of this subpart) is being considered. The Community and Business Programs Chief (Loan Specialist) will be a member if a loan for facilities of the type financed under the provisions of Subpart A of Part 1942 of this chapter is being considered. The Farmer Programs Chief will be a member of the board if a project, the success of which is dependent on the production of agricultural products, is being considered. If the proposed project covers more than one program area, all the chiefs for those programs involved will be members of the board. If the approval of an application for a B&I loan may result in benefiting or hindering other FmHA or its successor agency under Public Law 103–354 programs, the review board will determine whether the making of such loan or guarantee is likely to result in embarrassment for FmHA or its successor agency under Public Law 103–354 as a result of a possible conflict of interest whereby other parties may accuse the agency of giving loan preference to housing borrowers (in the case of site development) or producers (in the case of agricultural processing plants) or other FmHA or its successor agency under Public Law 103–354 programs.

4. The State Director may request the County Supervisor and/or District Director to attend the review board meeting whenever it is determined they may have special knowledge of the proposed loan which may affect the board's decision.

5. Prior to submission of a B&I guaranteed loan(s) request to the National Office for loan processing review and prior to loan approval, the appropriate loan processing official must visit the project site and discuss the loan proposal with the lender and borrower. In the event there are multiple project sites the official should visit a representative sample of project sites to develop deeper understanding of the project operation. For businesses without a developed project site a visit is not necessary; however, a visit with the lender and borrower is still required. The findings of the visit should be documented in the loan docket submitted to the National Office.

6. The State Director will prepare an original and two copies of Form FmHA or its successor agency under Public Law 103–354 1940–3 for each loan to be obligated. Also, for each initial loan, Form FmHA or its successor agency under Public Law 103–354 1980–50, ''Add, Delete, or Change Guaranteed Loan Borrower Information,'' will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA or its successor agency under Public Law 103–354 1940–3 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Form FmHA or its successor agency under Public Law 103–354 1940–3 and Form FmHA or its successor agency under Public Law 103–354 449–14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form FmHA or its successor agency under Public Law 103–354 1940–3 to the lender in advance of issuance of Form FmHA or its successor agency under Public Law 103–354 449–14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA or its successor agency under Public Law 103–354 1940–3 and retain the original of the form as a permanent part of the FmHA or its successor agency under Public Law 103–354 case file. The State Director may retain the remaining conformed copy of Form FmHA or its successor agency under Public Law 103–354 1940–3. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form FmHA or its successor agency under Public Law 103–354 1980–50 will be prepared and distributed for initial loans only.

a. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA or its successor agency under Public Law 103–354 1940–3 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

b. The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 35 of Form FmHA or its successor agency under Public Law 103–354 1940–3.

c. The Finance Office will terminally process telephone reservation requests. Those requests for reservation received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

d. Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. The Finance Office will mail to the State Director Form FmHA or its successor agency under Public Law 103–354 440–57, ''Acknowledgment of Obligated Funds/Check Request,'' prepared in duplicate, confirming the reservation of authority with the obligation date inserted as required by item No. 9 on the FMI for Form FmHA or its successor agency under Public Law 103–354 440–57. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information staff in the National Office as required by FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office).

e. See FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office) for notification procedures.

7. State Director notifies the lender and borrower if he/she will not issue the Form FmHA or its successor agency under Public Law 103–354 449–14.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 56 FR 8271, Feb. 28, 1991]

§ 1980.453 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA or its successor agency under Public Law 103–354 449–14 the lender and applicant should complete and sign the ''Acceptance of Conditions,'' and return a copy to the FmHA or its successor agency under Public Law 103–354 State Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA or its successor agency under Public Law 103–354.

(b) If the lender indicates in the ''Acceptance of Conditions'' that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender will immediately advise the FmHA or its successor agency under Public Law 103–354 State Director.

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA or its successor agency under Public Law 103–354 449–14. For loans requiring National Office concurrence, a copy of Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA or its successor agency under Public Law 103–354 449–14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the proposed project and if the loan exceeds the State Director's loan approval authority, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto. If the loan is within the State Director's loan approval authority, the State Director may approve such changes.

B. On loan applications within the State Director's loan approval authority, the State Director will submit to the National Office, Business and Industry Division, within 30 days after the Form FmHA or its successor agency under Public Law 103–354 449–14 has been accepted:

1. A copy of Form FmHA or its successor agency under Public Law 103–354 449–29.
2. A copy of Form FmHA or its successor agency under Public Law 103–354 449–14 is accepted by the lender and the borrower.
2. A copy of FmHA or its successor agency under Public Law 103–354 State Loan Review Board Minutes.
4. Notification of required financial and other reports, their frequency, due dates and fiscal year-end.
5. A copy of the proposed loan agreement between the lender and the borrower.
6. When debt refinancing is involved, a copy of the justification for the refinancing.
7. The cover memorandum should indicate whether the Form FmHA or its successor agency under Public Law 103–354 449–34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 1980.60(a) of Subpart A of this part, and, if not, a proposed date for issuance of the Form FmHA or its successor agency under Public Law 103–354 449–34.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989; 57 FR 4359, Feb. 5, 1992]

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

In addition to compliance with the requirements of § 1980.60 of subpart A of this subpart, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* The FmHA or its successor agency under Public Law 103–354 State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where the Loan Note Guarantee has not yet been issued and the loan is within the State Director's loan approval authority) provided there are no changes in the borrower's ownership or control, loan purposes, scope of project and loan conditions in the Form FmHA or its successor agency under Public Law 103–354 449–14 and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA or its successor agency under Public Law 103–354 with a letter stating the reasons it no longer desires to be a lender for the project. For loans in excess of the State Director's loan approval authority, National Office concurrence is required. The State Director will submit a recommendation concerning the

transfer of lenders along with the lender's letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part ''B'' of Form FmHA or its successor agency under Public Law 103–354 449–1. If approved by FmHA or its successor agency under Public Law 103–354, the State Director will issue a letter or amendment to the original Form FmHA or its successor agency under Public Law 103–354 449–14 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

(b) *Substitution of borrowers.* FmHA or its successor agency under Public Law 103–354 will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA or its successor agency under Public Law 103–354 449–14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in the Form FmHA or its successor agency under Public Law 103–354 449–1, item 15. All requests for exceptions must be approved by the FmHA or its successor agency under Public Law 103–354 National Office.

(c) *Changes in terms and conditions in Form FmHA or its successor agency under Public Law 103–354 449–14.* It is the intent of FmHA or its successor agency under Public Law 103–354 that once the Form FmHA or its successor agency under Public Law 103–354 449–14 is issued and accepted by the lender, the commitment is not to be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Should changes be requested by the lender, the State Director will negotiate with the lender and proposed borrower any proposed changes to the originally accepted Form FmHA or its successor agency under Public Law 103–354 449–14. If, as a result of these negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the project, and if the loan exceeds the State Director's loan approval authority, the State Director will submit these changes in the conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto. Changes to the conditional commitment may be approved by the State Director for loans within their loan approval authority.

(d) *Additional requirements for B&I guaranteed loans.* All B&I borrowers and lenders, as applicable, must comply with Appendix D, paragraphs (I) (A) and (B); (II)(A) through (II)(A)(2)(g)(1); (II) (B) and (C); (III) (A), (B), (C), (D), and (E).

(e) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA or its successor agency under Public Law 103–354 and provide those documents and certifications required in §§ 1980.60 and 1980.61 of subpart A of this part. Only when the FmHA or its successor agency under Public Law 103–354 B&I or C&BP Chief or Loan Specialist, as required in paragraph B. (Administrative) of this section, is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

(f) *Loan closing.* When loan closing plans are established, the lender will notify FmHA or its successor agency under Public Law 103–354.

(g) *Closing of working capital loans.* The State Director will not issue a Loan Guarantee for a working capital loan prior to the completion of all proposed construction for the project. Working capital loan funds will not be used to pay short-term notes.

Administrative

A. *The State Director reviews:* 1. [Reserved]

2. Plans for inspections made on construction projects. These should be coordinated with the lender and borrower. Form FmHA or its successor agency under Public Law 103–354 424–12, ''Inspection Reports,'' may be used by the State Engineer or Architect who will make an inspection of the projects which involve substantial construction. The inspection shall be completed prior to the issuance of the Loan Note Guarantee to assure all construction is complete. The State

Loan Specialist or Chief may also participate in the inspections.

3. Cost overruns, if any, and how they will be met. State Directors may approve cost overruns for projects in any amount or percentage within their loan approval authority not to exceed 10 percent in loan amounts between $1 million and $10 million.

4. Basic credit requirements of all loans.

B. In all cases, the Program Chief or the B&I Loan Specialist will conduct a preguarantee review before issuance of the Loan Note Guarantee to assure that all requirements of the application, Conditional Commitment for Guarantee and Loan Agreement have been met including the required certifications using language specified by the regulations, and will provide such verification in the loan file, including arrangements for annual audit reports. In the conduct of this review, all requirements of § 1980.60(a) of Subpart A of this part will be reviewed and special attention should be paid to reviewing current financial statements of the borrower to assure that no adverse change has taken place. The District Director may participate in the review.

C. The State Director or any other FmHA or its successor agency under Public Law 103–354 personnel shall not sign any documents other than those specifically provided for in Subparts A or E of this part. No certificates shall be signed except the ''Certificate of Incumbency and Signature'' as set forth as Appendix B of this subpart.

D. *Par (a) Transfer of Lender*. The State Director will analyze all requests for substituted lenders including the servicing capability, eligibility and experience of the new lender before the request is approved. If approved, notify the Finance Office of the change using Form FmHA or its successor agency under Public Law 103–354 1980–42, Do not deobligate and reobligate the loan if the Form FmHA or its successor agency under Public Law 103–354 449–14 was issued in a previous fiscal year.

E. *Par (b) Substitution of borrowers*. The State Director will review any request for exceptions to substitution of borrowers and forward such requests with a memorandum of facts and recommendations to the National Office for a decision. The National Office will not approve any request where the legal entity is changed, such as from a corporation to a partnership, etc., or if the ownership changes more than 20 percent.

F. *Par (c) Changes in terms and conditions in Form FmHA or its successor agency under Public Law 103–354 449–14*. The State Director will review any request for changes to Form FmHA or its successor agency under Public Law 103–354 449–14. Only those changes which do not materially affect the project, its capacity, employment, original projections or credit factors may be approved. Changes in legal entities or where tax considerations are the reason for change will not be approved when modifying any loan guarantee or conditions of guarantee. State Directors may approve these changes in terms and conditions if the loan is within the State Director's loan approval authority and the change will not result in a major change in the scope of the project. Changes in terms and conditions for loans in excess of the State Director's loan approval authority, must be submitted to the National Office with a memorandum of facts and recommendations for review and concurrence.

In order to identify the number and types of action taken, the following procedures are to be followed when requests of this type are approved by FmHA or its successor agency under Public Law 103–354.

1. Start with the number 1 when the first modification is approved and enter this number in the upper right hand corner of the Letter of Concurrence and on the related ''Modification or Administration Action'' sheet.

2. Next to the modified wording on the work copy of the Conditional Commitment for Guarantee and the Term Loan Agreement or any form which has been modified, pencil in a short cross reference to the modification and identify the number given it.

3. File the copies of the ''Modification or Administrative Action'' sheet and related Letters of Concurrence numerically in the docket directly on top of the affected original documents of conditions.

4. This order of recordkeeping should include any requests which were declined by the National Office.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 26413, July 12, 1988; 57 FR 4359, Feb. 5, 1992; 61 FR 18495, Apr. 26, 1996]

§§ 1980.455–1980.460 [Reserved]

§ 1980.461 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

[See § 1980.61 of Subpart A, of this part]

Administrative

A. *Par (a) of Subpart A, § 1980.61*. The original Form FmHA or its successor agency under Public Law 103–354 449–35 will be retained in the FmHA or its successor agency under Public Law 103–354 loan file.

B. *Par (b)(1) of Subpart A, § 1980.61. Copies of all issued Loan Note Guarantees will be kept in the FmHA or its successor agency under Public Law 103–354 loan file*.

C. *Par (b)(2) of Subpart A, § 1980.61*. The State Director will approve all substitutions of Loan Note Guarantee or Contracts of Guarantee.

D. It is imperative that the original loan covered by a Contract of Guarantee is current.

E. *The Registered Holder will transmit to the State Director:* 1. Request for substitution together with the original Contract of Guarantee.

2. Copies of the notes with lender's identification numbers. (All requirements of the Lender's Agreement will be complied with before any new notes are issued.)

3. Certification that the loan is current and in good standing.

4. Certification of outstanding principal amount of the loan.

5. Executed Lender's Agreement. (FmHA or its successor agency under Public Law 103–354 provides form to Lender).

6. Executed Form FmHA or its successor agency under Public Law 103–354 1980–19. (See §1980.21 of Subpart A of this part for calculation of fee due).

7. Payment for appropriate guarantee fee.

F. *State Director will:* 1. Review all the requirements of Paragraph E of this section.

2. Verify the submitted request and if in order, send the guarantee fee and Form FmHA or its successor agency under Public Law 103–354 1980–19 to Finance Office with a notation of the date the new Loan Note guarantee will be issued. (Note: The substitution of a Loan Note Guarantee for the Contract of Guarantee is not to be considered as a new loan for recordkeeping purposes).

3. Complete the Loan Note Guarantee (appropriate number for attachment to each note), date and sign the instrument. The following statement will be entered at the top of the form: ''This Loan Note Guarantee is issued in substitution of Contract of Guarantee dated _____.'' The State Director will transfer from the Contract of Guarantee all information pertaining to the Loan Note Guarantee.

4. Execute Lender's Agreement.

5. Cancel the original Contract of Guarantee.

6. Transmit to the lender the original Loan Note Guarantee and a copy of executed Lender's Agreement and retain in the loan file copies of the Loan Note Guarantee with attached original cancelled Contract of Guarantee, a copy of Form FmHA or its successor agency under Public Law 103–354 1980–19 and the original Lender's Agreement.

All applicable provisions of this subpart and Subpart A of this part apply to the loan when the Loan Note Guarantee is signed.

G. *Alternate Procedure:* If the Registered Holder does not want to deliver the original contract of Guarantee with his/her request for substitution, the State Director will accept a copy of the Contract of Guarantee and proceed as above. However, the Loan Note Guarantee will be delivered only upon receipt of the original Contract of Guarantee.

H. *Par (b)(3) of Subpart A, §1980.61.* For reporting purposes where multi-notes are issued, the loan to the borrower will be counted as one loan regardless of the number of notes issued.

I. *Par (b)(4) of Subpart A, §1980.61.* The State Director will notify the Finance Office of the transaction.

J. *Par (d) of Subpart A, §1980.61.* A copy of Form FmHA or its successor agency under Public Law 103–354 449–36 will be kept and a copy of executed Lender's Agreement retained in loan file along with copies of the Loan Note Guarantee with attached original cancelled Contract of Guarantee, copy of Guarantee Fee Report and the original Lender's Agreement.

K. *Par (e) of Subpart A, §1980.61.* State Director signs all Forms FmHA or its successor agency under Public Law 103–354 449–13, ''Denial Letter.''

L. *Par (g) of Subpart A, §1980.61.* The State Director will: 1. Review Form FmHA or its successor agency under Public Law 103–354 1980–19 for completeness.

2. Deposit the guarantee fee through concentration banking and include the amount in the total collections on the Daily Activity Report.

3. Submit Form FmHA or its successor agency under Public Law 103–354 1980–19, Guaranteed Loan Closing Report with the Daily Activity Report and other attachments to Finance Office in the salmon envelope marked ''CR''. This form is used *in lieu of* the 451–2, ''Schedule of Remittance.''

4. On the Daily Activity Report, Form 1980–19 will be counted as one in the item count as if it were a card or coupon.

5. Ascertain that originals or copies, as appropriate, are retained in the FmHA or its successor agency under Public Law 103–354 Loan file.

§§ 1980.462–1980.468 [Reserved]

§ 1980.469 Loan servicing.

The lender is responsible for loan servicing and for notifying the FmHA or its successor agency under Public Law 103–354 of any violations in the Lender's Loan Agreement. (See Paragraph X of Form FmHA or its successor agency under Public Law 103–354 449–35).

(a) All B&I guaranteed loans in the lender's portfolio will be classified by the lender as soon as it is notified by the State Office to do so and again whenever there is a change in the loan which would impact on the original classification. The State Director will notify the lender of this requirement for all existing loan guarantees, when

new Loan Note Guarantees are issued to a lender and/or when the State Office becomes aware of a condition that would affect the classification and justification of the classification will be sent to the State Office. The loans will be classified according to the following criteria:

(1) *Substandard Classifications.* Those loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this category must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that the lender and FmHA or its successor agency under Public Law 103–354 will sustain some loss.

(2) *Doubtful Classification.* Those loans which have all the weaknesses inherent in those classified Substandard with the added characteristics that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(3) *Loss Classifications.* Those loans which are considered uncollectible and of such little value that their continuance as bankable loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

(b) There is a close relationship between classifications; and no classifications category should be viewed as more important than the other. The uncollectibility aspect of Doubtful and Loss classifications are of obvious importance; however, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future claims against the B&I guarantee.

(c) Substandard, Doubtful and Loss are adverse classifications. There are other classifications for loans which are not adversely classified but which require the attention and followup of the lenders and FmHA or its successor agency under Public Law 103–354. These classifications are:

(1) *Special Mention Classification.* Those loans which do not presently expose the lender and FmHA or its successor agency under Public Law 103–354 to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving the lender's close attention. Failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that the lender is unable to supervise properly because of a lack of expertise, an inadequate loan agreement, the condition of or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the borrower's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this designation. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(2) *Seasoned Loan Classification. A loan which:* (i) Has a remaining principal guaranteed loan balance of two thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(ii) Is in compliance with all loan conditions and B&I regulations.

(iii) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(iv) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the guaranteed loan.

(3) *Current Non-problem Classification*—Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a Seasoned Loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the lender on liquidations and property management.

A. While the lender has the primary responsibility for loan servicing and protecting

the collateral, the State Director is responsible for seeing that servicing as required by the Lender's Agreement and regulation is properly accomplished. Loan servicing is intended to be a preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

B. *Paragraph II of the Lender's Agreement.* 1. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. As used herein, the phrase ''use of loan funds for unauthorized purposes'' refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase ''unauthorized purposes'' means any purpose not listed by the Lender in the completed application as approved by FmHA or its successor agency under Public Law 103–354.

2. With respect to the negligent servicing and use of loan funds for unauthorized purposes, the Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by negligent servicing and use of loan funds for unauthorized purposes regardless of the time FmHA or its successor agency under Public Law 103–354 acquires knowledge of the negligent servicing or use of loan funds for unauthorized purposes by the lender. Only the amount of the loss caused by negligent servicing or use of loan funds for unauthorized purposes can be withheld from the final loss claim submitted by the lender. The dollar amount withheld from the final loss claim must be ascertainable. In order to determine the final loss amount, the guaranteed loan collateral and any collateral of the guarantor(s) must be liquidated and settled or a settlement with the guarantor(s) reached. In the event there is reason to suspect the lender of negligent servicing or use of loan funds for unauthorized purposes during the life of the loan, the lender should be notified in writing that (a) the acts of negligent servicing and/or use of loan funds for unauthorized purposes will cause the guarantee to be unenforceable by the lender to the extent these acts cause a loss; (b) any decision not to honor any part of the guarantee is not possible until the loan has been liquidated and a loss established; (c) if any loss occurs FmHA or its successor agency under Public Law 103–354 will consider whether negligent acts of the lender caused a loss after the liquidation is complete; and (d) at the time FmHA or its successor agency under Public Law 103–354 determines a loss has occurred as the result of negligent servicing the lender may appeal any adverse decision.

3. When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA or its successor agency under Public Law 103–354 staff must coordinate with OIG in advance regarding routine servicing actions on existing loans. A borrower or lender can be sued even though criminal fraud is present. If FmHA or its successor agency under Public Law 103–354 has good reason to believe that, for example, a borrower or a lender made a false statement to obtain a loan or guarantee, or a lender submitted a loss claim to FmHA or its successor agency under Public Law 103–354 which was false or fraudulent, it should promptly call the matter to the attention of OGC—even if no payment of the loss claim has occurred yet. (This would include those situations in which a borrower lied to the lender in order to get the loan, the lender believed the borrower and made the loan—which was guaranteed by FmHA or its successor agency under Public Law 103–354—and then the lender presented a loss claim to FmHA or its successor agency under Public Law 103–354 for payment after the borrower defaulted on the loan.) Sometimes it might be necessary to ask OIG to do an investigation to establish all the aspects of the fraud. If at all possible, this should then be done prior to referral to OGC.

4. There are two methods the Government could use to seek relief for the fraud. One of the ways the Government could seek redress for the fraud is to sue under the False Claims Act (31 U.S.C. sections 3729–3731). If fraud is proven to have occurred, the False Claims Act provides for the recovery of double damages and a $2,000 penalty (and the costs of one civil suit) for each act involving, for example: (a) Knowingly submitting to a Government employee of false or fraudulent claim for payment or approval, (b) knowingly making or using a false record or statement to get a false or fraudulent claim paid or approved, or (c) conspiring to defraud the

United States by getting a false or fraudulent claim allowed or paid. Suit under the False Claims Act must be filed within six years from the date of the commission of the act (e.g., presentation of the claim to FmHA or its successor agency under Public Law 103–354 for payment). The double damage feature ought to be a good incentive to convince OIG to undertake necessary investigations to help establish the fraud.

5. In order to decide whether to file suit, the Department of Justice will need to know such things as: What was the amount of the loan or the loss paid to the lender or holder? How much did the scheme cost the Government? What is the difference in money between what the Government paid out and what it should have paid out? Does the borrower or lender have enough assets to make it worth suing? If FmHA or its successor agency under Public Law 103–354 can answer these questions before referral to OGC—either on its own or by using OIG—than OGC can refer the matter that much more quickly to the Justice Department.

6. There is also a way to bring suit for civil fraud by alleging that ''common law'' fraud occurred. This would just involve proving that a borrower or a lender falsely represented by their words or actions, a matter of fact either by alleging something in a false or misleading manner or by concealing something that should have been disclosed; and that FmHA or its successor agency under Public Law 103–354 was deceived by this conduct, and relied on it to its detriment. Under ''common law'' fraud, only single damages could be recovered, and there would be no $2,000 penalty assessed. The action would generally have to be brought within three years from the date of the discovery of the fraud.

7. Neither the False Claims Act nor the right to bring a ''common law'' action for fraud precludes the Government from just suing to recover the money wrongfully or mistakenly paid by its employees. If the Justice Department decides not to pursue a civil frauds claim under the False Claims Act or ''common law,'' it will return the matter to OGC. Depending on what stage the proceedings were in when the matter was first referred, FmHA or its successor agency under Public Law 103–354 could then continue to negotiate with the lender or OGC could re-refer the case to Justice for any contract-based actions, including fraud or misrepresentation based on the terms of the guarantee.

C. *The State Director will assure that:* 1. [Reserved]

2. A timetable for routine site, borrower and lender visitations by FmHA or its successor agency under Public Law 103–354 personnel is established before the Loan Note Guarantee is issued. As a guide, visits to newly established borrowers with the lender represented should be scheduled monthly. Visits to established, nonproblem borrowers must be made at least annually except for seasoned loans which will be visited at least bi-annually. Special attention problem accounts should be visited as frequently as the need demands. If possible, these visitations should be coordinated with the lender's visits.

3. During or in preparation for field visits, the following functions are to be performed:

(a) Current financial information is obtained in advance and analyzed for trends.

(b) Any issues revealed or problems not resolved from the last visitation are included in the agenda.

(c) Collateral is observed and its condition, maintenance, protection and utilization by the borrower appears to be satisfactory.

(d) A report of the visit is made on Form FmHA or its successor agency under Public Law 103–354 449–39, ''Field Visit Review (Business and Industrial Loans),'' or otherwise documented and included in the loan file. The report should include an opinion of the borrower's status based upon observations made during the visit.

(e) Any instructions or directions to the lender should be confirmed by letter.

4. The Program Chief or Loan Specialist will conduct an annual meeting with each lender or its agent with whom a Loan Note Guarantee(s) or Contract of Guarantee(s) is outstanding. This cannot be redelegated. These meetings may be scheduled at the time FmHA or its successor agency under Public Law 103–354 makes periodic field inspections to the borrower's place of business. At the meeting, a review will be made of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreements. The observations and results of the meeting will be documented. Form FmHA or its successor agency under Public Law 103–354 449–39 may be used for this purpose. Servicing exceptions on the part of the lender which are noted by FmHA or its successor agency under Public Law 103–354 will be confirmed by letter to the lender.

5. The lender performs an adequate analysis of borrower financial statements for FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 in turn will evaluate the lender's analysis and follow up with the lender on servicing action(s) required or negative observations not detected through the lender's analysis. The financial statement analysis of the lender, the financial statement and a memorandum reflecting FmHA or its successor agency under Public Law 103–354's analysis, including a comparison to previous and projected performance of the borrower, will be forwarded to the National Office, Attention: Business and Industry Division, only for the following loans:

(a) All loans within the first year of loan closing.

(b) Loans over one year old as determined by the State Director or a National Office assigned loan reviewer who is participating in a field review. In event of a disagreement between the State Director and an assigned loan reviewer as to which loans should be included, the assigned loan reviewer's decision will take precedence.

(c) All problem and delinquent loans.

(d) Loans that the State Director would like reviewed by the National Office.

6. Meetings are arranged between the lender, borrower and FmHA or its successor agency under Public Law 103–354 to resolve any problems of late payment, etc.

D. *State Director authorities.* 1. The State Director may delegate authority for the conduct of all functions listed in § 1980.469 Administrative B., except item C. 4. in Administrative B.

2. The State Director may approve B&I guaranteed loan servicing actions as authorized in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter.

3. Servicing actions on loans which exceed the State Director's loan approval authority are to be referred together with the State Director's recommendations to the Director, Business and Industry Division, for prior review and concurrence.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 60 FR 26350, May 17, 1995; 61 FR 18495, Apr. 26, 1996]

§ 1980.470 Defaults by borrower.

[See § 1980.63 of Subpart A, of this part.]

Administrative

Refer to Appendix G of FmHA or its successor agency under Public Law 103–354 Instruction 1980–E (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the lender on liquidations and property management.

A. In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the State Director, or its designee, and borrower to resolve the problem. A memorandum of the meeting, individuals who attend, a summary of the problem and proposed solution will be prepared by the FmHA or its successor agency under Public Law 103–354 representative and retained in the loan file. When the State Director receives a notice of default on a loan, he/she will immediately notify the National Office in writing of the details and will subsequently report the problem loan to the National Office on the quarterly status report. The State Director will notify the lender and borrower of any decision reached by FmHA or its successor agency under Public Law 103–354.

B. In considering servicing options, some of which are identified in paragraph X. A of Form FmHA or its successor agency under Public Law 103–354 449–35, the prospects for providing a permanent cure without adversely affecting the risks of the FmHA or its successor agency under Public Law 103–354 and the lender must become the paramount objective. Within the State Director's authority temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA or its successor agency under Public Law 103–354. Some of these actions may require concurrence of the holder(s). A deferral, rescheduling, reamortization or moratorium is limited by the period of time authorized by this subpart for the purpose for which the loan(s) is made or the remaining useful life of the collateral securing the loan. For example, if the promissory note on a working captial loan is scheduled to mature in 2 years the loan could be rescheduled for 7 years or the remaining life of the collateral whichever is the lesser of the two.

C. Subsequent loan guarantee requests will be processed in accordance with provisions of § 1980.473 of this subpart.

D. If the loan was closed with the multinote option, the lender may need to possess all notes to take some servicing actions. In these situations when FmHA or its successor agency under Public Law 103–354 is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of OGC, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will FmHA or its successor agency under Public Law 103–354 endorse the original Form FmHA or its successor agency under Public Law 103–354 449–34 to the lender.

E. The State Director's authority to approve servicing actions is defined in § 1980.469, Administrative D.2.

F. Consultant services may be recommended by the State Director to assist FmHA or its successor agency under Public Law 103–354 and the lender in determining which servicing action is appropriate. Requests for consultant services should be made by the State Director and addressed to the Administrator, Attn: Business and Industry Division. A full explanation of the loan history, an evaluation and scope of the proposed study and the need should be included in the request.

G. When the National Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its

option, assume the servicing responsibility on individual cases.

H. The State Director will report all delinquent and problem loans quarterly to the Director, Business and Industry Division, by the 10th day of January, April, July and October.

I. The State Director will notify the Finance Office by memorandum of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

§ 1980.471 Liquidation.

(See § 1980.64 of subpart A of this part.)

Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the lender on liquidations and property management.

(a) Collateral acquired by the lender can only be released after a complete review of the proposal.

(1) There may be instances when the lender acquires the collateral of a business where the cost of liquidation exceeds the potential recovery value of the collection. Whenever this occurs the lender with the concurrence of FmHA or its successor agency under Public Law 103–354on the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's length transaction with the concurrence of FmHA or its successor agency under Public Law 103–354.

Administrative

A. The State Director determines which FmHA or its successor agency under Public Law 103–354 personnel will attend meetings with the lender.

B. Introduction to Paragraph XI and Paragraph XI B of the Lender's Agreement. FmHA or its successor agency under Public Law 103–354 will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available with appropriate recommendations, along with the State Director's exceptions to the lender's plan, if any, to the Director, Business and Industry Division, for evaluation and approval or rejection of the State Director's recommendation regarding liquidation. Only when compromise cannot be reached between FmHA or its successor agency under Public Law 103–354 and the lender on the best means of liquidation will FmHA or its successor agency under Public Law 103–354 consider conducting the liquidation. The State Director has no authority to exercise the option to liquidate without National Office approval. When FmHA or its successor agency under Public Law 103–354 liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form FmHA or its successor agency under Public Law 103–354 1980–45, ''Notice of Liquidation Responsibility.''

C. State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liquidation plan prepared by the lender in accordance with the requirements of paragraph XII A of the Lender's Agreement.

D. Paragraph XI D. State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA or its successor agency under Public Law 103–354 is conducting liquidation, after they have been submitted with the State's recommendations to the Director, Business and Industry Division for prior review.

E. Paragraph XI E 2. State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form FmHA or its successor agency under Public Law 103–354 499–30, ''Loan Note Guarantee Report of Loss.'' The Finance Office forwards loss payment checks to the State Director for delivery to lender. When a loss claim is involved on a particular loan guarantee, ordinarily one ''Estimated Loss Report'' will be authorized. Only one final ''Report of Loss'' will be authorized. A final Form FmHA or its successor agency under

Public Law 103–354 449–30 must be filed with the Finance Office at the completion of all liquidations. Finance Office will use this form to close out the account.

F. Paragraph XI E 3. Final loss payments will be made within the 60 days required but only after a review by FmHA or its successor agency under Public Law 103–354 to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the Director, Business and Industry Division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the FmHA or its successor agency under Public Law 103–354 guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan and interest cannot be accrued on the principal amount of the loan that is equal to the estimated loss payment. Community and Business Program Chiefs (C&BP), Business and Industry Chiefs or Loan Specialists will conduct such reviews. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See Subpart A of Part 1901 of this Chapter) will be submitted to the National Office, Business and Industry Division, for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the C&BP Chief, B&I Chief or Loan Specialist will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrence which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file. A copy of this report together with the review of the final loss claim will be included in the material sent to the Director, B&I Division, for review prior to approval of final loss payments.

§ 1980.472 Protective advances.

[See § 1980.65 Subpart A of this Part.]

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the lender on liquidations and property management.

A. Protective advances will not be made in lieu of additional loans, in particular, working capital loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations. Ordinarily, protective advances are made when liquidation is contemplated or in process. A precise rule of when a protective advance should be made is impossible to state. A common, but by no means the only, period when protective advances might be needed is during liquidation. At this point, the borrower and success of the project are no longer of paramount importance, but preserving collateral for maximum recovery is of vital importance. Elements which should always be considered include how close the project is to liquidation or default, how much control the borrower will have over the funds, what danger is there that collateral may be destroyed and whether there will be a good chance of saving the collateral later if a protective advance in contemplation of liquidation is made immediately. A protective advance *must* be an indebtedness of the borrower.

B. The State Director must approve, in writing, all protective advances on loans within his/her loan approval authority which exceed a total commulative advance of $500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

C. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§ 1980.473 Additional loans or advances.

(Refer to paragraph XIII of Form FmHA or its successor agency under Public Law 103–354 449–35.)

Administrative

Only the State Director shall approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee. The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§ 1980.474 [Reserved]

§ 1980.475 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and

all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending Chapter 11 case to a liquidating proceeding under Chapter 7 or under Section 1123(b) (4) or seek dismissal of the proceedings.

(5) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(6) FmHA or its successor agency under Public Law 103–354 will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in FmHA or its successor agency under Public Law 103–354's opinion, FmHA or its successor agency under Public Law 103–354 and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization, liquidating Chapter 11 or Chapter 7 (unless the lender is directly handling the liquidation) cases are not to be deducted from the collateral proceeds.

(d) *Estimated loss payments*. See paragraph XVI of Form FmHA or its successor agency under Public Law 103–354 449–35.

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) for advice on how to interact with the lender on liquidation and property management.

A. It is the responsibility of the State Program Chief to see that FmHA or its successor agency under Public Law 103–354 is being fully informed by the lender in all bankruptcy cases.

B. All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

C. Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral provided the lender is doing the actual liquidation of the collateral as provided by the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If and when liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, the lender cannot claim expenses.

D. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be halted in accordance with the Lender's Agreement and carry the approval of the State Director.

E. The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

F. The lender is responsible for advising FmHA or its successor agency under Public Law 103–354 of the completion of the Chapter 11 reorganization plan; however, the FmHA or its successor agency under Public Law 103–354 servicing office will monitor the lender's files to ensure timely notification of servicing actions.

G. If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays in full the remaining balance of the loan as set forth in the plan without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

H. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA or its successor agency under Public Law 103–354 servicing office immediately. The FmHA or its successor agency

under Public Law 103–354 servicing office will then obtain advice from OGC on what actions FmHA or its successor agency under Public Law 103–354 should take.

I. Protective Advances—Authorized protective advances may be included with the estimated loss payment associated with the Chapter 11 reorganization provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy.

J. Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

[54 FR 1598, Jan. 13, 1989]

§ 1980.476 Transfer and assumptions.

(a) All transfers and assumptions will be approved in writing by FmHA or its successor agency under Public Law 103–354. Such transfers and assumptions will be to an eligible applicant.

(b) Transfers and assumptions will be considered without regard to § 1980.451 (d) of this subpart.

(c) The borrower will submit to FmHA or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 449–4 for the required character evaluation prior to the execution of the Assumption Agreement.

(d) Available transfer and assumption options to eligible borrowers include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same terms.

(4) Less than the total indebtedness may be transferred to another borrower on different terms.

(e) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA or its successor agency under Public Law 103–354 written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(1) FmHA or its successor agency under Public Law 103–354 must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(2) The FmHA or its successor agency under Public Law 103–354 County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of borrower's ability.

(f) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(g) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guaranteed loan owed, plus any prior liens. If any cash downpayment is made, it may be paid directly to the transferor as payment for equity in the project provided:

(i) The lender recommends and FmHA or its successor agency under Public Law 103–354 approves the case downpayment be released to the transferor. The lender and FmHA or its successor agency under Public Law 103–354 may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on

such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the transferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any actions against the transferee in connection with such transfer in the future without first obtaining the written approval of FmHA or its successor agency under Public Law 103–354 and the lender.

(iv) The lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(h) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA or its successor agency under Public Law 103–354 review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(i) The lender will issue a statement to FmHA or its successor agency under Public Law 103–354 that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(j) FmHA or its successor agency under Public Law 103–354 will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(k) The assumption will be made on the lender's form of assumption agreement.

(l) The assumption agreement will contain the FmHA or its successor agency under Public Law 103–354 case number of the transferor and transferee.

(m) Loan terms cannot be changed by the Assumption agreement unless previously approved in writing by FmHA or its successor agency under Public Law 103–354, with the concurrence of any holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect and all applicable Truth in Lending requirements will be met.

(n) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA or its successor agency under Public Law 103–354 a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA or its successor agency under Public Law 103–354 before any borrower or guarantor is released from liability.

(o) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(p) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated ''report of Loss'' on Form FmHA or its successor agency under Public Law 103–354 449–30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on Line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form 449–30, lines 13 and 14.

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the lender on liquidations and property management.

A. The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/

her individual loan approval authority including:

1. Consent in writing to the release of the transferor and guarantors from liability.

2. Any changes in loan terms.

NOTE.— The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) will be endorsed in the space provided on the form(s).

B. A copy of the Assumption Agreement will be retained in the FmHA or its successor agency under Public Law 103–354 file. The State Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA or its successor agency under Public Law 103–354 1980–7, ''Notice of Transfer and Assumption of a Guaranteed Loan,'' and submit Form FmHA or its successor agency under Public Law 103–354 1980–50 for all new borrowers and Form FmHA or its successor agency under Public Law 103–354 1980–51, ''Add, Change, or Delete Guaranteed Loan Record,'' in order that Finance records may be adjusted accordingly.

C. Any transfer and assumption of less than the total indebtedness must be submitted to the Director, Business and Industry Division, for review and concurrence.

D. If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the National Office for approval, ATTN: Business and Industry Division.

§§ 1980.477–1980.480 [Reserved]

§ 1980.481 Insured loans.

Applications from private parties for whom FmHA or its successor agency under Public Law 103–354 and such borrowers agree that a guarantee lender is not available and from public bodies shall be processed as insured loans in accordance with the applicable provisions of this subpart and Subpart A of Part 1942 of this chapter, including the credit elsewhere requirement, except as provided in § 1980.488 of this subpart which provides for the guarantee of taxable bond issues of public bodies. Loans to public bodies will be used only to finance:

(a) Community facilities as defined in § 1980.402 of this subpart, and

(b) Constructing and equipping industrial plants for lease to private businesses (not including loans for operating such businesses) when the requesting loan is not available under Subpart A of Part 1942 of this chapter.

Administrative

A. Without specific written delegated authority, all insured loans require National Office concurrence prior to approval.

B. Applications from private parties for insured loans will not be encouraged.

C. Loan closings on insured loans will be in accordance with this subpart, the Regional Attorney and applicable provisions of Subpart A of Part 1942 of this chapter.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988]

§§ 1980.482–1980.487 [Reserved]

§ 1980.488 Guaranteed industrial development bond issues.

(a) Loans to public bodies will be guaranteed only in connection with the issuance of any class or series of industrial development bonds (as defined in section 103(c)(2) of the Internal Revenue Code of 1954, as amended (IRC)), the interest on which is included in gross income under IRC. No part of the loan guaranteed by FmHA or its successor agency under Public Law 103–354 may extend to any class or series of industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of such Code. Before the execution of any Loan Note Guarantee, the lender will furnish FmHA or its successor agency under Public Law 103–354 evidence regarding interest on bonds being taxable for Federal income tax purposes. Such evidence may be in the form of an unqualified opinion of a recognized bond counsel or a ruling from the Internal Revenue Service. Guaranteed loans to public bodies can only be used for constructing and equipping industrial plants for lease to private businesses engaged in industrial manufacturing and does not provide funds for debt refinancing, working capital and other miscellaneous fees, charges or services. The lessee will have to provide necessary capital and sufficient financial strength to provide for a sound project.

(b) If FmHA or its successor agency under Public Law 103–354 and the applicant agree that a guaranteed lender is not available, the application may be considered for an insured loan under the provisions of § 1980.481 of this subpart.

Administrative

The lender is responsible for notifying the FmHA or its successor agency under Public Law 103–354 of the taxability of the proposed bond issue.

§ 1980.489 [Reserved]

§ 1980.490 Business and industry buydown loans.

(a) *Introduction*. This section contains regulations for the Business and Industry Buydown (BIB) loan program. The purpose of this program is to provide loan guarantees with reduced interest rates to the borrowers, under the authority of Public Law 103–50 (107 Stat. 241). All provisions of Subparts A and E of this part apply to BIB loans except as provided in this section. All forms used in connection with a BIB loan will be those used with other B&I loans, except as provided in this section.

(b) *Location of applicants*. Businesses eligible for BIB loans shall be located within the area covered by the Presidential disaster declaration related to Hurricanes Andrew or Iniki or Typhoon Omar.

(c) *Interest rate*. (1) If the interest rate charged by the lender (note rate) on a BIB loan is a variable rate in accordance with § 1980.423 of this subpart, the base rate must be the prime rate as published in the Wall Street Journal and the note rate must not exceed the prime rate as published in the Wall Street Journal by more than 100 basis points. If the note rate is fixed, it must not exceed by more than 100 basis points the prime rate as published in the Wall Street Journal on the day the Loan Note Guarantee is issued.

(2) The note rate for a BIB loan must be the same for the entire loan, including both the guaranteed and unguaranteed portion.

(d) *Interest rate buydown*. (1) To be eligible for a BIB loan, the business must provide evidence and the lender and FmHA or its successor agency under Public Law 103–354 must determine that, at least for the first year of the loan, the business will not have adequate cash flow to meet all of its financial obligations including the required payments on the proposed loan at the note rate, but that it can meet all obligations if the interest rate is reduced by 100 basis points.

(2) During the first year after a Loan Note Guarantee is issued for a BIB loan, FmHA or its successor agency under Public Law 103–354 will pay one percentage point of interest on the loan directly to the lender, thereby reducing the interest due from the borrower by this amount. This interest payment shall be applied to both the guaranteed and unguaranteed portion of the loan pro ratably according to FmHA or its successor agency under Public Law 103–354 regulations.

(3) Interest payments by FmHA or its successor agency under Public Law 103–354 may continue in subsequent years if the borrower's cash flow is insufficient to pay all obligations including the required payments on the proposed loan at the note rate. On or about each yearly anniversary of the promissory note the lender may submit a request to FmHA or its successor agency under Public Law 103–354 for continued interest payments, along with current profit and loss and cash flow statements and cash flow projections to show that the continued payments are needed for another year. FmHA or its successor agency under Public Law 103–354 will promptly review the material submitted, determine whether the continued interest payments by FmHA or its successor agency under Public Law 103–354 are needed to provide for sufficient cash flow in the coming year, and notify the lender in writing of the determination. Once interest payments by FmHA or its successor agency under Public Law 103–354 are terminated because the borrower's cash flow is determined to be sufficient to pay the note rate, such payments will not be made in subsequent years even if the cash flow decreases.

(4) This section does not authorize interest payments by FmHA or its successor agency under Public Law 103–354 on B&I loans other than those approved under this section. To be eligible for interest payments by FmHA or its successor agency under Public Law 103–354, the loan must be designated as a BIB loan when approved and funded from funds authorized by Public Law 103–50.

(e) *Duration of BIB loan program*. No BIB loan will be obligated after September 30, 1994.

(f) *Administrative procedures.* (1) A lender that wants a B&I application considered under BIB authorities should so indicate by notation on Form FmHA or its successor agency under Public Law 103–354 449–1 or by letter submitted with the Form FmHA or its successor agency under Public Law 103–354 449–1.

(2) FmHA or its successor agency under Public Law 103–354 will identify a loan as a BIB loan by notation in the top margin of Form FmHA or its successor agency under Public Law 103–354 449–29 and by the ''type of assistance'' code listed on Form FmHA or its successor agency under Public Law 103–354 1940–3, in accordance with the Forms Manual Insert.

(3) FmHA or its successor agency under Public Law 103–354 will set out the interest buydown provisions in accordance with this section in the Conditional Commitment for Guarantee. When the Loan Note Guarantee is issued, the lender and FmHA or its successor agency under Public Law 103–354 will execute Form FmHA or its successor agency under Public Law 103–354 1980–48, ''Business and Industry Interest Rate Buydown Agreement.''

(4) The lender will request the interest payment from FmHA or its successor agency under Public Law 103–354 by submitting Form FmHA or its successor agency under Public Law 103–354 1980–23, ''Request for Business and Industry Interest Buydown Payment,'' to the FmHA or its successor agency under Public Law 103–354 servicing office. Each request must cover exactly 1 year and be filed within 30 days after the anniversary date of the promissory note, except when interest buydown is terminated between anniversary dates. The FmHA or its successor agency under Public Law 103–354 servicing office will review each request for consistency with FmHA or its successor agency under Public Law 103–354 regulations and the Form FmHA or its successor agency under Public Law 103–354 1980–48 and, if the claim is valid, will approve it and forward it to the Finance Office for issuance of the payment to the lender.

(g) *Termination of interest buydown.* When FmHA or its successor agency under Public Law 103–354 purchases a portion of a loan, interest buydown will cease on the entire loan. Interest buydown will also cease upon termination of the Loan Note Guarantee or assumption/transfer of the loan. In the event of any action that causes the interest buydown to terminate, the lender will submit a claim on Form FmHA or its successor agency under Public Law 103–354 1980–23 for interest buydown payments through the date of termination.

(h) *Loan purposes.* (1) *Refinancing.* Section 1980.452 *Administrative* C.1. (d) of this subpart does not apply to BIB loans if refinancing is needed as a direct consequence of the disaster. In such cases, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(2) *Agriculture.* Section 1980.412 (e) of this subpart does not apply to BIB loans. BIB loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(3) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(4) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed

and breakfasts, race tracks, gambling, or golf courses.

(5) *Meat processing facilities.* The provisions of § 1980.411 (a)(8) of this subpart will not apply to BIB loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(i) *Small Business Administration.* Section 1980.451 (c) of this subpart will not apply to BIB loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(j) *Loan guarantee limits.* Notwithstanding the provisions of § 1980.420 of this subpart, the guarantee percentage on any BIB loan will not exceed 80 percent.

(k) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I loan guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(l) *Equity requirements.* The equity requirements of § 1980.441 of this subpart do not apply to BIB loans.

(m) *Collateral.* Section 1980.443 Administrative A. 2., 3., and 4. of this subpart will not apply to BIB loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(n) *Conditional approval.* A Form FmHA or its successor agency under Public Law 103–354 449–14 may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA or its successor agency under Public Law 103–354 449–14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA or its successor agency under Public Law 103–354 449–14 will be issued prior to the obligation date established with the Finance Office.

(o) *Financial statements.* All requirements of § 1980.451(i)(13) of this subpart will apply except that for BIB loans minimum annual financial statements will be required as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of $500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of $500,001 through $1 million, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than $1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per § 1980.113 of subpart B of this part.

(p) *Agriculture loans.* The following additional provisions apply to BIB loan guarantees for businesses engaged in agriculture production:

(1) *General policy*. Paragraph (p) of this section contains the regulations for making BIB loans to farmers for agricultural purposes. BIB loans made for agricultural purposes are subject to the provisions in subparts A and E of this part except as specified. In addition, certain sections of subpart B of this part referenced in this section are applicable subject to the limitations outlined in this section. Several key loan processing and loan servicing requirements stipulated in subpart B of this part do not apply to loans made to borrowers under this section.

(2) *Type of guarantee*. BIB loans will be processed under the Loan Note Guarantee option of §1980.101 (e)(1) of subpart B of this part Only. No loan will be processed for a Contract of Guarantee (Line of Credit) under §1980.101 (e)(2) of subpart B of this part.

(3) *Farm size*. Loan guarantees may be made under the BIB program without regard to the size of the farming operation.

(4) *Filing and processing preapplications and applications*. If the applicant has already developed material for an FmHA or its successor agency under Public Law 103–354 Farmer Programs loan or if the financial and production information required by §1980.113 of subpart B of this part is needed to document repayment ability or is required by the lender, §1980.113 of subpart B of this part may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) If the application is submitted solely for a farm as defined in §1980.106(b) of subpart B of this part, Form FmHA or its successor agency under Public Law 103–354 1980–25, ''Farmer Programs Application,'' or Form FmHA or its successor agency under Public Law 103–354 449–1, will be used as an application for assistance.

(5) *Evaluation of applications*. If the application is developed and processed in accordance with §1980.113 of subpart B of this part, the provisions outlined in §1980.114 of subpart B of this part apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and his/her rights through inclusion of the Equal Credit Opportunity Act (ECOA) statement. An opportunity will be given for an appeal as set out in subpart B of part 1900 of this chapter.

(iii) When applied to BIB applications, references in §1980.114 of this part to ''County Office'' shall normally be construed to mean ''State Office.'' References to ''County Supervisor'' shall be construed to mean ''Business and Industry Chief or Community and Business Programs Chief, or other appropriate FmHA or its successor agency under Public Law 103–354 official as designated by the State Director.''

(6) *Terms of loan repayment*. (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operational and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. Interest will not be deferred and will be due at least annually from the date of the debt instrument. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(7) *Agriculture BIB loan purposes*. Loans may be made only for the following purposes:

(i) Operating purposes as outlined in §1980.175 (c)(1) of Subpart B of this part except for those stipulated in §1980.175(c)(1)(iv) and (vii).

(ii) Real estate purposes as outlined in § 1980.180 (c) of Subpart B of this part except for those stipulated in § 1980.180 (c)(1) and (4).

(iii) Refinancing in accordance with paragraph (h)(1) of this section and §§ 1980.411 (a)(11), 1980.451 (i)(19), and 1980.452 Administrative C. (except § 1980.452 Administrative C. 1. (d) of this subpart.

(8) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

[59 FR 28466, June 2, 1994]

§§ 1980.491–1980.494 [Reserved]

§ 1980.495 FmHA or its successor agency under Public Law 103–354 forms and guides.

The following FmHA or its successor agency under Public Law 103–354 forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

(a) Form FmHA or its successor agency under Public Law 103–354 449–1. ''Application for Loan and Guarantee,'' is referred to as ''Appendix A,''

(b) The ''Certificate of Incumbency and Signature'' is referred to as ''Appendix B,''

(c) ''Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities'' is referred to as ''Appendix C,''

(d) ''Alcohol Production Facilities Planning, Performing, Development and Project Control'' is referred to as ''Appendix D,''

(e) ''Environmental Assessment Guidelines'' is referred to as ''Appendix E.''

(f) Form FmHA or its successor agency under Public Law 103–354 449–14, ''Conditional Commitment for Guarantee'' is referred to as ''Appendix F,'' and

(g) ''Liquidation and Property Management Guide'' is referred to as ''Appendix G.''

(h) ''Suggested Format for the Opinion of the Lender's Legal Counsel'' is referred to as ''Appendix H.''

(i) ''Instructions for Loan Guarantees for Drought and Disaster Relief'' and Forms FmHA or its successor agency under Public Law 103–354 1980–68, ''Lender's Agreement—Drought and Disaster Guaranteed Loans,'' 1980–69, ''Loan Note Guarantee—Drought and Disaster Guaranteed Loans,'' and 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,'' are referred to as ''Appendix I.''

(j) [Reserved]

(k) ''Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises'' and Forms FmHA or its successor agency under Public Law 103–354 1980–71, ''Lender's Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,'' 1980–72 ''Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,'' and 1980–73 ''Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans'' are referred to as ''Appendix K.''

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

§ 1980.496 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.497 General administrative.

Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the OGC on liquidations and property management.

(a) *Office of the General Counsel (OGC).* In performing the FmHA or its successor agency under Public Law 103–354 functions with respect to B&I, D & D, and DARBE loans, the advice and assistance of OGC may be sought and followed on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA or its successor agency under Public Law 103–354 has any questions concerning the lender's resolution of these matters, OGC should be consulted. Assistance of OGC will be requested on all loans as specified herein and all liquidations and workouts.

(b) *Contact with OGC.* Initial informal contact with OGC should be made as soon as possible. FmHA or its successor agency under Public Law 103–354 State Directors should use the following format in formally requesting legal assistance on workouts.

(1) *Origination:* All written requests should come from the State Director.

(2) *Method:* Request should be made by referral memorandum to the Regional Attorney setting forth a brief statement of the facts, the reason assistance is requested, the extent of legal assistance sought, the date when FmHA or its successor agency under Public Law 103–354's response to the lender's liquidation plan (if any) is due and:

(i) *Projected losses on collateral: e.g.,* projected losses on collateral are expected to be significant.

(ii) *Unusual or complex nature of primary collateral: e.g.,* multi-state foreclosures or foreclosure of leases or general intangibles.

(iii) *Presence of other major creditors or of senior creditors: e.g.,* guaranteed loan collateral may be subject to a prior lien or other creditors may have rights in other assets of borrower, such as inventory and accounts receivable.

(iv) *Litigation is pending or threatened: e.g.,* bankruptcy, other foreclosure suits.

(3) *Materials to submit:* Referral memorandums will be accompanied by a copy of lender's liquidation plan together with a copy of FmHA or its successor agency under Public Law 103–354's planned response and principal loan papers, conditional commitment for guarantee, guarantee documents and any comments from the National Office. If lender refuses to prepare a plan, the State Director should so state. DO NOT SEND DOCKETS unless specifically requested by OGC.

(c) *Reviews prior to issuance of the loan note guarantee.* After the conditional commitment for guarantee has been issued and proposed with closing documents prepared by the lender and forwarded to FmHA or its successor agency under Public Law 103–354 with the lender's legal counsel's opinion in the suggested format of appendix H of this subpart, but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations and indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review in accordance with § 1980.451 Administrative B 5 of this subpart and indexed and tabbed.

(d) *Please submit the following for OGC review.* Copies of:

(1) Letter from FmHA or its successor agency under Public Law 103–354 National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA or its successor agency under Public Law 103–354 449–14, including any amendments;

(3) Loan Agreement;

(4) Promissory Notes;

(5) Security documents—Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);

(6) Personal or corporation guarantees with related security documents;

(7) Proposed Form FmHA or its successor agency under Public Law 103–354 449–35.

(8) Proposed Form FmHA or its successor agency under Public Law 103–354 449–34.

(9) Proposed Form FmHA or its successor agency under Public Law 103–354 449–36, if any;

(10) Proposed Lender's Certification (§ 1980.60 of subpart A of this part); and

(11) Opinion of Lender's Counsel in form prescribed by OGC.

(e) *Do not submit for OGC review* feasibility studies, title information, or the original application unless specifically requested to do so.

(f) *OGC advice*. The Regional Attorney will review the docket and furnish advice to FmHA or its successor agency under Public Law 103–354 on whether it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE BENEFIT OF FmHA or its successor agency under Public Law 103–354 ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER FmHA or its successor agency under Public Law 103–354 REGULATIONS. The Regional Attorney at his/her option may attend the loan closing. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

(g) *Delegation of authority*. The State Director may delegate those administrative duties and responsibilities as authorized in the Administrative sections of this subpart, except those specifically reserved to the State Director.

§ 1980.498 Business and Industry Disaster Loans.

(a) *Introduction*. This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992. No BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

(b) *Location of Applicants*. (1) Section 1980.405 of this subpart. ''Rural area determinations,'' will not apply to BID loans. BID loans may be made in rural and nonrural areas.

(2) Eligible borrowers' businesses must be located within the area covered by the Presidential declaration except for those with qualifying losses from microburst wind in accordance with paragraph (a) of this section.

(c) *Loan Purposes*. Loans may be guaranteed for the purposes listed in § 1980.411 of this subpart, ''Loan Purposes,'' except as follows:

(1) *Relationship to disaster*. The purpose of any BID loan must be to cover costs that are a direct consequence of a natural disaster or microburst of wind in accordance with paragraph (a) of this section. The amount of the loan must not be greater than the amount needed as determined by the Rural Development Administration or its successor agency under Public Law 103–354 (RDA or its successor agency under Public Law 103–354) to cure problems caused by the natural disaster so that the business is reestablished on a successful basis. Facilities which were damaged or destroyed by the natural disaster may be repaired or replaced by modern facilities as necessary to ensure success. Replacement by modern facilities will not be made solely for the purpose of enlarging the business or increasing its production capacity. No loan for a change of purpose of the business will be guaranteed. Eligible refinancing or working capital loans should not exceed the amount needed to overcome the financial distress caused by the disaster. Losses that were adequately paid by insurance or by loans or grants from other sources will not be covered by BID loans. BID loans may be used to supplement insurance payments and/or assistance from other sources when the insurance coverage or other assistance is not sufficient.

(2) *Refinancing.* Section 1980.452, Administrative C.1.(d) of this subpart does not apply to BID loans. If refinancing is needed as a direct consequence of the disaster, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(3) *Agriculture.* Section 1980.412(e) of this subpart does not apply to BID loans. BID loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(4) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(5) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(6) *Meat processing facilities.* The provisions of §1980.411(a)(8) of this subpart will not apply to BID loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(d) *Federal Emergency Management Agency (FEMA).* BID loans may be approved only to the extent that the assistance is not available from FEMA. The case file will be documented to show that FEMA assistance was not available or that FEMA assistance is not adequate to cover the costs as a consequence of the natural disaster.

(e) *Small Business Administration.* Section 1980.451 of this subpart will not apply to BID loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(f) *Loan guarantee limits.* Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BID loan will not exceed 80 percent.

(g) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(h) *Equity requirements.* The equity requirements of §1980.441 of this subpart do not apply to BID loans.

(i) *Feasibility studies.* Feasibility studies as required by §1980.442 of this subpart will not be required for BID loans if the business has a successful financial history that supports future plans and projections that indicate a successful operation with adequate repayment ability.

(j) *Collateral.* Section 1980.443, Administrative A. 2., 3., and 4. of this subpart will not apply to BID loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(k) *Conditional approval.* A Form FmHA or its successor agency under

Public Law 103–354 449–14, ''Conditional Commitment for Guarantee,'' may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA or its successor agency under Public Law 103–354 449–14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA or its successor agency under Public Law 103–354 449–14 will be issued prior to the obligation date established with the Finance Office.

(l) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that it is modified for BID loans to require minimum annual financial statements as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of $500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of $500,001 through $1,000,000, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than $1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per §1980.113 of subpart B of part 1980 of this chapter.

(m) *Agriculture loans.* The following additional provisions apply to BID loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* This portion of this section contains the regulations for making BID loans to farmers for agricultural purposes. BID loans made for agricultural purposes are subject to the provisions in subparts A and E of part 1980 of this chapter except as specified. In addition, certain sections of subpart B of part 1980 of this chapter referenced in this section are applicable subject to the limitations outlined in this section. BID loans made for agricultural purposes are made under the Business and Industry authority of section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended. In this regard, several key loan processing and loan servicing requirements stipulated in subpart B of part 1980 of this chapter do not apply to loans made to borrowers under this section. Only the material cross-referenced to subpart B of part 1980 of this chapter is to be utilized in lieu of or in addition to the requirements contained in subpart E of part 1980 of this chapter in processing loans under this section.

(2) *Type of guarantee.* See §1980.101(e)(1) of subpart B of part 1980 of this chapter. BID loans will be processed under the Loan Note Guarantee option ONLY. No loan will be processed for a Contract of Guarantee (Line of Credit) under this section.

(3) *Abbreviations and definitions.* (i) The abbreviations and definitions found in §1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for ''family farm,'' ''related by blood or marriage,'' and ''subsequent loans.''

(ii) Loan guarantees may be made under the BID program without regard to the size of the farming operation.

(4) *Loan eligibility requirements.* In addition to the requirements set forth in this subpart, the requirements in §1980.175(b) of subpart B of part 1980 of this chapter regarding controlled substances are applicable.

(5) *Filing and processing preapplications and applications.* If the

applicant has already developed material for an FmHA or its successor agency under Public Law 103–354 Farmer Programs loan or if the financial and production information required by §1980.113 of subpart B of part 1980 of this chapter is needed to document repayment ability or is required by the lender, §1980.113 of subpart B of part 1980 of this chapter may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) Timeframes for applicant/lender notification in §1980.113 of subpart B of part 1980 of this chapter do not apply.

(iii) If the application is submitted solely for a farm as defined in §1980.106(b) of subpart B of part 1980 of this chapter, Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services,'' or Form FmHA or its successor agency under Public Law 103–354 449–1, ''Application for Loan and Guarantee,'' will be used as an application for assistance.

(6) *Evaluation of applications.* If the application is developed and processed in accordance with §1980.113 of subpart B of part 1980 of this chapter, the provisions outlined in §1980.114 of subpart B of part 1980 of this chapter applies with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and the opportunity given for an appeal as set out in subpart B of part 1900 of this chapter.

(7) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. All accrued interest will be due at least annually from the date of the debt instrument. In no case will interest be deferred. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(8) *BID agriculture loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in §1980.175(c)(1) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c)(1) (iv) and (vii) of that section.

(ii) Real estate purposes as outlined in §1980.180(c) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c) (1) and (4) of that section.

(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) of this section and §§1980.411(a)(11), 1980.451(i)(19) and 1980.452 ADMINISTRATIVE C [except 1980.452 ADMINISTRATIVE C 1(d)] of this subpart.

(9) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

[57 FR 45969, Oct. 5, 1992, as amended at 58 FR 34342, June 24, 1993; 58 FR 38952, July 21, 1993; 58 FR 41172, Aug. 3, 1993; 58 FR 48300, Sept. 15, 1993]

§1980.499 [Reserved]

§1980.500 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0029. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 58 hours per response, with an average of 4 hours per response including time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–XXXX), Washington, DC 20503.

[55 FR 19245, May 8, 1990]

APPENDICES TO SUBPART E

Appendix A

Form FmHA 449-1
(Rev. 5-16-83)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

FORM APPROVED
OMB NO. 0575-0021
EXPIRES 10-31-85

APPLICATION FOR LOAN AND GUARANTEE
(Business and Industry)

FmHA Case Number

General Information: The "Application for Loan and Guarantee" is to provide information needed for the analysis and loan determination process. Tear at perforations for ease in use. Specific references are made in this application to sections of the Business and Industrial Loan Instruction. For complete guidance, see FmHA Instruction 1980-A and 1980-E and related FmHA forms.

Part A – is to be completed by the proposed borrower. The original and two copies with attachments will be submitted to the proposed lender.

Part B – is to be completed by the lender. Upon completion, the original and one copy and attachments of Part A and B will be filed with the FmHA State Office.

PART A

Instructions to Proposed Borrower: Complete items one through 20. Submit original and two copies of this application and all supporting documents to the lender. If additional space is required, provide for by an attachment. Additional information may be obtained from any FmHA Office.

1. NAME: *(Show official name without abbreviations unless the abbreviation is a part of the official name. For proprietor or partnership, show name(s) followed by d/b/a and trade name used, if any, and attach a copy of the partnership agreement).*

Street		City	County
State	ZIP Code	Telephone Number	Amount of Loan Requested $
Project Location: City	Population *(Last Census)*	County	State
Franchise ☐ Yes ☐ No	If Yes, submit copy		

2. TYPE OF BUSINESS: | Applicant's Tax Identification Number | SIC Number

3. THIS PROJECT IS:
☐ A new business venture ☐ Other *(Explain)*
☐ A new branch of facility ☐ An expansion of an existing facility
☐ Refinancing debts ☐ Transfer of Ownership

Date Enterprise Established:

4. VETERAN - For individual or partner indicate if veteran ☐ Yes ☐ No
If yes, indicate service from to Branch

5. CITIZENSHIP - Do you meet the citizenship requirements in FmHA Instruction 1980.403? ☐ Yes ☐ No

6. HISTORY OF BUSINESS - Provide a brief description and history of the business *(attach additional sheets if necessary).*

7. COMMUNITY BENEFITS - Comment on the benefits the community will receive if the loan is made *(i.e., taxes, jobs and any other benefits).*

Information requested by this form is collected for determining program eligibility and project analysis. Completion of this form is required to obtain the benefit of an FmHA Business and Industry loan guarantee. This statement is furnished pursuant to P. L. 96-511.

8. PREVIOUS FEDERAL, STATE, OR LOCAL FINANCING - List assistance received, requested, or any pending applications. *(Include direct, participation, insured, or guarantee loans and grants from any Federal, State, or local sources).*

9. LITIGATIONS - List details of any pending or final disciplinary or legal *(civil or criminal)* action against the proposed borrower, guarantors, partners, principal stockholders and directors.

10. NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES - List the names of all attorneys, accountants, appraisers, packagers, agents, and all other parties *(whether individuals, partnerships, associations)* engaged by or on behalf of the proposed borrower *(whether on a salary, retainer or fee basis and regardless of the amount of compensation)* for the purpose of rendering professional or other services of any nature whatever to proposed borrower, in connection with the preparation or presentation of this application to a lender. List all fees or other charges or compensations paid or to be paid for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the proposed borrower together with a description of such services rendered or to be rendered with complete justification for such purposes. **NOTE: all fees and charges are subject to FmHA review and approval and may, in some cases, be paid out of loan proceeds. (See FmHA Instruction 1980.411 and 1980.414).**

Name and Address *(Include ZIP Code)*	Description of Service Rendered or to be Rendered with complete Justification	Total Compensation Agreed to be Paid*	Compensation Already Paid

**Enter specific dollar amounts or hourly rates. "Unknown," "Undetermined," or other imprecise terms are not sufficient.*

11. SUBSIDIARIES AND AFFILIATES - (1) List the name and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the proposed borrower, including concerns in which the proposed borrower holds a controlling *(but not necessarily a majority)* interest:

(2) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the proposed borrower. The proposed borrower should comment briefly regarding the trade relationship between the proposed borrower and such subsidiaries or affiliates and if the proposed borrower has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconcilement of net worth *(all not more than 60 days old)* must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as required of the proposed borrower.

12. PURCHASE AND SALES RELATIONS WITH OTHERS - Does proposed borrower buy from, sell to or use the services of, any concern in which an officer, director, major stockholder, or partner, or proprietor of the proposed borrower has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, stockholder, and partners, names of such concerns and explain the nature of the transaction(s).

13. RECEIVERSHIP - BANKRUPTCY - Has the proposed borrower or any officer or, partner or director of the proposed borrower, affiliates or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt? ☐ Yes ☐ No If "Yes" give names, dates and details.

14. DISCLOSURE OF SPECIAL INFORMATION REGARDING PRINCIPALS - (a) List below the names of any FmHA employees who are related by blood, marriage, or adoption, or who have any present or have had any past, direct or indirect, financial interest in or association with, the proposed borrower, or any of its partners, officers, directors, principal stockholders including such interest in other enterprise; (b) When the proprietor, or any partner, officer, director, or their spouse, is an employee of the U.S. Government including members of the armed forces, detailed information shall be submitted with the application. Check box(s) if (a) or (b) is not applicable. ☐ (a) ☐ (b)

NAMES AND ADDRESS *(Include ZIP Code)*	Details of Relationship or Interest

15. MANAGEMENT - Enter names of (a) all owners, partners, key officers, directors or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all other stockholders having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded. Personal guarantees from major stockholders or owners having a major interest in a corporation, and all partners of partnerships usually will be required. If guarantor cannot provide such guarantee due to existing contractual or legal restrictions, explain in an attachment. Final determinations will be made by the FmHA. Attach, in the case of personal guarantee, current financial statements not over 60 days old at time of filing, and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation. Additional updated financial statements may be required depending on processing time.

(a) Name	(b) Position or Title	(c) Annual Compensation $	(d) % Ownership	(e) Outside Net Worth $	(f) Personal Guarantee Offered* (Yes or No)	(g) Insurance Carried For Benefit of Applicant

*If none offered, provide full explanation why guarantee cannot be offered. *(See FmHA Instruction 1980.443 (b)).*

16. REGULATORY AGENCIES - List all regulatory agencies (*(National, State, or Local)* which affect this business or project and explain if there are any pending matters with such regulatory agencies. Indicate if permits, licenses or clearance are necessary and their status. *(See FmHA Instruction 1980.45 and 1980.451)*

17. INSTRUCTION TO PROPOSED BORROWER - Attach to this application the following supporting documents. Reference for 1980-A include section 1980.1 thru 1980.100 and reference for 1980-E include sections 1980.401 thru 1980.500:

(a) Comments from state and local governments, if not already submitted. *(See FmHA Instruction 1980.451 (f) (8)).*

(b) Form FmHA 449-4, "Statement of Personal History," if not already submitted. *(See FmHA Instruction 1980.451 (f) (3)).*

(c) Form FmHA 449-22, "Certification of Non-Relocation and Market and Capacity Information," if applicable. *(See FmHA Instruction 1980.412 (c) and (d).*

(d) Financial data for new or existing businesses are required in accordance with FmHA Instruction 1980.451 (i) (7) and (8).

(e) Aging of accounts receivable and payable. *(Use 30, 60, 90 days with individual account explanation of items over 90 days old). (See FmHA Instruction 1980.451 (i) (15)).*

(f) For companies listed on major stock exchanges and subject to the Securities and Exchange Commission regulations, a copy of the latest SEC 10K report. *(See FmHA Instruction 1980.451 (i) (16)).*

(g) Provide supporting documentation for your projections, including economic factors, markets, management, etc. For loans in excess of $1 million see FmHA Instruction 1980.442 .

(h) If construction is involved, *(See FmHA Instruction 1980.451 (i) (11)).* Final plans and specifications must be submitted to the lender for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need be attached. *(See FmHA Instruction 1980.451 (i) (4) and 1980.454 (d)).*

(i) If construction is involved, provide applicable equal opportunity and nondiscrimination forms. *(See FmHA Instruction 1980.41).*

(j) Form FmHA 449-10, "Applicant's Environmental Impact Evaluation." *(See FmHA Instruction 1980.40 and 1980.451 (i) (3)).*

(k) Evidence whether the project is located in a flood or mudslide hazard area. *(See FmHA Instruction 1980.42 and 1980.451 (i) (17)).*

(l) Provide a written statement of effect project would have on Historic Places, if any. *(See FmHA Instruction 1980.44 and 1980.451 (i) (15)).*

(m) If application is for health care facility, attach a "Certificate of Need," from appropriate regulatory agency having jurisdiction over the project. *(See FmHA Instruction 1980.451 (k)).*

(n) If loan is in excess of $100,000, provide certification and notices as required for the Clean Air Act and Water Pollution Control Act. *(See FmHA Instruction 1980.43).*

(o) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.

(p) For all persons listed under MANAGEMENT, item 15, provide a brief description of education, technical training, employment and business experience *(resumes may be used).*

(q) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the name of the creditors, loan purpose, original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secures such loans. You may use Form FmHA 449-29 Attachment I.

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18. POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES:

(a) A proposed borrower may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examination, etc.

(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and will subject the parties to such a transaction to prosecution.

(c) FmHA will not approve placement or finder's fees for the use or attempted use of influence in obtaining or trying to obtain a loan.

(d) Fees which will be approved will be limited to reasonable sums for services actually rendered in connection with the application or the closing, based upon the time and effort required, and the nature and extent of the services rendered by such representative.

(e) It is the responsibility of the proposed borrower to set forth in Section 10 of this application the names of all persons or firms engaged by or on behalf of the proposed borrower. Proposed borrowers are also required to advise FmHA in writing of the names and fees of any representatives engaged by the proposed borrower subsequent to the filing of the application. Failure to so notify FmHA constitutes "misrepresentation" and will cause FmHA to contest the guarantee if lender had knowledge of this omission.

(f) Any proposed borrower having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan guarantee.

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19. AGREEMENT OF NONEMPLOYMENT OF FmHA PERSONNEL. In consideration of FmHA guaranteeing any part of the loan applied for in this application, the proposed borrower hereby agrees with FmHA that proposed borrower will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of FmHA and (b) as such, shall have occupied a position or engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Consolidated Farm and Rural Development Act and other acts administered by FmHA from time to time.

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20. CERTIFICATION - The proposed borrower hereby certifies that:

(a) The Proposed borrower has read FmHA policy and regulations concerning representatives and their fees *(18 above)* and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for other than for services and expenses authorized pursuant to paragraph 18 above.

(b) The proposed borrower has not paid or incurred any obligation to pay any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the proposed borrower agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.

(c) Information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the proposed borrower and are submitted for the purpose of requesting FmHA to guarantee a loan by a lender to the proposed borrower. Whether or not the loan herein applied for is approved, the proposed borrower agrees to pay or reimburse the lender for the cost of any surveys, title or mortgage examinations, appraisals, etc., performed by nonlender personnel with consent of the proposed borrower.

(d) The proposed borrower hereby covenants, promises, agrees and gives herein the ASSURANCE that in connection with any loan to the proposed borrower which FmHA may guarantee as a result of this application, it will COMPLY with the requirements of Executive Order 11245 regarding Equal Credit Opportunity. Proposed borrower further agrees that in the event it fails to comply with said applicable provision, FmHA may cancel, terminate, accelerate repayment of or suspend in whole or in part the financial assistance provided or to be provided by FmHA, and that FmHA or the United States Government may take any other action that may be deemed necessary or appropriate of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, religion, color, sex, marital status or national origin recipients of Federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records. These requirements are applicable to all transferees and successors in interest.

NOTICE: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.

The proposed borrower hereby agrees to provide the lender and FmHA timely periodic financial statements including the annual financial statement required by FmHA Instruction 1980.451 (i)(13). Failure to provide such reports will be considered a default of the loan in accordance with Form FmHA 449-35, "Lender's Agreement," which is a part of Subpart E of Part 1980, Title 7 CFR.

WARNING: **Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."**

Misrepresentation of material facts may also be the basis for denial of credit by the Farmers Home Administration.

*Proposed Borrower Name:

_____

_____

CORPORATE SEAL

By _____

Title _____

Attest: _____

Date Signed: _____, 19__

_____
(Title) *(Title)*

Proposed Borrower's Contact Person

_____
Name

_____
Address

_____
Telephone

**(Individual, general partner, trade name, or corporation name).*

PART B

INSTRUCTIONS: Lender completes item 21 through 33 and submits the original and one copy of this application and all supporting documents to FmHA.

21. REQUEST FOR GUARANTEE: *(For use only by lender)* LENDER TAX IDENTIFICATION NO. _____

We propose to make and service a loan to the proposed borrower named on page 1 of this application. We request an FmHA loan guarantee subject to the provisions of the applicable FmHA Instructions.

22. TERMS AND CONDITIONS OF LOAN: Percent of Guarantee Requested _____%

(1) Type	Amount	Terms (yrs.)	Interest*	Monthly Payments
Real Estate	$ _____	_____ yrs.	_____ %	$ _____
Machinery and Equipment	$ _____	_____ yrs.	_____ %	$ _____
Working Capital	$ _____	_____ yrs.	_____ %	$ _____
Other _____	$ _____	_____ yrs.	_____ %	$ _____
TOTAL	$ _____			$ _____

***If the variable rate, follow by a "v" and identify base rate used and what interest differential is added to base rate. If multi-rates are used provide overall effective interest rate for the entire loan: _____%. NOTE: Guaranteed borrower must have the right to prepay their loans. Prepayment penalties are permitted if reasonable and approved by FmHA. Attach amortization schedule for loan.**

23. (a) SOURCE AND USE OF FUNDS: Loan funds will be disbursed and used for the following purposes, in the following amounts.

Building and Improvements	$ _____	Machinery and Equipment	$ _____
Land and Rights	_____	Contingencies	_____
Fees *(List below)*	_____	Debt Refinancing*	_____
Legal and Engineering Fees	_____	Working Capital	_____
Interim Interest	_____	Other *(Specify)* _____	_____
			$ _____

***Attach complete justification for the request** *(include long and short term debt)*

(b) Describe in detail the source and use of funds from (a) above and any other source of funds for the project and its amount and indicate whether the amounts and sources are proposed or definite.

24. COLLATERAL AND LIEN POSITION: (Describe collateral in detail, show whether now owned or to be acquired). (Use Form FmHA 449-2 with appropriate appraisal reports and indicate any prior liens that may exist on the collateral).

25. PLANNED DISBURSEMENTS: Record plans for distributing the loan. *(See FmHA Instruction 11980.60 and 1980.454).*

26. (a) PERSONAL AND/OR CORPORATE GUARANTEES RECOMMENDED: *(See FmHA Instruction 1980.443).*
(b) COLLATERAL OFFERED FOR PERSONAL AND/OR CORPORATE GUARANTEES:

27. INSURANCE: (List requirements for Life, Hazard, Federal Flood, and Liability).

28. COMMENTS OF LENDER: *(Attach additional sheets, if necessary).*

(a) Evaluate proposed borrower's management, past record, repayment ability and other financial analysis.

_____

_____

_____

_____

(b) State whether any officer, director, stockholder, or employee of the lender has a financial interest in the proposed borrower or vice versa. If so, give details:

_____

_____

_____

_____

_____

(c) Is proposed borrower indebted to lender? ☐ Yes ☐ No If yes, provide history of debt repayment and other details:

_____

_____

_____

_____

(d) List all fees and charges for the loan, including those for preparation of application, servicing, etc. Indicate whether the guarantee fee will be passed on to proposed borrower. *(See FmHA Instruction 1980.411 and 1980.414).*

_____

_____

_____

_____

(e) Provide loan servicing plans, including field inspections, frequency of obtaining periodic and annual financial statements and their analysis, use of correspondents or other outside consultants, location of office servicing the loan, and complying with servicing responsibilities set forth in the "Lender's Agreement," Form FmHA 449-35.

_____

_____

_____

_____

29. LOAN AGREEMENT: Attach proposed lender and borrower loan agreement *(See FmHA Instruction 1980.451 (i) (13))*.

30. LENDER'S EXPERIENCE WITH FmHA:
(a) Have you made any loans guaranteed by FmHA? ☐ Yes ☐ No
If yes, check program area: ☐ Farmer Programs ☐ Rural Housing ☐ Business and Industry.
(b) If proposed borrower has or had a loan(s) with you, has such loan(s) appeared in regulatory examination report?
☐ Yes ☐ No If yes, explain.

_____

_____

(c) Have you ever been debarred from participation in FmHA programs? If yes, explain.

_____

_____

31. Verify and comment on proposed borrower's debt schedule: _____

_____

_____

_____

_____

32. PLANS FOR CONSTITUTING THE LOAN: *(See Form FmHA 449-35, "Lender's Agreement," paragraph III A)*.

(a) Will retain entire loan ☐ Yes ☐ No
(b) Will utilize secondary market for guaranteed portion *(indicated by check)*.
Assignment _____ Participation _____ Multi-note _____
(c) Participation of unguaranteed portion ☐ Yes ☐ No
(Lender must retain 5% of the unguaranteed portion of loan in its portfolio).

33. OPINION: In our opinion, the loan has repayment ability, appears feasible and all FmHA requirements in FmHA Instruction 1980-A and 1980-E will be met.

WARNING: **Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."**

Misrepresentation of material facts may also be the basis for FmHA not issuing a Loan Note Guarantee.

LENDER:

_____

Contact Person _____ _____

Telephone Number _____ _____

Date _____, 19____ _____

By: _____
Authorized Officer

_____
Title

APPENDIX B—CERTIFICATE OF INCUMBENCY AND SIGNATURE

U.S. Department of Agriculture—Farmers Home Administration or its successor agency under Public Law 103–354

I, (Name)_____, (Title)——— of the Farmers Home Administration or its successor agency under Public Law 103–354, (FmHA or its successor agency under Public Law 103–354), an Agency of the United States Department of Agriculture, DO HEREBY CERTIFY that the following person holds the office of (State Director, State Program Loan Chief, District Director, or County Supervisor)_____ of _____, for FmHA or its successor agency under Public Law 103–354 and that the signature appearing below and that the signatures appearing above that person's name on the following described document is the genuine signature of such person:

1. Form(s) FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee,'' dated_____ relating to loan made by (Lender's Name)_____ to (Borrower's Name)_____, FmHA or its successor agency under Public Law 103–354 Loan Identification No.__.

2. Form(s) FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement,'' dated_____ relating to loan made by (Lender's Name)_____ to (Borrower's Name)_____, FmHA or its successor agency under Public Law 103–354 Loan Identification No.__.

3. Form(s) FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement,'' dated_____ relating to loan made by (Lender's Name)_____ to (Borrower's Name)_____, FmHA or its successor agency under Public Law 103–354 Loan Identification No.__.

Signature_____ (Name Type)_____.

In witness whereof, I have hereunto signed my name this ____ day of _____, 19__.

Farmers Home Administration or its successor agency under Public Law 103–354.

By — _____

(Title) _____

APPENDIX C—GUIDELINES FOR LOAN GUARANTEES FOR ALCOHOL FUEL PRODUCTION FACILITIES

(1) *Alcohol production facility*. An alcohol production facility is a facility in which alcohol, suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks and not suitable for beverage purposes, is manufactured from biomass.

(2) The alcohol production facility includes all facilities necessary for the production and storage of alcohol and the processing of the by-products of alcohol production. The intent is to limit the alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of the project. Further refinements, such as gasoline blending or the construction of facilities which use the alcohol or by-products in another manufacturing process, are not considered part of the alcohol production facility.

(3) Application will be reviewed by both B&I personnel and the State Office engineer and forwarded to the National Office if approval is recommended.

(4) The applicant should have a startup *tangible* book equity of 20–25 percent. (Appraisal surplus and subordinated debt are not eligible equity items.)

(5) Loan maturity maximums will be as follows:

Real Estate=15–20 years

Machinery & Equipment=10 years or less depending on the estimated life of the equipment involved

Working Capital=3 years (It is assumed that the additional equity required for these projects will provide much of the working capital needs.)

(6) Farmers Home Administration or its successor agency under Public Law 103–354 will ordinarily only finance new facilities and will not get involved in the refinancing of existing ones.

(7) Priority consideration will be given to the use of primary fuel other than petroleum or natural gas.

(8) A positive energy balance must be indicated and supported by appropriate data; i.e., the energy content of the alcohol produced at the alcohol production facility must be greater than the energy used to produce the alcohol and by-products.

(9) Plant location, in relation to feedstocks, primary fuel and markets for product and by-products, will be an important consideration.

(10) Debt refinancing will only be considered in modest amounts and only when necessary to provide a satisfactory lien position.

(11) Feasibility studies are very important and required and will be prepared by competent and knowledgeable independent parties.

(12) Participating lenders must either have expertise or the availability of expertise in this field.

(13) The proposed operating managers must have experience in this or a related field.

(14) Alcohol Fuel Production Facilities are eligible for assistance underthe Drought and Disaster (D&D) Guaranteed Loan and Disaster Assistance for Rural Business Enterprises (DARBE) programs described in this

subpart, and especially in appendix I and appendix K. Any such loan must meet the requirements for D&D and DARBE loans.

[52 FR 6522, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 54 FR 5, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

APPENDIX D—ALCOHOL PRODUCTION FACILITIES PLANNING, PERFORMING, DEVELOPMENT AND PROJECT CONTROL

(I) *Design Policy*. The borrower shall ensure or cause to be ensured that:

(A) All project facilities are designed utilizing accepted engineering practices and are conformed to applicable Federal, State and local codes and requirements.

(B) Proven equipment and processes are employed in all project facilities unless an exception is granted by the Administrator or designee of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) (''Administrator'') in accordance with paragraph (B)(2) hereof and pilot equipment or processes are used instead.

(1) Equipment and processes shall be considered ''proven'' if they have been successfully employed in other commercial facilities.

(2) Equipment and processes shall be considered pilot if they have not been used in a commercial operation but have been operated on a scale such that all design and material problems have been identified and resolved and operations maintained to demonstrate that the equipment and process may be successfully applied to the proposed commercial operation. Pilot equipment and processes may be considered for use in the project subject to the following:

(a) The plans, specifications, and operational data for the applicable facilities are reviewed by the Administrator or designee and lender. If, in the opinion of FmHA or its successor agency under Public Law 103–354, the proposed processes or equipment are insufficiently developed to assure reliable and successful operation of the project, proven processes and equipment will be utilized.

(b) If pilot processes or equipment are used, the Administrator or designee will also require that:

(i) Reasonable provision is made in the project for conversion to proven equipment or processes; and

(ii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A reserve account for this conversion may be required. This account will not be an eligible loan purpose.

(C) Facility and equipment design incorporates cost-effective primary fuel systems, energy recovery systems and conservation measures to the maximum extent that this is feasible and consistent with paragraphs (I), (A), and (B) of this appendix.

(II) *Technical Services*.

(A) The borrower is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the project to assure that the completed project will operate at the prescribed levels of performance. In discharging its responsibility the borrower will obtain or cause to be obtained:

(1) Full engineering services for design and construction inspection for all project facilities. Resident inspection by qualified persons will be required.

(2) Agreements for engineering or design/build services which describe the project facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, conversion efficiency, rate of production and fuel consumption and product quality under normal operating conditions. The design parameters will be mutually agreed upon by the borrower, lender, the State Director and the project engineer, and may not be modified without the written concurrence of each of these parties. These agreements for engineering or design/build services will require, or the borrower will otherwise obtain, assurance satisfactory to the State Director that:

(a) The project engineer will maintain adequate insurance to protect the borrower, lender and the Government from incurring expenses resulting from errors and omissions of the engineer in performance of engineering services.

(b) The project engineer will certify that only proven equipment and processes will be utilized in the proposed development. The State Director may request evidence of successful operations of such proven equipment and process. If proven equipment or processes are not used in the project, the project engineer will identify these items and provide the information necessary for acceptance by the Administrator, borrower and lender in accordance with paragraph (I)(B)(2) of this appendix.

(c) If used equipment or existing facilities are incorporated into the project, they must be inspected by the project engineer or by another qualified engineer of the borrower. This engineer will prepare a report describing the proposed facilities or equipment and will comment on their suitability for use in the project. The report will also identify the modifications necessary for successful integration into the project. A cost estimate will also be included comparing new equipment and facilities to the proposed existing facilities or used equipment. Consideration must

be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) The project engineer or qualified individuals representing the manufacturer of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Such personnel will be experienced in the proper operation and maintenance of applicable plant components. A report will be presented to the borrower within two weeks of each site visit advising the borrower of operation and maintenance deficiencies. A copy of each report will be forwarded to the State Director and lender by the borrower.

(e) The project engineer will prepare or supervise the preparation of a record drawing of all facilities. One copy will be submitted to the lender and the borrower.

(f) The project engineer or another group acceptable to the State Director and lender will prepare an operation and maintenance manual and assist the borrower in the start-up of the project. The operation and maintenance manual will describe the specific operation and maintenance procedures which must be performed for the project to operate at its rated capacity and efficiency and outline product testing, quality control, plant safety and emergency shut-down procedures.

(g) The project engineer will assist the borrower in determining acceptability of materials, equipment and construction during the construction period, review shop drawings, payment estimates and change orders, and assist in determining substantial completion of the project and final completion of individual contracts.

(1) The project is substantially complete when:

(i) Construction is sufficiently completed in accordance with plans and specifications so that the project may be used for its intended purpose, and;

(ii) The project is producing products of the quantity and quality and at the conversion and energy efficiencies proposed in the completed application submitted by the lender and borrower and approved by the FmHA or its successor agency under Public Law 103–354.

(2) The State Director must concur that the project is substantially complete. The following evidence, in form and substance satisfactory to the State Director and lender, must be submitted prior to such concurrence:

(i) A certificate from the project engineer stating that all facilities are substantially complete. Engineers who design specialized equipment or processes must also certify that construction/fabrication is acceptable in accordance with plans and specifications previously approved by them. The certification of the project engineer must be based upon a project start-up procedure where the complete project operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure in materials and defects in workmanship. After this pre-startup, the certifying engineers will monitor project operations for a continuous period of at least 72 hours or 3 consecutive batch runs as appropriate to assure that all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of system operation and performance data obtained during project start-up.

(iii) Exceptions to substantial completion and a list of nonsubstantial items which must be completed prior to release of any contractor's retainage.

(3) If the project is not producing products of the required quantity or quality at the prescribed conversion efficiencies, even though the project is otherwise physically complete in accordance with paragraph (1)(i) of this subparagraph, the project engineer will prepare a report identifying the corrective actions including an estimate of costs and additional time necessary to meet established performance criteria.

(4) The project must be certified to be substantially complete by an independent engineer if any portion of the project has been designed or constructed by the borrower or the project engineer has participated in any portion of the construction.

(B) Modification of plans and specifications will not be made without the written authorization of the project engineer.

(C) The Administrator, State Director or their representative's acceptance or concurrence in feasibility studies, preliminary engineering reports, plans, specifications, contract documents and payment estimates will not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction, nor will such acceptance or concurrence be deemed a waiver of any of the Government's rights or remedies against any person or party. Reviews and construction inspections by the Administrator, State Director or their representatives are solely for the benefit of the Government and do not relieve the lender or borrower of their obligation to conduct project reviews and inspections.

(III) *Project Construction.*

(A) Borrower will not award contracts for the construction of any project facilities unless and until:

(1) The borrower obtains applicable construction permits, right-of-ways, licenses and approvals of Federal, State and local authorities for the construction of such facilities.

(2) The State Director concurs in applicable plans, specifications and contract documents. Standard contract documents prescribed for use in Federally assisted projects may be used as a guide for determining the minimum standards for contract acceptability. These standard documents are contained in Guides 18 and 19 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(B) The borrower has the responsibility, without recourse to the Government, for the settlement and satisfaction of all contractual and administrative issues arising out of procurements. This includes, but is not limited to, disputes, claims, protests of awards, or other matters of a contractual nature. Matters concerning violation of laws are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(C) The borrower's attorney will review executed contract documents including applicable performance and payment bonds and provide a certificate to the borrower and lender that they have been properly executed and that the persons executing these documents have been properly authorized to do so.

(D) In all contracts for construction or facility improvement awarded in excess of $100,000, the borrower will require bonds and a bank letter of credit or cash deposit in escrow, assuring performance and payment of 100 percent of the contract cost. The surety will normally be in the form of performance and payment bonds. Such assurance shall remain in full force and effect through any warranty period. Companies providing performance and payment bonds must hold a certificate of authority as an acceptable security on Federal bonds and eligible for listing in Treasury circular 510 as amended and be legally doing business in the State the project is located.

(E) Project Changes. Any change in the project which may affect collateral, its ultimate financial viability or compliance with the conditional commitment must have prior approval of the lender and FmHA or its successor agency under Public Law 103–354.

(1) Construction contracts will require that change orders receive prior approval from the lender when such changes:

(a) Increase or decrease contract price,

(b) Materially modify contract provisions,

(c) Increase or decrease time of completion,

(d) Affect project performance.

(2) All change orders will be recorded on a chronologically numbered contract change order as they occur. Change orders will not be included in payment estimates until approved by the borrower, project engineer, the lender and concurred in by FmHA or its successor agency under Public Law 103–354.

(F) Warranty.

(1) All major equipment must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start-up of equipment.

(2) Equipment purchased by a construction contractor or design builder and all other work shall be further warranted to be free from defect in material and workmanship by the contractor or the design builder for a period of one year after substantial completion of the contract.

(3) Applicable provisions to this effect shall be included in equipment purchase orders or construction contracts.

(G) Lease agreements. Where the right of use or control of any property or equipment not owned by the borrower is essential to the successful operation of the project during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property or equipment and the borrower. Lease agreements shall not contain provisions for restricted use of the site or facility, forfeiture or similiar cancellation clauses and shall provide for the right to transfer and lease without restriction. Such lease contracts or agreements shall be approved by the lender and FmHA or its successor agency under Public Law 103–354.

(IV) *Project Control.*

(A) Lender will adopt project control procedures to assure that loan funds are applied for costs or expenses properly attributable to the project (''Eligible Project Costs'') as proposed in the completed application submitted by the lender and borrower and approved by the FmHA or its successor agency under Public Law 103–354. A project monitoring account (''Project Monitoring Account'') will be developed by lender for this purpose and concurred in by the State Director. This account will be divided into sufficient budget categories to permit adequate control of expenditures and identification of potential budget overruns.

(B) The first advance (''First Advance'') of loan funds to the borrower will not commence from the Project Monitoring Account prior to lender's receipt of evidence that:

(1) The borrower has made adequate provisions for compliance with measures established by FmHA or its successor agency under Public Law 103–354 to mitigate adverse historical and environmental impacts.

(2) Applicable engineering, design/build, construction management, inspection and plant start-up service agreements have been obtained and accepted by the State Director and lender.

(3) The project engineer has prepared a detailed cost estimate and construction schedule for all facilities related to the project. This estimate must indicate that the project can be completed with the funds available as shown on the Form FmHA or its successor

agency under Public Law 103–354 449–1, ''Application for Loan and Guarantee.'' A reasonable contingency amount will be included in the estimate. This contingency shall be at least 20 percent of the estimated project costs for which firm bids have not been received plus 5 percent of project costs for which firm bids have been received. Construction interest and inspection costs will be based upon a reasonable contingency for unforeseen delays in project completion. The estimate shall include a listing with associated costs of any proposed leasing arrangements for property or equipment that is essential to the successful operation of the project.

(4) All funds necessary for construction of project facilities will be available when needed.

(5) The borrower has retained a project manager with sufficient experience and training to supervise project construction and engineering services on behalf of the borrower.

(C) After the first advance, future advances may be made from the Project Monitoring Account, in accordance with prudent lender practice, for all Eligible Project Costs established in the Project Monitoring Account, provided these payments are made in accordance with the terms of applicable contracts and are approved by the borrower and, when applicable, recommended by the project engineer.

(D) Payments for Eligible Project Costs incurred by the borrower prior to satisfaction of the conditions precedent to the first advance shall be made with borrower's funds or other nonguaranteed loan funds only. These payments however, may be reimbursed through the Project Monitoring Account as authorized by the State Director after compliance with Paragraph (IV)(B) hereof. The lender will not advance and the borrower will not be entitled to loan funds for reimbursement if such costs or expenses incurred by the borrower prior to the first advance, or at anytime thereafter, were for costs or expenses other than Eligible Project Costs. Costs and expenses accruing from but not limited to, interest charges imposed by construction, equipment, material or service contracts, penalty payments, damage claims, awards or settlements are not Eligible Project Costs unless specifically approved by the State Director.

(E) The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are paid for Eligible Project Costs and that problems in project development are expeditiously reported to the State Director.

(F) The lender will prepare a monthly report showing the expenditures made from each budget category of the Project Monitoring Account. This report will include a review of construction progress including proposed and approved contract change orders and, to the extend possible, identify problems or delays in construction or other matters which might affect successful startup of project. This report may be based upon information received from the project engineer and borrower and/or independent observations of the lender. The report will be initialed by the borrower and project engineeer and submitted to the State Director.

(G) Transfer of loan funds between established or new categories of the Project Monitoring Account or any change in the total amount of funds committed to the project will be reported by the lender to the State Director as these changes occur.

APPENDIX E—ENVIRONMENTAL ASSESSMENT GUIDELINES

In completing an assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project and its operation and maintenance. The attainment of the project's major objectives often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The impacts of these activities must also be assessed.

The environmental reviewer should consult with appropriate experts from Federal, State and local agencies, universities and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact should be summarized in the assessment as accurately as possible and include name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The Farmers Home Administration or its successor agency under Public Law 103–354 assessment should be prepared in the following format; it should address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant.

These assessment guidelines have been designed to cover the wide variety of impacts which may be encountered. Consequently, not every issue or potential impact raised in these guildlines may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors and issues which may be encountered. In preparing an assessment, each topic heading

identified by a roman numeral and each environmental factor listed under topic heading IV, such as air quality for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

(I) *Project description and need.* Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA or its successor agency under Public Law 103–354's position regarding the need for it, and the extent or area of land to be considered as the project site.

(II) Primary beneficiaries and related activities.

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of an FmHA or its successor agency under Public Law 103–354 action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA or its successor agency under Public Law 103–354 action or are themselves induced or supported by the FmHA or its successor agency under Public Law 103–354 action or another related activity. These activities may have been completed in the very recent past and are now operational or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be Federally permitted or assisted. When they are, identify the involved Federal agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

(III) *Description of project area.* Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey ''15 minute'' (''7½ minute'' if available) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4) if completed, a standard soil survey for the project and, (5) if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

(IV) *Environmental impact.*

(1) Air Quality—Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersals of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality and topographical and meteorological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

(2) Water Quality—Discuss, in terms of amounts and types of effluents all aspects of the project, including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by the Environmental Protection Agency (EPA), contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of

treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA or its successor agency under Public Law 103–354 project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

(3) Solid Waste Management—Indicate all aspects of the project, including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy to these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

(4) Land Use—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to the unique or sensitive areas discussed under Section III, Description of Project Area. Also address any changes in land use which may result from demand for feedstock for the plant's operation. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

(5) Transportation—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

(6) Natural Environment—Indicate all aspects of the project, including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

(7) Human Population—Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc., will effect nearby residents and their lifestyles or users of the project area and surrounding areas. Cite contacts with appropriate experts.

(8) Construction—Indicate the potential effects of construction of the project on air quality, water quality noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

(9) Energy Impacts—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

(10) Discuss any of the following areas which may be relevant: noise, vibrations,

safety, seismic conditions, fire prone locations, radiation, and aesthetic considerations. Cite any discussions with appropriate experts.

(V) *Coastal Zone Management Act.*

Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings,

(VI) Compliance with Advisory Council on Historic Preservation's regulations.

In this section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the asessment the results of the coordination process with the Advisory Council on Historic Preservation.

(VII) Compliance with the Wild and Scenic Rivers Act.

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. A summary of discussions held or any required formal coordination shall be included in the assessment.

(VIII) Compliance with the Endangered Species Act.

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

(IX) Compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resource Council's *Floodplain Management Guidelines* for more specific guidance.

(X) State Environmental Policy Act.

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation.

(XI) Consultation requirements.

Attach the comments of any State or local agency received through the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs.

(XII) Environmental analysis of participating Federal agency.

Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation.

(XIII) Reaction to project.

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA or its successor agency under Public Law 103–354 to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

(XIV) Cumulative impacts.

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the

results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

(XV) Adverse impact.

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

(XVI) Alternatives.

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative location, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project.

(XVII) Mitigation measures.

Describe any measures which will be taken or required by FmHA or its successor agency under Public Law 103–354 to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

APPENDIX F—CONDITIONAL COMMITMENT FOR GUARANTEE

USDA-FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

Form FmHA or its successor agency under Public Law 103–354 449–14
(Rev. 12–89)
FORM APPROVED
OMB NO. 0575–0024
TO: Lender _____
Case No. _____
Lender's Address _____
State _____
Borrower _____
County _____
Type of Loan _____
Principal Amount of Loan _____
$ _____

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) hereby agrees that, in accordance with applicable provisions of the FmHA or its successor agency under Public Law 103–354 regulations published in the Federal Register and related forms, it will execute Form(s) FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee,'' subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA or its successor agency under Public Law 103–354 will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is[1] _____% and, if applicable, the loan subsidy rate IS _____%[1]. If a variable rate is used, it must be tied to a base rate which cannot change more often than _____[2] and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA or its successor agency under Public Law 103–354's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term ''Borrower'' includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA or its successor agency under Public Law 103–354. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee, the Request for Guarantee Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan, or the Application for Loan and Guarantee. Once this instrument is executed and returned to FmHA or its successor agency under Public Law 103–354, no major change of conditions or approved loan purpose as listed on the forms will be considered. Additional Conditions and Requirements including Source and Use of Funds:[3]

This conditional commitment will expire on _____ [4] unless the time is extended in writing by FmHA or its successor agency under Public Law 103–354, or upon the Lender's earlier notification to FmHA or its successor agency under Public Law 103–354 that it does not desire to obtain an FmHA or its successor agency under Public Law 103–354 guarantee.

UNITED STATES OF AMERICA
BY: _____
Date: _____
FmHA or its successor agency under Public Law 103–354 *(Title)* _____

[1] Footnotes appear at the end of Form.

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354)[5]

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

_____
(Name of Lender)
By: _____
(Signature of Lender)
[6] _____
(Signature for Borrower)

[1] Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a ''V'' and the appropriate loan subsidy rate, if applicable.

[2] Insert the period prescribed in the applicable FmHA or its successor agency under Public Law 103–354 regulation. For B&I loans ''quarterly'' and for CP loans ''annually'' will be inserted in this space.

[3] Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert ''NONE''.

[4] FmHA or its successor agency under Public Law 103–354 will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

[5] Return completed and signed copy of this form to FmHA or its successor agency under Public Law 103–354 issuing office.

[6] Required in B&I, CP, and RH–MF cases, not in other cases.

[55 FR 11139, Mar. 27, 1990]

APPENDIX G [RESERVED]

APPENDIX H—SUGGESTED FORMAT FOR THE OPINION OF THE LENDER'S LEGAL COUNSEL

(Legal Opinion to be Retyped on Lender's Counsel's Letterhead)

To: (Name of Lender).

I/We have acted as counsel to (Lender) _____ in connection with a $ (amount) _____ (type) _____ loan by the (Lender) _____ (hereinafter ''the Lender'' to (Borrower) _____ (hereinafter ''Borrower''), the terms of which loans are set forth in a certain Loan Agreement (hereinafter ''the Loan Agreement'') executed by the Lender and Borrower on (date) _____.

In connection with this loan, I/we have examined:

1. The corporate records of Borrower, including its Articles of Incorporation, By-Laws and Resolutions of its Board of Directors.
2. The Loan Agreement between the Lender and Borrower.
3. The Security Agreement executed by Borrower on (date) _____.
4. The Guaranty (where applicable) executed on (date) _____ by (personal guarantors) _____.
5. Financing Statements executed by Borrower and the Lender.
6. Real Estate Mortgages dated _____ and executed by Borrower in favor of the Lender.
7. Real Estate Mortgages dated _____ and/or other security documents dated_____ executed by (personal guarantors) _____ in favor of the Bank.
8. The appropriate title and/or lien searches relating to Borrower's property.
9. The pledge of stock and instruments related thereto.
10. Such other materials, including relevant provisions of the laws of this state as I/we have deemed pertinent as a basis for rendering the opinion hereafter set forth.

In Some Circumstances

11. Lease(s) between Borrower and (lessor's name) _____ for the rental of (property being rented) _____, (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) _____ term commencing on (date) _____.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized corporation in good standing under the laws of the Commonwealth/State of (State) _____.
2. Borrower has the necessary corporate power to authorize and has taken the necessary corporate action to authorize the Loan Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the ''Loan Instruments.''
3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create and valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any

contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) _____ given as security for a loan in the amount of $_____ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) _____ given to (secured creditor) _____ as security for a loan (state type of loan, i.e., revolving line of credit, _____ if known) in the amount of $_____.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreemnt has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of reassignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors rights.

[52 FR 6522, Mar. 4, 1987]

APPENDIX I—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 (''Disaster Assistance for Rural Business Enterprises'') of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used

in this appendix, the term ''natural disaster(s)'' refers only to drought, hail, excessive moisture, and related conditions occurring in 1988. All provisions of Subparts A and E of Part 1980 of this chapter apply to D&D loans, except as provided in this appendix. All forms used in connection with a D&D loan will be those used in connection with a B&I guaranteed loan, except for the following three forms that are incorporated in this Appendix I of this Subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as Exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103–354 1980–68, ''Lender's Agreement—Drought and Disaster Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement.''

(2) Form FmHA or its successor agency under Public Law 103–354 1980–69, ''Loan Note Guarantee—Drought and Disaster Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee.''

(3) Form FmHA or its successor agency under Public Law 103–354 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement.''

B. *Loan purpose.* Except for §§1980.411(a)(11), 1980.412, and section C., below, loan procees may be used for purposes described in §1980.411(a) if such use of loan proceeds will assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture, or related conditions which occurred in 1988. In lieu of the debt refinancing requirements in §1980.411(a)(11), the following refinancing requirements apply to D&D loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, hail, excessive moisture, or related condition occurring in 1988, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See §1980.412. Except for hotels, motels, tourist and recreation facilities mentioned in section B of this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the D&D guaranteed loan.

(2) Any eligible agricultural production purpose if annual tillage of the soil is involved.

(3) Refinancing or restructuring debt(s) which are or were in payment default more than 60 consecutive days during the 12 months preceding the date of the adverse financial effect of the natural disaster of 1988 upon the borrower.

D. *Transactions which will not be guaranteed.* In addition to transactions listed in §1980.413, FmHA or its successor agency under Public Law 103–354 will not guarantee:

(1) D&D guaranteed loan(s) to any borrower if the total cumulative principal amount of D&D guaranteed loan(s) to that borrower would exceed $500,000, or

(2) Any D&D guaranteed loan if the completed application is not received by FmHA or its successor agency under Public Law 103–354 on or before September 30, 1991.

E. *Borrower equity requirements.* See §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to D&D loans. Tangibles balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to D&D guaranteed loans.

F. *Filing and processing preapplications and applications.* See §1980.451. All requirements of §1980.451 remain in effect. But, in addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted, as a part of an application under §1980.451(i) evidence is required which demonstrates:

(1) The causal relationship between a 1988 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be

shown that business operations were damaged as a result of such natural disaster.

G. *Loan guarantee limit.* See §1980.20 of Subpart A. The maximum loss covered by the Loan Note Guarantee, Form FmHA or its successor agency under Public Law 103–354 1980–69, can never exceed the percentage of guarantee multiplied by the unpaid principal amount of the loan as evidenced by the note(s) or by assumption agreement(s). Interest, capitalized interest, and protective advances are not covered by the guarantee of a D&D loan.

H. *Percentage of guarantee.* See §1980.420. The maximum percentage of guarantee on a D&D loan is 90 percent of the unpaid principal.

I. *Lender's existing unguaranteed exposure.* The provisions of §1980.452 Administrative C. 1(d) do not apply.

J. *No direct or ''insured'' loans.* Sections 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with ''insured'' or direct loans do not apply to D&D loans. All D&D loans are FmHA or its successor agency under Public Law 103–354 guaranteed loans. FmHA or its successor agency under Public Law 103–354 has no authority to make D&D loans directly to borrowers.

EXHIBIT A TO APPENDIX I—LENDER'S AGREEMENT; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)[1]

Form FmHA or its successor agency under Public Law 103–354 1980–68 (11–88)

FmHA or its successor agency under Public Law 103–354 Loan Ident. No. _____

_____

(Lender) of

_____

has made a loan(s) to

_____

(Borrower)

_____

in the principal amount of $ _____ as evidenced by _____ note(s) (include Bond as appropriate) described as follows:

_____

_____

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee)'' (Form FmHA or its successor agency under Public Law 103–354 1980–69) or has issued a ''Conditional Commitment for Guarantee'' (Form FmHA or its successor agency under Public Law 103–354 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement. The maximum loss guaranteed is governed by 7 CFR Part 1980 Subpart E Appendix I and the Loan Note Guarantee (Drought and Disaster Guaranteed Loans)

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal (Maximum $_____).

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement Drought and Disaster Guaranteed Loan (Assignment Guarantee Agreement) attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of failure to act but also not acting in

[1] Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.

a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment*. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103–354 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan.'' Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103–354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) therunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System*. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103–354 1980–69, ''Loan Note Guarantee—Drought and Disaster Guaranteed Loan'' attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103–354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103–354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103–354 1980–69, for each of the notes.

b. *After Loan Closing:* (1) Upon written approval by FmHA or its successor agency under Public Law 103–354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103–354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103–354 will issue the appropriate Loan Note Guarantees—Drought and Disaster Guaranteed Loan to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—Drought and Disaster Guaranteed Loan which will be cancelled by FmHA or its successor agency under Public Law 103–354.

3. *Participations*. a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its portfolio or retain a minimum of 5 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan to the extent of the portion of loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan, and this agreement, and the FmHA or its successor agency under Public Law 103–354 program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in

accordance with the terms of Form FmHA or its successor agency under Public Law 103–354 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower. Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103–354 has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103–354. Subsequent to full disbursement completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103–354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103–354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103–354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103–354's written concurrence. It is the Lender's responsibility to maximize the collection of interest due on the loan. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase from the Holder(s) by FmHA or its successor agency under Public Law 103–354 if such interest can be collected. If FmHA or its successor agency under Public Law 103–354 has repurchased, FmHA or its successor agency under Public Law 103–354 is equally so entitled.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103–354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA or its successor agency under Public Law 103–354; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103–354 at such time and frequency as required by the loan agreement or Conditional

Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103–354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103–354.

8, Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103–354 regulations.

10. Providing FmHA or its successor agency under Public Law 103–354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103–354 1980–41, ''Guaranteed Loan Status Report.''

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103–354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default. A. The Lender will notify FmHA or its successor agency under Public Law 103–354 when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103–354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103–354 1980–44. ''Guaranteed Loan Borrower Default Status.'' A meeting will be arranged by the Lender with the Borrower and FmHA or its successor agency under Public Law 103–354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103–354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103–354's, Lender's, and the Holders(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103–354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or its successor agency

under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal, due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103–354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103–354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103–354 has purchased, FmHA or its successor agency under Public Law 103–354 is equally entitled.

The FmHA or its successor agency under Public Law 103–354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103–354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due to the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee, nor does such purchase waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 from the Holder against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee. To the extent FmHA or its successor agency under Public Law 103–354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103–354 repurchases from a Holder, FmHA or its successor agency under Public Law 103–354 will pay the Holder only the amounts due the Holder. FmHA or its successor agency under Public Law 103–354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103–354 and no such fee is collectible from FmHA or its successor agency under Public Law 103–354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103–354. When FmHA or its successor agency under Public Law 103–354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103–354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provision in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 will be notified immediately in writing. FmHA or

its successor agency under Public Law 103–354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103–354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103–354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103–354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103–354 with:

1. Such proof as FmHA or its successor agency under Public Law 103–354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103–354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103–354 and the Lender.

B. *FmHA or its successor agency under Public Law 103–354's response to Lender's liquidation plan.* FmHA or its successor agency under Public Law 103–354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency under Public Law 103–354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103–354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103–354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103–354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103–354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103–354 all rights and interests necessary to allow FmHA or its successor agency under Public Law 103–354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103–354.

2. FmHA or its successor agency under Public Law 103–354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103–354 include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA or its successor agency under Public Law 103–354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103–354 or the Lender, as the case may be.

D. *Liquidation:* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103–354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103–354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103–354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103–354 1980–43, ''Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103–354.'' When FmHA or its successor agency under Public Law 103–354 liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103–354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note

Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103–354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103–354. Payment will be made in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103–354 an estimate of the loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103–354 will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103–354 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103–354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103–354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103–354 449–30 by the Lender to FmHA or its successor agency under Public Law 103–354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103–354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103–354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103–354 in making the investigation. If FmHA or its successor agency under Public Law 103–354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103–354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103–354 will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103–354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

F. *Maximum amount of interest loss payment.* Interest is not covered by the guarantee.

G. *Application of FmHA or its successor agency under Public Law 103–354 loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103–354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA or its successor agency under Public Law 103–354 449–30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103–354 in order to close out the files at the FmHA or its successor agency under Public Law 103–354 Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA or its successor agency under Public Law 103–354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103–354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed.

In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure*. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment*. Such loss will be paid by FmHA or its successor agency under Public Law 103–354 within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances will not be covered by the guarantee.

XIII. Additional Loans or Advances. The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103–354 even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery. After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103–354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103–354 and the Lender. FmHA or its successor agency under Public Law 103–354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases. Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guarantee portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery).

XVI. Other Requirements. This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103–354 regulations not inconsistent with this agreement.

XVII. Execution of Agreements. If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103–354 with respect to execution of such contract. FmHA or its successor agency under Public Law 103–354 in no way warrants that such a contract has been or will be executed.

XVIII. Notices. All notices and actions will be initiated through FmHA or its successor agency under Public Law 103–354 for— _____

_____

(State) with mailing address at the

Date of this instrument _____

_____

Dated this _____ day of _____, 19__.

Lender:

By _____

Title _____

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

By _____

Title _____

Attest: _____ (SEAL)

EXHIBIT B TO APPENDIX I—LOAN NOTE GUARANTEE; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)

Form FmHA or its successor agency under Public Law 103–354 1980–69 (11–88)

Borrower _____

Lender _____

Lender's Address _____

State _____

County _____

Date of Note _____

FmHA or its successor agency under Public Law 103–354 Loan Identification Number __

Lender's IRS ID Tax Number _____

Principal Amount of Loan $ _____

The guaranteed portion of the loan is $_____ which is _____ (_____ %) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $ _____ and is number _____ of _____.

Lender's Identifying Number _____

Face Amount _____

Percent of Total Face Amount _____

Amount Guaranteed _____

Maximum Loss Guaranteed Governed by 7 CFR Part 1980, Subpart E, Appendix I

Total $ _____ 100% $ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354 of the United States Department of Agriculture (herein called ''FmHA or its successor agency under Public Law 103–354''), pursuant to

the Disaster Assistance Act (P.L. 100–387, 7 USC) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including principal indebtedness as evidenced by said note(s) or by assumption agreement(s), or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) (Maximum $). No capitalized interest is guaranteed.

Definition of Holder. The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103–354 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,'' is used.

Definition of Lender. The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 CFR Part 1980. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. Loan Servicing. Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. Priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses aganinst the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103–354 any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make.

5. Payments. Lender will receive all payments of principal, or interest, on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances. Protective advances made by Lender will not be guaranteed.

7. Repurchase by Lender. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public

Law 103–354. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision.

8. FmHA or its successor agency under Public Law 103–354 Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103–354 will purchase from Holder the unpaid principal balance of the guaranteed portion less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103–354 from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103–354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103–354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103–354 has purchased, FmHA or its successor agency under Public Law 103–354 is equally entitled.

The FmHA or its successor agency under Public Law 103–354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 with the information necessary for FmHA or its successor agency under Public Law 103–354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment of FmHA or its successor agency under Public Law 103–354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103–354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations*. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed by any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and that FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing*. If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans.

a. The lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103–354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103–354 at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion*. The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates*. This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103–354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103–354.

13. *Settlement*. The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. *Notices*. All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103–354 _____ for _____ (State) with mailing address at the date of this instrument:

_____

United States of America
Farmers Home Administration or its successor agency under Public Law 103–354
By: _____
Title: _____
(Date) _____
Assumption Agreement by _____
dated _____, 19__
Assumption Agreement by _____
dated _____, 19__

EXHIBIT C TO APPENDIX I—ASSIGNMENT GUARANTEE AGREEMENT—DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)[1]

FmHA or its successor agency under Public Law 103–354 Loan Ident. No. _____

Form FmHA or its successor agency under Public Law 103–354 1980–70 (11–88)

_____
of _____
(Lender) has made a loan to _____
in the principal amount of $ _____
as evidenced by a note(s) dated _____
The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee) (Form FmHA or its successor agency under Public Law 103–354 1980–69) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced.

_____
of _____

(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof. _____

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is $ _____ . Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $ _____ of such loan now outstainding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA or its successor agency under Public Law 103–354 certify to the Holder that the Lender has paid and FmHA or its successor agency under Public Law 103–354 has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing*. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee*. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder*. The guaranteed protion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of

[1] Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.

the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 CFR Part 1980 now in effect and future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is inconstestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan attached to or relating to a note which provides for payment of interest on interest is void.

6. *Rights and Liabilities.* The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103–354 for any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103–354 1980–70 to effectuate the transfer.

Lender:
Address:
By _____
Title _____
Attest: _____
(SEAL)
Holder:
Address:
By _____
Title _____
Attest: _____
(SEAL)

United States of America
Farmers Home Administration or its successor agency under Public Law 103–354
Address: _____
By _____
Title _____

[54 FR 5, Jan. 3, 1989, as amended at 54 FR 14792, Apr. 13, 1989; 54 FR 26946, June 27, 1989]

APPENDIX J [RESERVED]

APPENDIX K—REGULATIONS FOR LOAN GUARANTEES FOR DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISES

A. In general

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or $2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term ''natural disaster(s)'' refers only to drought, freeze, storm, excessive moisture, earthquake, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103–354 1980–71, ''Lender's Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement.''

(2) Form FmHA or its successor agency under Public Law 103–354 1980–72, ''Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee.''

(3) Form FmHA or its successor agency under Public Law 103–354 1980–73, ''Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement.''

B. Loan purposes

Loan proceeds may be used for purposes described in §1980.411(a), except in lieu of the

debt refinancing requirements in §1980.411(a)(11), the following refinancing requirements apply to DARBE loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. DARBE loan proceeds may be used for hotels, motels, tourist, or recreation facilities which meet the eligibility requirements of DARBE guaranteed loans in addition to the eligible loan purposes as stated in FmHA or its successor agency under Public Law 103–354 Instruction 1980–E. In addition, DARBE loan proceeds may be used for business enterprises engaged in agricultural production (production agriculture) which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fibers or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm and domestic animals. Other eligible uses of loan proceeds under agricultural production include:

(1) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(2) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(3) Loans for livestock and poultry processing as identified under eligible purposes.

(4) The growing of mushrooms or hydroponics.

In addition, those business enterprises which qualify for assistance as agricultural production must be ineligible entities for FmHA or its successor agency under Public Law 103–354 farmer program loans because the entity exceeds the definition of a family-size farm as defined by FmHA or its successor agency under Public Law 103–354 Instruction 1941–A, §1941.4(d).

C. Ineligible loan purposes

FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.412 are ineligible purposes for DARBE guaranteed loans except for hotels, motels, tourist, recreation facilities and agricultural production (production agriculture) as defined in §1980.412(e), DARBE guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the DARBE guaranteed loan.

(2) Alleviating financial distress of entities engaged in agricultural production that are eligible for other FmHA or its successor agency under Public Law 103–354-type farm loan programs.

D. Transactions which will not be guaranteed

In addition to transactions listed in FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.413, except for §1980.413(a)(3), FmHA or its successor agency under Public Law 103–354 will not make DARBE guaranteed loans if the completed application is not received by FmHA or its successor agency under Public Law 103–354 on or before September 30, 1991, nor will FmHA or its successor agency under Public Law 103–354 make subsequent DARBE guarantee loans.

E. Borrower equity requirements

See FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to DARBE loans. Tangible balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to DARBE guaranteed loans.

F. Filing and processing preapplications and applications

See FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.451. All requirements of §1980.451 remain in effect. In addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted as a part of an application under §1980.451(i) evidence is required which demonstrates to FmHA or its successor agency under Public Law 103–354's satisfaction:

(1) The causal relationship between a 1988 or 1989 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at

the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a nautral disaster. It must be shown that business operations were damaged as a result of such natural disaster.

(3) Evidence of compliance with Sodbuster and Swampbuster requirements as referenced in paragraph K below.

G. *Loan guarantee limit.* The total principal amount of DARBE guaranteed loans to any one borrower cannot exceed $10,000,000. The maximum loss covered by Form FmHA or its successor agency under Public Law 103–354 1980–72, ''Loan Note Guarantee DARBE,'' issued on any one borrower can never exceed the percentage of guarantee multiplied by the unpaid principal and accrued interest on the loan as evidenced by the note(s) or by assumption agreement(s), and protective advances, or $2,500,000, whichever is the lesser amount.

H. *Percentage of guarantee.* The provisions of FmHA or its successor agency under Public Law 103–354 instruction 1980–E, §1980.420 will not apply to DARBE. For loans in excess of $2,000,000, the percentage of guarantee will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed $2,000,000. For loans of $2,000,000 or less the maximum percentage of guarantee will be 90 percent. For example, a loan of $10,000,000 would not exceed a 20 percent guarantee; a $5,000,000 loan would not exceed a 40 percent guarantee.

I. Lender's existing unguaranteed exposure

The provisions of §1980.452 ADMINISTRATIVE C. 1(d) do not apply.

J. No direct or insured loans

FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §§1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with insured or direct loans do not apply to DARBE loans. All DARBE loans are FmHA or its successor agency under Public Law 103–354 guaranteed loans. FmHA or its successor agency under Public Law 103–354 has no authority to make DARBE loans directly to borrowers.

K. Sodbuster and Swampbuster requirements

The provisions of FmHA or its successor agency under Public Law 103–354 Instruction 1940–G, exhibit M, will apply to loans made to rural business enterprises engaged in agricultural production.

EXHIBIT A TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103–354

Form FmHA or its successor agency under Public Law 103–354 1980–71
(Rev. 11–89)
FORM APPROVED
OMB NO. 0575–0029

LENDER'S AGREEMENT

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO A HOLDER OR LENDER IS $2,500,000.

Type of Loan.

_____

Applicable 7 CFR part 1980 subpart

_____

FmHA or its successor agency under Public Law 103–354 Loan Ident. No.

_____

(Lender) of

_____

has made a loan(s) to

_____

(Borrower)

_____

in the principal amount of $_____ as evidenced by

_____

note(s) (include Bond as appropriate) described as follows:

_____
_____
_____
_____
_____

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has entered into a ''Loan Note Guarantee—DARBE'' (Form FmHA or its successor agency under Public Law 103–354 1980–72) or has issued a ''Conditional Commitment for Guarantee'' (Form FmHA or its successor agency under Public Law 103–354 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Guarantee—DARBE will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

THE MAXIMUM LOSS PAYMENT UNDER A LOAN GUARANTEE UNDER THE DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE GUARANTEED LOAN PROGRAM IS LIMITED TO $2,500,000, OR THE PERCENTAGE OF GUARANTEE TIMES THE PRINCIPAL, ACCRUED INTEREST, AND APPROVED PROTECTIVE ADVANCES, WHICHEVER IS LESS.

II. FULL FAITH AND CREDIT.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee—DARBE or Assignment Guarantee Agreement—DARBE attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee—DARBE will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, D.C. 20503.

III. LENDER'S SALE OR ASSIGNMENT OF GUARANTEE LOAN—DARBE.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103–354 1980–73, ''Assignment Guarantee Agreement—DARBE.'' Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103–354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103–354 1980–72, ''Loan Note Guarantee—DARBE,'' attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103–354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103–354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103–354 1980–72, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA or its successor agency under Public Law 103–354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103–354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103–354 will issue the appropriate Loan Note Guarantees—DARBE to be attached to each of the notes then extant in exchange for the original loan Note Guarantee—DARBE which will be cancelled by FmHA or its successor agency under Public Law 103–354.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 5% for Disaster Assistance for Rural Business Enterprises loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a (Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—DARBE to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—DARBE, and this agreement, and the FmHA or its successor agency under Public Law 103–354 program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103–354 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee—DARBE.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103–354 has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. SERVICING.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103–354. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures;

that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103–354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the convenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103–354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103–354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103–354's written concurrence. For loans covered by 7 CFR part 1980, subpart H, the Holder may designate the payee when an Individual Certificate is issued.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103–354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA or its successor agency under Public Law 103–354; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103–354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103–354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103–354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103–354 regulations.

10. Providing FmHA or its successor agency under Public Law 103–354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103–354 1980–41, ''Guaranteed Loan Status Report.''

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103–354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M.

X. DEFAULT.

A. The Lender will notify FmHA or its successor agency under Public Law 103–354 when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103–354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103–354 1980–44, ''Guaranteed Loan Borrower Default Status.'' A meeting will be arranged by the Lender with

the Borrower and FmHA or its successor agency under Public Law 103–354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103–354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of title 7 CFR part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103–354's Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR part 1980, subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed $2,500,000 for principal, interest and approved protective advances.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103–354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand upon the Lender. Under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and accrued interest together with protective advances, whichever is less.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the originals of the Loan Note Guarantee—DARBE and note properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA or its successor agency under Public Law 103–354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its

successor agency under Public Law 103–354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee, nor does such purchase waive any of the FmHA or its successor agency under Public Law 103–354's rights against Lender, and FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights insuring to FmHA or its successor agency under Public Law 103–354 from the Holder against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee—DARBE. To the extent FmHA or its successor agency under Public Law 103–354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to the Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103–354 repurchases from a Holder, FmHA or its successor agency under Public Law 103–354 will pay the Holder only the amounts due the Holder, FmHA or its successor agency under Public Law 103–354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103–354 and no such fee is collectible from FmHA or its successor agency under Public Law 103–354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee—DARBE.

XI. LIQUIDATION.

If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103–354. When FmHA or its successor agency under Public Law 103–354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103–354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

If the Lender does not purchase the guaranteed portion of the loan FmHA or its successor agency under Public Law 103–354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103–354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103–354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103–354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103–354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103–354 with:

1. Such proof as FmHA or its successor agency under Public Law 103–354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice

as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal DARBE loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On DARBE loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103–354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103–354 and the Lender.

B. FmHA or its successor agency under Public Law 103–354's response to Lender's liquidation plan. FmHA or its successor agency under Public Law 103–354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency under Public Law 103–354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103–354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103–354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103–354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103–354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103–354 all rights and interest necessary to allow FmHA or its successor agency under Public Law 103–354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103–354.

2. FmHA or its successor agency under Public Law 103–354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103–354 include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA or its successor agency under Public Law 103–354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103–354 or the Lender, as the case may be.

D. Liquidation. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103–354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103–354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103–354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103–354 1980–43, ''Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103–354.'' When FmHA or its successor agency under Public Law 103–354 liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103–354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103–354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103–354. Payments will be made in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103–354 an estimate of loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103–354 will agree to pay an estimated loss settlement to the Lender provided the lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103–354 449–30, using the basic formula as provided on the report except that the appraisal

value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA or its successor agency under Public Law 103–354, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA or its successor agency under Public Law 103–354 regulations.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103–354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103–354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103–354 449–30 by the Lender to FmHA or its successor agency under Public Law 103–354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103–354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103–354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103–354 in making the investigation. If FmHA or its successor agency under Public Law 103–354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103–354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103–354 will send the original to the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103–354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee—DARBE.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA or its successor agency under Public Law 103–354 when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA or its successor agency under Public Law 103–354 to the Lender cannot exceed the limits set forth in the Loan Note Guarantee—DARBE. If FmHA or its successor agency under Public Law 103–354 conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA or its successor agency under Public Law 103–354 accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the Loan Note Guarantee—DARBE to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA or its successor agency under Public Law 103–354. The balance of allowable accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA or its successor agency under Public Law 103–354 loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103–354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. In all cases a final Form FmHA or its successor agency under Public Law 103–354 449–30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103–354 in order to close out the files at the FmHA or its successor agency under Public Law 103–354 Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral

unless the costs have been previously determined by the Lender (with FmHA or its successor agency under Public Law 103–354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103–354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA or its successor agency under Public Law 103–354 within 60 days after the review of the accounting of the collateral.

XII. PROTECTIVE ADVANCES.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA or its successor agency under Public Law 103–354 written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. ADDITIONAL LOANS OR ADVANCES.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103–354 even though such expenditures or loans will not be guaranteed.

XIV. FUTURE RECOVERY.

After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103–354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103–354 and the Lender. FmHA or its successor agency under Public Law 103–354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. TRANSFER AND ASSUMPTION CASES.

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30, line 13 and 14.

XVI. BANKRUPTCY.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments.

1. Estimated Loss Payments.

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA or its successor agency under Public Law 103–354, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA or its successor agency under Public Law 103–354 with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender

for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA or its successor agency under Public Law 103–354 1980–44, ''Guaranteed Loan Borrower Default Status,'' and forward this form to the Finance Office.

2. Interest Loss Payments.

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA or its successor agency under Public Law 103–354 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee—DARBE or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA or its successor agency under Public Law 103–354 servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA or its successor agency under Public Law 103–354 with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30.

XVII. OTHER REQUIREMENTS.

This agreement is subject to all the requirements of the applicable subpart of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103–354 regulations not inconsistent with this agreement.

XVIII. EXECUTION OF AGREEMENTS.

If this agreement is executed prior to the execution of the Loan Note Guarantee—DARBE, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103–354 with respect to the execution of such contract. FmHA or its successor agency under Public Law 103–354 in no way warrants that such a contract has been or will be executed.

XIX. NOTICES.

All notices and actions will be initiated through FmHA or its successor agency under Public Law 103–354 for

_____

(State) with mailing address at the date of this instrument

Dated this _____ day of _____, 19 ____.

LENDER:

Attest:

_____

(Seal)

By

_____

Title

_____

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

By

_____

Title

_____

EXHIBIT B TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103–354

Form FmHA or its successor agency under Public Law 103–354 1980–72

(Rev. 11–89)
Type of Loan: _____
Applicable 7 CFR part 1980
Subpart_____

LOAN NOTE GUARANTEE

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO A HOLDER OR LENDER IS $2,500,000

USDA-FmHA or its successor agency under Public Law 103–354

From FmHA or its successor agency under Public Law 103–354 1980–72
(Rev. 11–89)
Type of Loan:_____
Applicable 7 CFR Part 1980
Subpart_____

LOAN NOTE GUARANTEE

DISASTER ASSISTANCE FOR

RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

TO A HOLDER OR LENDER IS $2,500,000

_____
Borrower—
_____
Lender—
_____
Lender's Address
_____
State
_____
County
_____
Date of Note
_____
FmHA or its successor agency under Public Law 103–354 Loan Identification No.
_____
Principal Amount of Loan $
—Borrower _____

_____
Lender

—Lender's Address _____

—State _____

County _____

—Date of Note _____

—FmHA or its successor agency under Public Law 103–354 Loan Identification No. ____

—Lender's IRS ID Tax No. _____

—Principal Amount of Loan $ _____
The guaranteed portion of the loan is _____ which is _____ (_____%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of. _____.

Lender's identifying Number	Face amount	Percent of total face amount	Amount guaranteed
	$	%	$
Total	$_____ 100%	100	$_____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354 of the United States Department of Agriculture (herein called ''FmHA or its successor agency under Public Law 103–354''), pursuant to the Disaster Assistance Act of 1989 does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Holders:

1. Any loss sustained by the Holder on the guaranteed portion and interest due on such portion up to a maximum aggregate amount of $2,500,000. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate losses exceed $2,500,000, each Holder's loss will be prorated by the percentage of the guaranteed portion of the loan the holder owns.

B. The Lender the lesser of 1, or 2 below:

1. Any loss sustained by the Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA or its successor agency under Public Law 103–354's authorization, including but not limited to advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, but only to the extent that inclusion of such protective advances would not cause

the total aggregate loss to exceed $2,500,000, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due thereon.

But only up to a maximum aggregate amount of $2,500,000. On loans with single or multiple holders and a Lender who owns part of the guaranteed portion, if the aggregate losses exceed $2,500,000, the Lender's loss will be prorated by the percentage of the guaranteed portion of the loan the Lender owns.

If FmHA or its successor agency under Public Law 103–354 conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA or its successor agency under Public Law 103–354 accepts responsibility for liquidation will not be covered by this Loan Note Guarantee—DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee—DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA or its successor agency under Public Law 103–354.

DEFINITION OF HOLDER.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103–354 1980–73, ''Assignment Guarantee Agreement—DARBE,'' is used. Loan evidenced by a single note may be assigned only by using Form FmHA or its successor agency under Public Law 103–354 1980–73.

DEFINITION OF LENDER.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart 7 CFR part 1980. The Lender is also the party requesting a loan guarantee.

1. LOAN SERVICING.

Lender will be responsible for servicing the entire loan, and the Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. PRIORITIES.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. FULL FAITH AND CREDIT.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. RIGHTS AND LIABILITIES.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee—DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103–354 any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make.

5. PAYMENTS.

Lender will receive all payments of principal, or interest, and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. PROTECTIVE ADVANCES.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the extent provided in this Loan Note Guarantee—DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. REPURCHASE BY LENDER.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision. As per the terms of this guarantee the maximum loss payment will not exceed $2,500,000 for principal, interest, and approved protective advances.

8. FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 PURCHASE.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103–354 will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103–354 from Holder. The Loan Note Guarantee-DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or $2,500,000, whichever is less. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of demand. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds $2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holder owns.

The FmHA or its successor agency under Public Law 103–354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 with the information necessary for FmHA or its successor agency under Public Law 103–354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103–354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103–354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. LENDER'S OBLIGATIONS.

Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and that FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee—DARBE.

10. REPURCHASE BY LENDER FOR SERVICING.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA or its successor agency under Public Law 103–354 to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103–354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103–354 at its option may purchase such guaranteed portions for servicing purposes.

11. CUSTODY OF UNGUARANTEED PORTION.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. WHEN GUARANTEE TERMINATES.

This Loan Note Guarantee—DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103–354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103–354.

13. SETTLEMENT.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. NOTICES.

All notice and actions will be initiated through the FmHA or its successor agency under Public Law 103–354 _____ for _____ (State) with mailing address at the date of this instrument:

_____

_____

United States of America
Farmers Home Administration or its successor agency under Public Law 103–354
By:

_____

Title:

_____

(Date)

_____

Assumption Agreement by

_____

dated_____,19____,
Assumption Agreement by

_____

dated_____,19____.

EXHIBIT C TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103–354

Form FmHA or its successor agency under Public Law 103–354 1980–73
(Rev. 11–89)
FORM APPROVED
OMB NO. 0575–0029

ASSIGNMENT GUARANTEE AGREEMENT

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOAN

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO A HOLDER OR LENDER IS $2,500,000

Type of Loan:

_____

Applicable 7 CFR Part 1980 Subpart

_____

FmHA or its successor agency under Public Law 103–354 Loan Identification Number

_____

_____ of _____

(Lender) has made a loan to

_____

in the principal amount of $ _____ as evidenced by a note(s) dated _____. The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) entered into a Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans (Form FmHA or its successor agency under Public Law 103–354 1980–72) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. Under the Disaster Assistance and Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and interest, whichever is less.

_____ of _____

(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises are attached hereto as a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $ _____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA or its successor agency under Public Law 103–354 certify to the Holder that the Lender has paid and FmHA or its successor agency under Public Law 103–354 has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

2. LOAN SERVICING. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. SERVICING FEE. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. PURCHASE BY HOLDER. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises and the program regulations found in the applicable subpart of 7 CFR part 1980 now in effect and future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the provisions hereof.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.

5. FULL FAITH AND CREDIT. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender or any Holder has actual knowledge at the time of this assignment, or which the Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to

act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

6. RIGHTS AND LIABILITIES. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee—DARBE by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103–354 for any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103–354 1980–73 to effectuate the transfer.

7. REPURCHASE BY THE LENDER (DEFAULTS). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed $2,500,000 for principal, interest and approved protective advances.

8. PURCHASE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354. If Lender does not repurchase as provided by paragraph 7, FmHA or its successor agency under Public Law 103–354 will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less Lender's servicing fee, within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or $2,500,000, whichever is less. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of demand.

On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds $2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holders owns.

The FmHA or its successor agency under Public Law 103–354 will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA

or its successor agency under Public Law 103–354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. LENDER'S OBLIGATIONS. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and that FmHA or its successor agency under Public Law 103–354 shall have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee—DARBE.

10. REPURCHASE BY LENDER FOR SERVICING. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA or its successor agency under Public Law 103–354 to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103–354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103–354 at its option may purchase such guaranteed portions for servicing purposes.

11. FORECLOSURE. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. REASSIGNMENT. Holder upon written notice to Lender and FmHA or its successor agency under Public Law 103–354 may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. NOTICES. All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103–354 _____ for _____ (state) with mailing address at the date of this assignment:

_____

Dated this _____ day of _____, 19____.

Lender:

_____

Address:

_____

Attest: _____(Seal)

By

_____

Title

_____

Holder:

_____

Address:

_____

Attest: _____(Seal)

By

_____

Title

_____

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

Address:

_____

_____

By

_____

Title

_____

[54 FR 42483, Oct. 17, 1989, as amended at 55 FR 137, Jan. 3, 1990; 55 FR 19245, May 8, 1990]

EXHIBITS TO SUBPART E

EXHIBIT G

NOTE. —The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA or its successor agency under Public Law 103–354 office.

[54 FR 1599, Jan. 13, 1989]

Subparts F–H [Reserved]

Subpart I—Community Programs Guaranteed Loans

SOURCE: 55 FR 11139, Mar. 27, 1990, unless otherwise noted.

§ 1980.801 Introduction.

(a) This subpart, supplemented by subpart A of this part, contains the regulations for Community Programs (CP) loans guaranteed by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354), and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee.

(b) The purpose of the CP Guaranteed Loan Programs is to improve, develop, or finance water or waste disposal facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to ''bail out'' lenders having such loans.

(c) The CP loan program is administered by the Administrator through a State Director serving each State. The District Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other FmHA or its successor agency under Public Law 103–354 employees.

[55 FR 11139, Mar. 27, 1990, as amended at 58 FR 229, Jan. 5, 1993; 64 FR 28336, May 26, 1999]

§ 1980.802 Definitions.

The following general definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of subpart A of this part.

Borrower. A borrower may be a cooperative, corporation, or other legal entity organized and operated on a nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized Indian tribal group; a municipality, county, or other political subdivision of a State. Groups organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or a supplemental agreement provision as may be required as a condition of loan approval.

Collateral. Security pledged for the guaranteed loan.

Lender. The person or organization making and servicing the loan which is guaranteed under the provisions of this subpart. The lender is also referred to in this subpart as the applicant, who is requesting a guarantee during the preapplication and application stage of processing.

Lender's exposure. The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Protective advances. Protective advances will not be made in lieu of additional loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations to protect or preserve collateral. Ordinarily, protective advances are made when liquidation is contemplated or in process. A protective advance must be an indebtedness of the borrower.

Public body. A municipality, county or other political subdivision of a

state, an Indian Tribe on a Federal or State reservation, or another Federally recognized Indian Tribe.

Service area. The service area is that area reasonably expected to be served by the facility being financed by the guaranteed loan.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[55 FR 11139, Mar. 27, 1990, as amended at 64 FR 28336, May 26, 1999]

§§ 1980.803–1980.804 [Reserved]

§ 1980.805 Rural area determinations.

Facilities financed through FmHA or its successor agency under Public Law 103–354 guarantee must primarily serve rural residents. For water or waste disposal facilities, the terms ''rural'' and ''rural area'' will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

[55 FR 11139, Mar. 27, 1990, as amended at 64 FR 28336, May 26, 1999]

§ 1980.806 Availability of credit from other sources.

To be eligible for a guaranteed loan under this subpart, the borrower must be unable to obtain the required credit without the CP loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and period of time. The borrower must certify in writing and FmHA or its successor agency under Public Law 103–354 shall determine the credit is not available from other sources at reasonable rates and terms without the CP loan guarantee. The lender also must certify that it would not make the loan without the guarantee. These certifications shall become a part of the FmHA or its successor agency under Public Law 103–354 case file.

[56 FR 29170, June 26, 1991]

§§ 1980.807–1980.810 [Reserved]

§ 1980.811 Legal authority and responsibility.

Each borrower must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The borrower shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice to provide such service in the state. Management agreements should provide for at least those items listed in Guide 24 of FmHA or its successor agency under Public Law 103–354 Instruction 1942–A (available in any FmHA or its successor agency under Public Law 103–354 office.) Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

§ 1980.812 Priorities.

Section 1942.17(c) of subpart A of part 1942 of this chapter shall apply to loans to be guaranteed under this subpart.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29170, June 26, 1991]

§ 1980.813 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve water or waste disposal providing service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities.

(1) Water or waste disposal facilities include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(2) Otherwise improve includes but is not limited to the following:

(i) The purchase of major equipment, such as solid waste collection trucks, which will in themselves provide an essential service to rural residents;

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service; and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

(b) Funds also may be used:

(1) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (a), (b)(1), and (b)(2) of this section.

(i) Reasonable fees and costs such as origination fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the FmHA or its successor agency under Public Law 103–354 National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the FmHA or its successor agency under Public Law 103–354 National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof;

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(2) To pay obligations for construction incurred before issuance of the conditional commitment. Construction work should not be started and obligations for such work or materials should not be incurred before the conditional commitment is issued. However, if there are compelling reasons for proceeding with construction before the conditional commitment is issued, applicants may request FmHA or its successor agency under Public Law 103–354 approval to pay such obligations. Such requests may be approved if FmHA or its successor agency under Public Law 103–354 determines that:

(i) Compelling reasons exist for incurring obligations before issuance of conditional commitment; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by the lender; and

(iv) All environmental requirements applicable to the applicant and the borrower have been met; and

(v) The borrower has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanics, material, or other liens that may attach to the security property. FmHA or its successor agency under Public Law 103–354 may authorize payment of such obligations at the time of loan closing. FmHA or its successor agency under Public Law 103–354's authorization to pay such obligations is on the condition that it is not committed to make the loan guarantee. FmHA or its successor agency under Public Law 103–354 assumes no responsibility for any obligations incurred by the borrower; and the borrower must subsequently meet all loan guarantee approval requirements. The lender's request and FmHA or its successor agency under Public Law 103–354 authorization for paying such obligations shall be in writing. If construction is started without FmHA or its successor agency under Public Law 103–354 approval, post

approval in accordance with this section may be considered.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29170, June 26, 1991; 57 FR 21199, May 19, 1992; 64 FR 28336, May 26, 1999]

§ 1980.814 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) On-site utility systems or business and industrial buildings in connection with industrial parks.

(b) Facilities to be used primarily for recreation purposes.

(c) Community antenna television services or facilities.

(d) Facilities which are not modest in size, design, and cost.

(e) Finder's and packager's fees.

(f) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348 (available in any FmHA or its successor agency under Public Law 103–354 office).

(g) New combined sanitary and storm water sewer facilities.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29170, June 26, 1991; 64 FR 28336, May 26, 1999]

§ 1980.815 Transactions which will not be guaranteed.

(a) Loans made by any Federal or State agencies. This does not preclude guaranteeing loans made by the Bank for Cooperatives or Federal Land Bank.

(b) Loans involved in tax-exempt obligations according to § 1980.23 of subpart A of this part.

(c) Loans for a water or waste disposal facility involving an FmHA or its successor agency under Public Law 103–354 grant.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§ 1980.816 Facilities for public use.

The parameters for ''facilities for public use,'' as defined at § 1942.17(e) of Subpart A of Part 1942 of this chapter, are applicable as well for this subpart. In addition:

(a) The term ''Applicant/Borrower,'' as used in § 1942.17(e), shall mean the lender and the borrower for purposes of this subpart.

(b) The term ''FmHA or its successor agency under Public Law 103–354 Fundings,'' as used in § 1942.17(e), shall mean FmHA or its successor agency under Public Law 103–354 guarantee for purposes of this subpart.

§ 1980.817 Fees and charges by lender.

(a) Allowable fees and charges by the lender are shown under § 1980.22 of Subpart A of this part.

(b) Guarantee fees are as shown under § 1980.21 of Subpart A of this Part.

§ 1980.818 Eligible lenders.

(a) Eligible lenders as defined in this section may participate in the FmHA or its successor agency under Public Law 103–354 CP loan guarantee program. These lenders must be subject to credit examination and supervision by either an agency of the United States or a state. Only those lenders listed in this section are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making loan servicing, and other requirements of the state in which the collateral will be located, and the loan making and/or loan servicing office requirements of § 1980.13 of Subpart A of this Part. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders include:

(1) Any Federal or State chartered:

(i) Bank, or

(ii) Savings and loan association.

(2) Any mortgage company that is a part of a bank holding company,

(3) Farm Credit Bank of the Federal Land Bank Association or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart.

(4) An insurance company regulated by a State or National insurance regulatory agency, and

(5) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development type projects. These lenders must also be subject to credit examination and supervision by either an agency of the United States or a state, and other

requirements as set forth in paragraph (a) of this section. These types of lenders must be approved by the FmHA or its successor agency under Public Law 103–354 Administrator prior to the issuance of the loan guarantee.

(b) With written concurrence of FmHA or its successor agency under Public Law 103–354, another eligible lender may be substituted for a lender who holds an outstanding Form FmHA or its successor agency under Public Law 103–354 449–14, ''Conditional Commitment for Guarantee,'' provided the borrower, loan purposes, scope of the project, and loan terms remain unchanged. After issuance of the Loan Note Guarantee and with prior written approval of the FmHA or its successor agency under Public Law 103–354 Administrator, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the FmHA or its successor agency under Public Law 103–354 Administrator only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the FmHA or its successor agency under Public Law 103–354 Administrator, the State Director will submit to the Finance Office Form FmHA or its successor agency under Public Law 103–354 1980–42, ''Notice of Substitution of Lender.''

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§ 1980.819 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and FmHA or its successor agency under Public Law 103–354.

(a) Normally, guarantees will not exceed 80 percent unless extraordinary circumstances exist. The State Director will document these circumstances in the case file. National Office concurrence is required when the requested guarantee exceeds 80 percent. The maximum allowable guarantee will be 90 percent.

(b) Lenders and borrowers will propose the percentage of guarantee. FmHA or its successor agency under Public Law 103–354 informs lenders and borrowers in writing on Form FmHA or its successor agency under Public Law 103–354 449–14, of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA or its successor agency under Public Law 103–354 determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) Borrower's management.

(2) Collateral.

(3) Financial condition.

(4) Lender's exposure (retain a minimum of 5% of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another.)

(5) Current trends and economic conditions.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§§ 1980.820–1980.822 [Reserved]

§ 1980.823 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103–354 review and approval. FmHA or its successor agency under Public Law 103–354 will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required state or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The interest rate will not

be raised more than one percent per year. The intervals between interest rate adjustments will be specified in the loan agreement but not more often than annually. During the life of the loan, the interest rate will not be increased more than 5 percentage points over the interest rate at loan closing. The lender must incorporate within the variable rate promissory note or bond at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(c) Any change in the interest rate between the date of issuance of the Form FmHA or its successor agency under Public Law 103–354 449–14 and before the issuance of the Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–34) must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA or its successor agency under Public Law 103–354 449–14.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar purpose for borrowers under similar circumstances.

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used, the lender will provide FmHA or its successor agency under Public Law 103–354 with the overall effective interest rate for the entire loan. Multi-rate loans must be either fixed or variable, but not both.

(f) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate on their CP guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA or its successor agency under Public Law 103–354 must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA or its successor agency under Public Law 103–354, then FmHA or its successor agency under Public Law 103–354 is a holder, and must affirm or reject interest rate change proposals. When FmHA or its successor agency under Public Law 103–354 is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA or its successor agency under Public Law 103–354 that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money; whether continuing with the loan would realistically promote or enhance rural development, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable; or allowing the borrower to continue at a reduced interest rate; and whether an in-depth financial analysis by the lender reasonably indicates that the project would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA or its successor agency under Public Law 103–354 file will reflect the documentation of the interest rate change decision.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement, when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate, can never exceed the amount which would have been eligible for claim, had the variable rate remained in force. The lesser cost to the Government will always

prevail. The lender must maintain records e which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest changes by a rider attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(g) No increases in interest rates will be permitted under the CP loan guarantee except the normal fluctuations in approved variable interest rate loans.

(h) FmHA or its successor agency under Public Law 103–354 will notify the Finance Office of any interest rate reduction by using Form FmHA or its successor agency under Public Law 103–354 1980–47, ''Guaranteed Loan Borrower Adjustments.'' The District Director will make corrections to the Rural Community Facility Tracking System (RCFTS) reflecting the interest rate change. The FmHA or its successor agency under Public Law 103–354 loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the District Director to reflect any change in the interest rate.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§ 1980.824 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the debt instrument except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the debt instrument rate on the guaranteed loan(s) will not be guaranteed by FmHA or its successor agency under Public Law 103–354. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within two years from the date of the debt instrument and at least annually thereafter. Interest will be due at least annually from the date of the debt instrument. Ordinarily, monthly payments will be expected, except for borrowers with income limited to less frequent intervals.

(b) The maximum time allowable for final maturity for an FmHA or its successor agency under Public Law 103–354 guaranteed CP loan will be limited to the useful life of the facility, not to exceed forty (40) years.

(c) FmHA or its successor agency under Public Law 103–354 will not guarantee any loan in which the bond, promissory note or any other document provides for the payment of interest upon interest.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§§ 1980.825–1980.831 [Reserved]

§ 1980.832 Environmental requirements.

The environmental requirements for this subpart are set out at § 1980.40 of subpart A of this part and subpart G of part 1940 of this chapter.

§ 1980.833 Flood or mudslide hazard area precautions.

The flood or mudslide hazard area precuations required for this subpart are set out at § 1980.42 of subpart A of this part.

§ 1980.834 Equal opportunity and nondiscrimination requirements.

The equal opportunity and nondiscrimination requirements for this subpart are set out at § 1980.41 of subpart A of this part.

§§ 1980.835–1980.841 [Reserved]

§ 1980.842 Economic feasibility requirements.

The economic feasibility requirements for this subpart are set out at § 1942.17(h) of subpart A and/or at § 1942.116 of subpart C of part 1942 of this chapter.

[56 FR 29171, June 26, 1991]

§ 1980.843 Security.

(a) The lender is responsible for seeing that proper and adequate security

is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA or its successor agency under Public Law 103–354.

(b) Security must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and the applicant's prospective earnings. The security may include but is not limited to the following: General Obligation Bonds, pledge of taxes or assessments, facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, and cash or other accounts. Security may also include assignments of leases or leasehold interest.

(c) All security must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§ 1980.844 Appraisal reports.

The borrower is responsible for the acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair.

[64 FR 28336, May 26, 1999]

§§ 1980.845–1980.850 [Reserved]

§ 1980.851 Processing applications.

(a) *Preapplications.* (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide Standard Form (SF) 424.1 or 424.2, ''Application for Federal Assistance.'' The County Supervisor will assist borrowers as needed in completing SF–424 and in filing written notice of intent and request for priority recommendations with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1940.453(c) of subpart J of part 1940 of this chapter). The County Supervisor will inform the borrower that if credit for the project is available from commercial sources without the guarantee at reasonable rates and terms, the borrower is not eligible for a loan guaranteed by FmHA or its successor agency under Public Law 103–354. Preapplications filed in the County Office will be forwarded immediately to the District Office. The applicant/borrower will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the borrower in completing the preapplication requirements. The District Director will meet with the borrower/applicant, whenever appropriate, to discuss FmHA or its successor agency under Public Law 103–354 preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward the preapplication package to the State Director. The preapplication package will contain:

(i) Eligibility determination and recommendations.

(ii) One copy of SF–424.

(iii) State intergovernmental review comments and recommendations for the borrower's project (clearinghouse comments.)

(iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination, such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise borrowers/applicants on what documents are necessary. Borrowers should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(vi) Information on applicant.

(2) The State Director will review each SF–424 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available without a guarantee. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant.

(3) If preapplication information indicates the project is ineligible, does not have sufficient priority, or that funds or guarantee authority are not available for the project, FmHA or its successor agency under Public Law 103–354 will so inform the applicant. The applicant will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible, and loan guarantee authority is available, FmHA or its successor agency under Public Law 103–354 will inform the applicant and borrower in writing and request that they complete the application. The applicant must be informed that an environmental review has not been conducted and no major commitment should be made that could affect the consideration of alternatives.

(b) *Applications*—(1) *Application conference*. When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant and borrower to provide copies of appropriate appendices and forms, and furnish guidance necessary for orderly application processing. The District Director will confirm decisions made at this conference by letter to the applicant and borrower. As the application is being processed, and the need develops for additional conference, the District Director will arrange with the applicant for such conferences.

(2) *Content of application package*. (i) Form FmHA or its successor agency under Public Law 103–354 1980–10, ''Application for Loan and Guarantee.''

(ii) Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.''

(iii) Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

(iv) Preliminary architectural or engineering report as appropriate, in accordance with Guides 6, 7, and 8 of subpart A of part 1942 (available in any FmHA or its successor agency under Public Law 103–354 office).

(v) Cost estimates.

(vi) Appraisal reports (as appropriate).

(vii) Credit reports obtained by the lender or FmHA or its successor agency under Public Law 103–354 on the borrower.

(viii) Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement.''

(ix) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agencies having jurisdiction over the project.

(x) Financial feasibility study, when required.

(xi) Proposed loan agreement.

(xii) Complete environmental review.

(xiii) Any additional information as may be required.

(3) *Review of decision*. If at any time prior to issuance of the conditional commitment, it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103–354 may be requested by the applicant under subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action. ''The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal

Trade Commission, Equal Credit Opportunity, Washington, DC 20580.''

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§ 1980.852 FmHA or its successor agency under Public Law 103–354 evaluation of application.

(a) FmHA or its successor agency under Public Law 103–354 will complete Form FmHA or its successor agency under Public Law 103–354 1942–45, ''Project Summary—Water and Waste Disposal and other Utility-type Projects,'' or Form FmHA or its successor agency under Public Law 103–354 1942–43, ''Project Summary Community Facilities (Other Than Utility-type Projects),'' as appropriate. The application will be evaluated and a determination made as to whether the borrower is eligible, the proposed loan is for an eligible purpose, and there is reasonable assurance of repayment ability, sufficient collateral and equity, the proposed loan complies with all applicable statutes and regulations, and adequate funds are available. The FmHA or its successor agency under Public Law 103–354 Architect/Engineer will review the Preliminary Architect/Engineer reports and provide technical analysis and recommendations on the appropriate Project Summary. If FmHA or its successor agency under Public Law 103–354 determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA or its successor agency under Public Law 103–354 conditionally commits to guaranteeing the loan after the receipt of a completed application in accordance with § 1980.47 of subpart A of this part, it will provide the lender and the borrower with Form FmHA or its successor agency under Public Law 103–354 449–14, listing all conditions for such guarantees. FmHA or its successor agency under Public Law 103–354 will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA or its successor agency under Public Law 103–354 1980–10.

(b) Within 30 days after the Form FmHA or its successor agency under Public Law 103–354 449–14 has been accepted, the State Director will send to the National Office, Attention: Community Facilities Division or Water and Waste Disposal Division, as appropriate, the following documents:

(1) A copy of Form FmHA or its successor agency under Public Law 103–354 1942–43 or FmHA or its successor agency under Public Law 103–354 1942–45.

(2) A copy of Form FmHA or its successor agency under Public Law 103–354 449–14 (with attachments) as accepted by the lender and borrower.

(3) A copy of the proposed loan agreement between the lender and the borrower.

(4) A copy of Form FmHA or its successor agency under Public Law 103–354 1980–10.

The cover memorandum should indicate whether the Form FmHA or its successor agency under Public Law 103–354 449–34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 1980.60(a) of subpart A of this part, and, if not, a proposed date for issuance of the Form FmHA or its successor agency under Public Law 103–354 449–34.

[56 FR 29172, June 26, 1991]

§ 1980.853 Loan approval and obligating funds.

The State Director will prepare an original and two copies of Form FmHA or its successor agency under Public Law 103–354 1940–3, ''Request for Obligation of Funds—Guaranteed Loans'' for each loan to be obligated. Also, for each initial loan, Form FmHA or its successor agency under Public Law 103–354 1980–50, ''Add, Delete, or Change Guaranteed Loan Borrower Information,'' will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA or its successor agency under Public Law 103–354 1940–3 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Forms FmHA or its successor agency under Public Law 103–354 1940–3 and 449–14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-

day reservation period and directs the State Director to forward Form FmHA or its successor agency under Public Law 103–354 1940–3 to the lender in advance of issuance of Form FmHA or its successor agency under Public Law 103–354 449–14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA or its successor agency under Public Law 103–354 1940–3 and retain the original of the form and the remaining conformed copy of Form FmHA or its successor agency under Public Law 103–354 1940–3. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form FmHA or its successor agency under Public Law 103–354 1980–50 will be prepared and distributed for initial loans only.

(a) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA or its successor agency under Public Law 103–354 1940–3 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

(b) The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 41 of Form FmHA or its successor agency under Public Law 103–354 1940–3.

(c) The Finance Office will terminally process telephone reservation requests. Those requests for reservations received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

(d) Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information Staff in the National Office as required by FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office).

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 8271, Feb. 28, 1991; 56 FR 29172, June 26, 1991]

§ 1980.854 Projects requiring National Office review.

(a) The following will be submitted to the National Office when the loan guarantee is not within the State Director's approval authority.

(1) Transmittal memorandum including:

(i) Recommendation.

(ii) Date of expected obligation.

(iii) Any unusual circumstances.

(2) Preapplication package.

(3) Application package.

(4) Project Summary (Form FmHA or its successor agency under Public Law 103–354 1942–45 or 1942–43).

(b) For applications to be reviewed in the field, at least those items in paragraphs (a)(2) through (4) of this section, should be available.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29172, June 26, 1991]

§ 1980.855 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA or its successor agency under Public Law 103–354 449–14, the lender and borrower should complete and sign the ''Acceptance of Conditions,'' and return a copy to the FmHA or its successor agency under Public Law 103–354 District Director. If certain conditions cannot be met, the lender and borrower

may propose alternate conditions to FmHA or its successor agency under Public Law 103–354.

(b) If the lender indicates in the ''Acceptance of Conditions'' that it desires to obtain a Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–34), and subsequently decides at any time after receiving a conditional commitment that it no longer wants a guarantee, the lender will immediately advise the FmHA or its successor agency under Public Law 103–354 District Director.

§ 1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–34).

In addition to compliance with the requirements of § 1980.60 of subpart A of this part, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee:

(a) *Transfer of lenders.* With prior written concurrence of the FmHA or its successor agency under Public Law 103–354 Administrator, the FmHA or its successor agency under Public Law 103–354 approval official may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued) provided, there are no changes in the borrower's ownership or control, loan purposes, scope of project, and loan conditions in the Form FmHA or its successor agency under Public Law 103–354 449–14, and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA or its successor agency under Public Law 103–354 with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part ''B'' of Form FmHA or its successor agency under Public Law 103–354 1980–10. If approved by FmHA or its successor agency under Public Law 103–354, the Administrator will issue a letter of amendment to the original Form FmHA or its successor agency under Public Law 103–354 449–14 reflecting the new lender who will acknowledge acceptance of the letter or amendment in writing. If the Loan Note Guarantee has been issued, the provisions of § 1980.818(b) regarding substitution of lender must be followed.

(b) *Substitution of borrowers.* FmHA or its successor agency under Public Law 103–354 will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA or its successor agency under Public Law 103–354 449–14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in Form FmHA or its successor agency under Public Law 103–354 1980–10. All requests for exceptions must be approved by the FmHA or its successor agency under Public Law 103–354 National Office.

(c) *Changes in terms and conditions in Form FmHA or its successor agency under Public Law 103–354 449–14.* Once Form FmHA or its successor agency under Public Law 103–354 449–14 is issued and accepted by the lender and borrower, the Commitment shall not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart.

(d) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA or its successor agency under Public Law 103–354 and provide those documents and certifications required in §§ 1980.60 and 1980.61 of subpart A of this part. For any loans involving bonds, the opinion of the recognized bond counsel will be reviewed to determine the adequacy of the bonds issued or to be issued. Only when the District Director is satisfied that all conditions for the guarantee have been met, will the Loan Note Guarantee be executed.

(e) *Title for land, rights-of-way, or easements.* Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility. Ordinarily, an opinion of counsel relative to rights-of-way similar to Form FmHA or its successor agency under Public Law 103–354 442–22, ''Opinion of Counsel Relative to Right-of-Way,'' is sufficient documentation for rights-of-way.

(2) A title report by the borrower's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to obtain and record such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities, such as a reservoir or pumping station, and the lender is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title report should be requested.

(f) *Loan closing*. When loan closing plans are established, the lender will notify FmHA or its successor agency under Public Law 103–354.

(g) *Review by OGC*. After the conditional commitment for guarantee has been issued and proposed closing documents prepared by the lender and forwarded to FmHA or its successor agency under Public Law 103–354 with the lender's legal counsel's opinion but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. Copies of the following documents should be submitted for OGC review:

(1) Letter from FmHA or its successor agency under Public Law 103–354 National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA or its successor agency under Public Law 103–354 449–14, including any amendments;

(3) Loan agreement;

(4) Promissory notes and/or bond transcript;

(5) Security documents—real estate mortgage, security agreement, financing statements, and leases (if applicable);

(6) Proposed Forms FmHA or its successor agency under Public Law 103–354 449–34, 449–35, ''Lender's Agreement,'' and 449–36 ''Assignment Guarantee Agreement,'' if any;

(7) Proposed lender's certification (§ 1980.60 of Subpart A of this part); and

(8) Opinion of lender's counsel in form prescribed by OGC.

(h) *OGC advice*. The Regional Attorney will review the docket for legal sufficiency and furnish advice to FmHA or its successor agency under Public Law 103–354. Such advice is for the benefit of FmHA or its successor agency under Public Law 103–354 only and does not relieve the lender of its responsibilities under FmHA or its successor agency under Public Law 103–354 regulations. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29172, June 26, 1991]

§ 1980.857 Issuance of lender's agreement, loan note guarantee, contract of guarantee, and assignment guarantee agreement.

Compliance with § 1980.61 of subpart A of this part is required for this subpart.

§§ 1980.858–1980.868 [Reserved]

§ 1980.869 Design and construction.

Specifications for design and construction provided at § 1942.18(d), (j)(1) and (2), and (n)(1), (2), (4), (5), (6), and (11) of subpart A of part 1942 of this chapter also apply to this subpart. The

lender will provide FmHA or its successor agency under Public Law 103–354 with a written certification at the end of construction that all funds were utilized for authorized purposes. The lender will also certify that the FmHA or its successor agency under Public Law 103–354 design policies have been met. The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are used for eligible project costs and that problems in project development are expeditiously reported to the District Director.

§ 1980.870 Loan servicing.

The lender will be responsible for servicing the entire loan in accordance with the lender's loan agreement. The lender will notify FmHA or its successor agency under Public Law 103–354 of any violations of the lender's loan agreement.

(a) The lender will require, at a minimum, annual audited financial statements which will be reviewed by the lender and a copy forwarded to the FmHA or its successor agency under Public Law 103–354 District Office with a summary evaluation by the lender. After receipt of the evaluation, the District Director will determine if a joint FmHA or its successor agency under Public Law 103–354 lender and borrower site visit will be necessary. Site visits will be conducted at least once every three years but may be scheduled more frequently if conditions warrant. Delinquent borrowers will be visited at least annually. The State Director may waive the audit requirement for financial statements for borrowers with gross annual income of less than $100,000.

(b) The District Director or his/her designated representative will meet annually with each lender or his/her agent with whom a CP loan guarantee is outstanding. At this meeting, a review will be made of the lender's performance in loan servicing and a determination of any future actions needed. This meeting will be documented in the running record for each borrower serviced by the lender and followed by a letter to the lender. The letter shall be placed in each borrower's case file.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29173, June 26, 1991]

§ 1980.871 Loan classification.

All CP guaranteed loans will be classified by FmHA or its successor agency under Public Law 103–354 at loan closing and again whenever there is a change in the loan which would impact on the original classification. The loans will be classified as set out at § 1904.104 of subpart C of part 1904 of this chapter.

[56 FR 29173, June 26, 1991]

§ 1980.872 Defaults by borrower.

(a) In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the District Director or designated representative and borrower to resolve the problem. A memorandum of the meeting listing the individuals in attendance and summarizing the problem and proposed solution will be prepared by the FmHA or its successor agency under Public Law 103–354 representative and retained in the loan file. When the District Director receives a notice of default on a loan, he/she will immediately notify the State Office in writing of the details. The District Director will notify the lender and borrower of any decision reached by FmHA or its successor agency under Public Law 103–354.

(b) In considering servicing options, some of which are identified in paragraph X. A of Form FmHA or its successor agency under Public Law 103–354 449–35, the prospects for providing a permanent cure without adversely affecting the risks to FmHA or its successor agency under Public Law 103–354 and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments or collateral subordination, must strengthen the loan and be in the best interest of the lender and FmHA or its successor agency under Public Law 103–354. Some of these actions may require concurrence of the holder(s).

(c) If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing action. In these situations when FmHA or its successor agency under Public Law 103–354 is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of the Office of the General Counsel (OGC), provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will FmHA or its successor agency under Public Law 103–354 endorse the original Form FmHA or its successor agency under Public Law 103–354 449–34 to the lender.

(d) When the State Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility.

(e) The State Director will report all deliquent and problem loans quarterly to the appropriate National Office program division by the 20th day of January, April, July, and October.

(f) The District Director will notify the Finance Office on Form FmHA or its successor agency under Public Law 103–354 1980–47 of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

§ 1980.873 Liquidation.

Liquidation will be conducted in accordance with the lender's loan agreement and § 1980.64 of subpart A of this part.

(a) State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with subpart A of part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liquidation plan prepared by the lender in accordance with the requirements of the lender's agreement.

(b) Collateral acquired by the lender can only be released after a complete review of the proposal.

(1) There may be instances when the lender acquires the collateral of a borrower where the cost of liquidation exceeds the potential recovery value of the security. Whenever this occurs, the lender with the concurrence of FmHA or its successor agency under Public Law 103–354, can abandon the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), or the lender or lender's stockholder(s) or officer(s), will require the concurrence of FmHA or its successor agency under Public Law 103–354.

(c) FmHA or its successor agency under Public Law 103–354 will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available, with appropriate recommendations along with the State Director's exceptions to the lender's plan to the Director of the appropriate program division for evaluation and approval or rejection of the State Director's recommendation. The State Director has no authority to exercise the option to liquidate without National Office approval. When FmHA or its successor agency under Public Law 103–354 liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form FmHA or its successor agency under Public Law 103–354 1980–45, ''Notice of Liquidation Responsibility'' to notify the Finance Office that FmHA or its successor agency under Public

Law 103–354 has liquidation responsibility and Form FmHA or its successor agency under Public Law 103–354 1980–46, ''Report of Liquidation Expense,'' to request payment of liquidation costs.

(d) State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA or its successor agency under Public Law 103–354 is conducting liquidation.

(e) State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with subpart A of part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss.'' The Finance Office forwards loss payment checks to the State Director for delivery to the lender. When a loss claim is involved on a particular loan guarantee, ordinarily one estimated ''Report of Loss'' will be authorized. In the case of bankruptcy, more than one estimated ''Report of Loss'' may be authorized. Only one final filed with the Finance Office at the completion of all liquidations. The Finance Office will use this form to close out the account.

(f) Final loss payments will be made within the 60 days required, but only after a review by FmHA or its successor agency under Public Law 103–354 to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days, and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the appropriate National Office program division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the FmHA or its successor agency under Public Law 103–354 guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan that is equal to the estimated loss payment. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See subpart A of part 1901 of this chapter) will be submitted to the appropriate National Office program division for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the State Director will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrences which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file.

[55 FR 11139, Mar. 27, 1990. Redesignated at 56 FR 29173, June 26, 1991]

§ 1980.874 Protective advances.

Protective advances may be made in accordance with the lender's loan agreement and § 1980.65 of subpart A of this part.

(a) The State Director must approve in writing, all protective advances on loans within his/her loan approval authority which exceed a total cumulative advance of $500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

(b) When considering protective advances, sound judgement must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

[55 FR 11139, Mar. 27, 1990. Redesignated at 56 FR 29173, June 26, 1991]

§ 1980.875 Additional loans or advances.

The State Director may approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–34). The

State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

[55 FR 11139, Mar. 27, 1990. Redesignated at 56 FR 29173, June 26, 1991]

§ 1980.876 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending chapter 11 case to a liquidation proceeding under chapter 7 or under section 1123(b)(4), or seek dismissal of the proceedings.

(5) FmHA or its successor agency under Public Law 103–354 will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a chapter 9 or chapter 11 reorganization, if an independent appraisal in necessary in FmHA or its successor agency under Public Law 103–354's opinion, FmHA or its successor agency under Public Law 103–354 and the lender will share such appraisal fee equally.

(c) Expenses on chapter 11 reorganizations, chapter 11 or chapter 7 liquidations (unless the lender is directly the liquidator) are not to be deducted from the collateral proceeds.

(d) All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

(e) FmHA or its successor agency under Public Law 103–354 or the lender, with the approval of the State Director, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during certain bankruptcy proceedings. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accrual during chapter 7 proceedings or after a chapter 11 proceeding becomes a liquidation proceeding. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the lender's agreement (Form FmHA or its successor agency under Public Law 103–354 449–35) and carry the approval of the State Director.

(f) The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

[55 FR 11139, Mar. 27, 1990. Redesignated at 56 FR 29173, June 26, 1991]

§ 1980.877 Transfer and assumptions.

(a) *General.* It is the policy of FmHA or its successor agency under Public Law 103–354 to approve transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan. All transfers and assumptions will be approved in writing by FmHA or its successor agency under Public Law 103–354. Transfers and assumptions may be approved subject to the following:

(1) When the transaction is to a member of the borrower's organization at a price which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference over transfers to ineligible borrowers, if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan and the transfer will be to the lender's advantage.

(4) If the debt(s) is not equal to the present market value, the transferee will assume an amount at least equal to either the present market value or the debt, whichever is less. The percentage of FmHA or its successor agency under Public Law 103–354's guarantee will be based on the new debt or the current market value, whichever is less.

(5) The lender concurs in the plans for dispositon of funds in the transferor's debt service, reserve, and operation and maintenance account.

(b) *Eligible borrowers.* (1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same or different terms.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made.

(5) If the transferor is to receive a payment for its equity, the total FmHA or its successor agency under Public Law 103–354 debt must be assumed.

(c) *Ineligible borrower.* Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain an equity or as a method of providing a source of easy credit for purchasers. Transfers are as follows:

(1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee. Transfer fees will be collected and payments applied in accordance with paragraph (d) of this section.

(2) For all loans covered by this subpart, the State Director, is authorized to approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant downpayment.

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103–354 review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay the debt according to the assumption agreement and must have the legal authority to enter into the contract. The borrower will submit a current balance sheet. The lender will obtain and analyze the credit history of the borrower. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) This subpart does not preclude the transferor from receiving equity payments when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) *Transfer fees.* Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) *Amount.* The transfer fees will be a standard fee plus the cost of the appraisal. This fee will be established by the FmHA or its successor agency under Public Law 103–354 National Office and issued annually to all FmHA or its successor agency under Public Law 103–354 State Offices for further distribution.

(2) *Remittance.* The lender will collect and submit the fee to the FmHA or its successor agency under Public Law 103–354 District Office. The FmHA or its successor agency under Public Law 103–354 District Office will submit the fee to the Finance Office identified as a transfer fee using Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittance.''

(3) *Waiver*. When the State Director determines waiving the transfer fee is in the best interest of the Government, the file will be submitted to the National Office with appropriate recommendations for the request.

(e) *Processing transfers and assumptions*. (1) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA or its successor agency under Public Law 103–354 written concurrence, only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(i) FmHA or its successor agency under Public Law 103–354 must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(ii) The District Director must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA or its successor agency under Public Law 103–354 review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(3) The lender will issue a statement to FmHA or its successor agency under Public Law 103–354 that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her loan approval authority including:

(i) Consent in writing to the release of the transferor and guarantors from liability.

(ii) Any changes in loan terms.

NOTE: The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) (Form FmHA or its successor agency under Public Law 103–354 449–34) will be endorsed in the space provided on the form(s).

(5) The assumption will be made on the lender's form of assumption agreement and will contain the FmHA or its successor agency under Public Law 103–354 case number of the transferor and transferee.

(6) If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the appropriate National Office program division for approval.

(7) A copy of the Assumption Agreement will be retained in the FmHA or its successor agency under Public Law 103–354 file. The District Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA or its successor agency under Public Law 103–354 1980–7, ''Notification of Transfer and Assumption of a Guaranteed Loan,'' and submit Form FmHA or its successor agency under Public Law 103–354 1980–50, for all new borrowers and Form FmHA or its successor agency under Public Law 103–354 1980–51, ''Add, Change, or Delete Guaranteed Loan Record,'' in order that Finance Office records may be adjusted accordingly.

(8) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by FmHA or its successor agency under Public Law 103–354, with the concurrence of any holder(s) and the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms.

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect, and all applicable Truth in Lending requirements will be met.

(9) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA or its successor agency under Public Law 103–

354 a copy of the transfer and assumption agreeement. Notice must be given by the lender to FmHA or its successor agency under Public Law 103–354 before any borrower or guarantor is released from liability.

(10) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(11) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated ''Report of Loss'' on Form FmHA or its successor agency under Public Law 103–354 449–30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30, lines 13 and 14.

(f) *Submission to National Office.* (1) Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(i) Where a loss to the Government will result; or

(ii) The prospective transferee is a member of the present borrower's organization; or

(iii) Proposals for transfer or assumption are made on more liberal terms than set forth in paragraphs (b) and (c) of this section; or

(iv) Proposals for cash downpayment to the present borrower in an amount which exceeds that actual sales expenses; or

(v) The transfer fee is to be waived for a prospective transferee.

(2) All submissions to the National Office will contain:

(i) Transfer case file.

(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms to complete the transfer prepared by the transferee.

(iv) Completed environmental review.

(v) Any other necessary supporting information.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

§ 1980.878 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA or its successor agency under Public Law 103–354 guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

§ 1980.879 Disposition of acquired property.

(a) When the lender acquires title to the collateral through a voluntary basis or foreclosure means, and the FmHA or its successor agency under Public Law 103–354 final loss claim is

not paid until final disposition, the lender should proceed as quickly as possible to develop a plan to see that the collateral is fully protected and a program to dispose of the collateral is commenced.

(b) Any collateral accepted by the lender on a voluntary basis or through foreclosure means *must* be titled in only the lender's name. FmHA or its successor agency under Public Law 103–354 should never be named as owner or co-owner of the collateral. FmHa's position is that of a guarantor.

(c) The first step the lender should take after acquiring the collateral is to see that the collateral is protected from deterioration (weather, vandalism). Hazard insurance in an amount necessary to cover the fair market value of the collateral should be maintained by the lender.

(d) The lender will prepare and submit to the District Director a plan on the best method of sale keeping in mind any prospective purchasers. The District Director will review and recommend action on the plan and forward the plan to the State Director for concurrence. Concurrence or non-concurrence of the plan shall be made in writing to the lender. If an existing liquidation plan addressed the disposition of acquired property, no further review is required unless modification of the plan is needed.

(e) Methods of liquidation.

(1) Direct sale by lender.

(2) Commercial broker.

(i) Broker should be experienced in the type of property involved.

(ii) The written agreement with the broker should include an agreement which allows that if the lender finds a purchaser, no commission would be paid to the broker.

(iii) A maximum of 120 days should be allowed on the contract. The contract should be renewable if all parties agree.

(3) Public auction.

(i) An experienced professional auctioneer should be engaged.

(ii) Adequate advertising should be obtained.

(iii) The lender with FmHA or its successor agency under Public Law 103–354 concurrence shall determine a minimum sale price for the collateral.

(f) Abandonment of the collateral.

(1) The primary purpose of collateral is to afford a net return on the loan balance. However, there will be times when FmHA or its successor agency under Public Law 103–354 will be faced with situations when converting the collateral to cash would result in a loss.

(2) Situations when this type of action could exist are:

(i) Senior lien claims held by other parties against the guaranteed loan collateral and the senior lien claims are more than the collateral value.

(ii) Collateral on the loan has deteriorated to the point where the net sale value (after expenses) of the collateral would not produce any funds that could be applied to the outstanding debt.

(iii) Specialized collateral which has little or no value or demand, taking into consideration the expenses of the sale.

(3) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be strongly considered. When a decision to abandon the property is made, the District Director will document the decision in the file and will advise the State Director of the decision.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

§ 1980.880 State Director's additional authorizations and guidance.

All proposed servicing actions which the State Director or lender is not authorized by this subpart to approve will be referred to the National Office.

[55 FR 11139, Mar. 27, 1990. Redesignated at 56 FR 29173, June 26, 1991]

§ 1980.881 Appeals.

Appeals are handled in accordance with § 1980.80 of subpart A of this part and subpart B of part 1900 of this chapter.

[55 FR 11139, Mar. 27, 1990. Redesignated at 56 FR 29173, June 26, 1991]

§§ 1980.882–1980.899 [Reserved]

§ 1980.900 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0137. Public reporting burden for this collection of information is estimated to vary from 1 to 50 hours with an average of 20 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0137), Washington, DC 20503.

PART 1981–1999 [RESERVED]