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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; 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.

The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982, the Deficit Reduction Act of 1984, and the Debt Collection Amendments Act of 1996 provides 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 Utility Service (RUS) for its water and waste programs, and Rural Business–Cooperative Service (RBS), herein referred to as ''USDA Agency,'' to collect delinquent debts. Any money that is or may become payable from the United States to a USDA Agency borrower or other individual or entity indebted to a USDA Agency may be subject to offset for collection of a debt. 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 borrowers 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 direct single family housing customers of the RHS.

[61 FR 59778, Nov. 22, 1996]

§ 1951.102 Standards and procedures for administrative offset requests received by FmHA or its successor agency under Public Law 103–354.

(a) Requests made by other Federal agencies to FmHA or its successor agency under Public Law 103–354 to offset moneys to be paid to FmHA or its successor agency under Public Law 103–354's debtors, including borrowers, contractors and grantees, must contain a written statement of the debt (including, where applicable, a separate statement of principal owed and overdue interest owed as of a given date, and the amount of interest currently running) owed by the debtor to the requesting agency, the due date of the debt, a description of the basis for the debt, and a certification that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR Part 102 have been met. Requests for offset will be sent to the appropriate FmHA or its successor agency under Public Law 103–354 State Director.

(b) Upon receipt of a request satisfying the requirements of paragraph (a) of this section, FmHA or its successor agency under Public Law 103–354 will effect an administrative offset from moneys payable to the debtor, giving written notice to the debtor, unless the offset might result in substantial interference with, or defeat the purpose of FmHA or its successor agency under Public Law 103–354's programs. For example, where the payment sought to be

offset is a loan, offset will not be made since the debtor would not be able to use the loan funds for the intended purpose. Similarly, where the payment sought to be offset is an advance payment under a contract to purchase goods, FmHA or its successor agency under Public Law 103–354 will not make the requested offset because the debtor would in all likelihood refuse to furnish the goods. However, where the payment is being made to compensate for past performance, the offset will be effected. For example, where the payment sought to be offset is for goods already furnished, the offset could be made without conflict with the purpose of the payment.

(c) If FmHA or its successor agency under Public Law 103–354 determines not to effect an offset, a written statement, including the reasons for the refusal, will be sent to the requesting agency and a copy of that statement will be sent to the debtor.

[55 FR 11005, Mar. 26, 1990]

§1951.103 Procedures for FmHA or its successor agency under Public Law 103–354-initiated administrative offset.

(a) This section explains the procedures to be followed to use administrative offset to collect amounts owed by a debtor to FmHA or its successor agency under Public Law 103–354 from payments to be made to the debtor by another Federal agency or from retirement payments to be made to a Federal or military retiree.

(b) Before another Federal agency can be asked to offset any amount, the debtor must have been given at least 30 days notice on FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–1, must have been afforded the rights set out in this section and, if the debtor is an FmHA or its successor agency under Public Law 103–354 borrower, the borrower's account must have been accelerated. A delinquent amount does not have to be reduced to judgment or be undisputed before offset can be used, and the payment does not have to be covered by an FmHA or its successor agency under Public Law 103–354 security instrument.

(c) Offset will not be used if, according to State law, the receipt of payments by use of administrative offset after acceleration has the effect of reinstating the debtor's account. A State supplement will be issued with the advice of the Office of General Counsel (OGC), explaining whether offset can be used in each State. Sums received through the use of administrative offset are not considered ''payments'' as that term is used in 7 CFR 1955.15(d)(3).

(d) Administrative offset will be used only where it is feasible. Administrative offset is not feasible where, for example, the cost to the Government of collecting by offset will exceed the amount collectible.

(e) Administrative offset will be used only where it is in the best interests of the Government. It will not be used where it would substantially interfere with, or defeat, the purpose of the paying Agency's program. Examples of this situation are listed in §1951.102(b) of this subpart. As another example, FmHA or its successor agency under Public Law 103–354 will not offset the initial payment for planting expenses under the Conservation Reserve Program (CRP) since an offset would possibly result in the land not being planted for conservation purposes; conversely, it will offset subsequent CRP payments which represent rental income to the debtor. In general, income supplementation and enhancement program payments by the Agricultural Stabilization and Conservation Service (ASCS) will be subject to offset. The National Office will provide guidance to FmHA or its successor agency under Public Law 103–354 County Supervisors as needed on the kinds of payments under other major Federal programs that will not be subject to offset.

(f) The use of administrative offset is limited when debtors have filed for bankruptcy. Before administrative offset in sought for a debtor who is subject to a pending bankruptcy, guidance with respect to each particular case will be sought from the OGC. The Agency will not request administrative offset for debts which have been discharged in bankruptcy.

(g) FmHA or its successor agency under Public Law 103–354 will not use offset to collect a debt more than 6

years after the Government's right to collect the debt first accrued, unless facts material to FmHA or its successor agency under Public Law 103–354's right to collect were not known and could not reasonably have been known by the FmHA or its successor agency under Public Law 103–354 official(s) charged with the responsibility of servicing the debtor's account. Offset may then be pursued. In no event, however, may administrative offset under this subpart be used against a claim which has been accrued for more than 10 years. Prior to collecting a claim by administrative offset after the 6 year period for bringing a civil action on the claim has expired, the loan servicing official will obtain the concurrence of the OGC to pursue the offset.

(h) FmHA or its successor agency under Public Law 103–354 will not use administrative offset with respect to debts owed by any State or local government; nor with respect to payments made under the Social Security Act, the Internal Revenue Code of 1954 (IRS debts may be offset under the IRS offset procedure in §§ 1951.121–1951.127 of this subpart), or the tariff laws of the United States.

[55 FR 11005, Mar. 26, 1990, as amended at 55 FR 25820, June 25, 1990]

§ 1951.104 Procedures for FmHA or its successor agency under Public Law 103–354-initiated offset.

(a) The use of administrative offset will be initiated by giving notice to the debtor of the intention to use administrative offset. Such notice shall advise the debtors of their rights to:

(1) Inspect and copy their records subject to the copying costs and hours set forth in FmHA or its successor agency under Public Law 103–354 Instruction 2018–E (available in any FmHA or its successor agency under Public Law 103–354 office);

(2) Avoid offset by paying the debt in full within 30 days;

(3) Present any reasons why administrative offset should not be used, including that the amount claimed to be owed is in error, that the use of administrative offset would create an extreme hardship, or that it would be unfair to the debtor for some other reason;

(4) Have a meeting with the decision-making official; and

(5) Obtain administrative appeal of the decision to use administrative offset.

(b) The debtor will be given 15 calendar days after receipt of the Notice to ask to inspect and/or copy his or her records, and 30 calendar days after receipt of the notice in which to:

(1) Make a written submission pursuant to paragraph (a)(3) of this section, or

(2) Request a meeting at which the borrower can make such a submission and/or orally raise any matters relevant to the proposed use of administrative offset to collect the amount owed, or

(3) Request immediate administrative appeal of the decision to use administrative offset.

(c) When a debtor cannot, for a good reason, meet the time limits set out in this section, FmHA or its successor agency under Public Law 103–354 can, in its discretion, extend the time.

(d) FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–1 will be used to give the notice required by this section. Notice will be sent to the debtor, by certified mail, return receipt requested, at the debtor's last known address. A duplicate copy will be mailed to the debtor, on the same day, by ordinary mail. The date of signing of the certified mail receipt will be used to compute the periods for response or, if the certified mail receipt in not signed and returned, the timeframe will commence with the tenth day after the date on which the duplicate was sent.

(e) If the debtor responds by asking for a meeting, it will be scheduled as set forth in subpart B of part 1900 of this chapter, and the debtor will be promptly advised in writing of the date, time, and place. If the response also asks to inspect and/or copy records, the response will give the debtor an opportunity, within 10 working days after receipt of the request, to inspect and/or copy those records. The letter will explain where the records are and when the debtor can inspect and/or copy them. The meeting will be scheduled not less than 10 working days after the date on which the debtor

is allowed to inspect and/or copy his or her records. At the meeting the debtor will be given an opportunity to present any evidence or arguments as to why administrative offset should not be used.

(f) If the debtor asks to inspect and/or copy records, but does not ask for a meeting, the debtor should, at the time of record inspection and/or copying, again be offered a meeting so that he or she will have an opportunity to discuss the contents of those records, or any other relevant matter, before FmHA or its successor agency under Public Law 103–354 actually begins to use administrative offset. This offer may be made orally and will be documented in the debtor's case file.

(g) Extreme hardship or unfairness to the debtor in using administrative offset are matters that are within the discretion of the FmHA or its successor agency under Public Law 103–354 County Supervisor or other decision-making official. The reasons for decisions on claims of extreme hardship or unfairness will be documented in the debtor's case file. Substantial medical expenses, or the lack of funds (other than those to be offset) for essential family living expenses, especially when the debtor's family includes dependent minor children, are examples of situations in which a decision not to use administrative offset may be justified. Extreme hardship exemptions are intended to be limited to providing food, shelter and medical care for the borrower's immediate family. In its discretion, FmHA or its successor agency under Public Law 103–354 may, as a condition to declining to use administrative offset because of extreme hardship or unfairness, require the debtor to enter into a written agreement concerning payment of the indebtedness and can require adequate security for such agreement.

(h) FmHA or its successor agency under Public Law 103–354 will respond promptly to all written or oral requests or presentations made by debtors under this section. Decisions to be made after a meeting with a debtor will be made promptly, and will be promptly communicated in writing to the debtor. If a request not to use offset is denied, either in response to a written submission or to matters raised at a meeting, the letter communicating that decision will also advise the debtor of his or her rights to administrative appeal. Other Federal agencies will not be requested to offset amounts before FmHA or its successor agency under Public Law 103–354 has mailed or hand delivered a letter to the debtor communicating its decision in response to any matters raised at a meeting or in response to a submission in writing.

(i) Decisions to use administrative offset are appealable under subpart B of part 1900 of this chapter. If the debtor is an FmHA or its successor agency under Public Law 103–354 borrower who has not had another opportunity to appeal FmHA or its successor agency under Public Law 103–354's determinations on the indebtedness itself, the appeal will include consideration of any issues concerning the debt that the debtor wishes to raise.

(j) Any borrower who had funds offset prior to December 1987, or who on the effective date of this subsection is still subject to an outstanding notice of offset (i.e., FmHA or its successor agency under Public Law 103–354 Form Letter 1951–3 has been sent and not retracted as of the effective date of this regulation) will be notified that he or she will be permitted to request an administrative hearing in accordance with the provisions of this regulation. The borrower may request a hearing if the borrower believes the previous offset actions by FmHA or its successor agency under Public Law 103–354 is contrary to this Administrative offset regulation.

[55 FR 11006, Mar. 26, 1990, as amended at 55 FR 25820, June 25, 1990]

§ 1951.105 Procedures for taking funds by administrative offset.

(a) *Requesting administrative offsets.* Administrative offset requests to other Federal agencies will be initiated by completing FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–3 and sending it to any Federal agency likely to have money scheduled for payment to the debtor. The debtor and the FmHA or its successor agency under Public Law 103–354 State Director, will be sent a copy of this form letter when it is sent to the other Federal agency.

(b) *Application of payments, refunds and overpayments for administrative offsets.* (1) Only amounts that are delinquent can be collected by offset. Therefore, if an FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–3 is submitted to another Federal agency which owes a debtor an amount in excess of the FmHA or its successor agency under Public Law 103–354 delinquency, the excess will be remitted to the debtor by the other Federal agency.

(2) Administrative offset payments will be processed in accordance with subpart B of this part, including depositing the payments in the Concentration Banking System or sending the payments to a wholesale lockbox bank. The offset payments will be applied to the debtor accounts as regular payments. Under no circumstances will funds collected under administrative offset be held in an escrow account.

(3) Refunds of amounts offset, plus interest, will be made within 45 days, pursuant to the provisions of 7 CFR 1951.13(b), if FmHA or its successor agency under Public Law 103–354 determines that an amount should not have been offset or that the debtor has won an administrative appeal. The ninety-day Treasury bill rate, as published in exhibit B to 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), in effect on the date the amounts were offset by the creditor agency, will be used to calculate interest payable to the debtor.

(4) The County Supervisor will record all borrowers referred for and/or collected through administrative offset on Form FmHA or its successor agency under Public Law 103–354 1951–16, ''Detail Report of Administrative Offset.'' The unpaid interest and unpaid principal amounts referred for offset should be reported only one time when first referred and obtained from FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–3. Form FmHA or its successor agency under Public Law 103–354 1951–16 will be filed in operational file B. At the close of each quarter, the County Supervisor will consolidate the information reported on Form FmHA or its successor agency under Public Law 103–354 1951–16 into Form FmHA or its successor agency under Public Law 103–354 1951–17, ''Consolidated Report of Administrative Offset.'' The consolidated county report will be forwarded to the State Administrative Officer within 5 days after the end of each quarter (e.g., October 5, January 5, April 5, and July 5). If there is no activity for the quarter, a negative report is required. Using Form FmHA or its successor agency under Public Law 103–354 1951–17, the State Administrative Officer will consolidate the reports received from the County Offices. The consolidated state report will be forwarded to the Finance Office, mail code FC–360A, within 10 calendar days after the end of each quarter (e.g., October 10, January 10, April 10, and July 10). If there is no activity for the quarter, a negative report is required.

(c) *Cancellation of administrative offset.* FmHA or its successor agency under Public Law 103–354 will promptly cancel administrative offset requests by written notification to every other Federal agency from which administrative offset was requested if, because of debtor payments or any other reason, FmHA or its successor agency under Public Law 103–354 is no longer entitled to administrative offset from payments to be made to a debtor.

[55 FR 11007, Mar. 26, 1990, as amended at 55 FR 25820, June 25, 1990]

§§ 1951.106—1951.110 [Reserved]

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent FmHA or its successor agency under Public Law 103–354 loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, underwithholding 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 delinquencies or debts owed to them by employees of FmHA or its successor agency under Public Law 103–354, excluding

County Committee members. Administrative offset, rather than salary offset, will be used to collect money from retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for farmer program 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 of the FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 can ask a Federal agency to offset any amount. Decisions made under the following section are not appealable under subpart B of part 1900 of this chapter.

(a) *Authorities.* The following authorities are granted to FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354's 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 FmHA or its successor agency under Public Law 103–354 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; the Assistant Administrator, Finance Office; 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]

§§ 1951.112—1951.120 [Reserved]

§ 1951.121 Internal Revenue Service (IRS) offset.

The IRS can reduce a taxpayer's overpayment of tax by the amount of any legally enforceable debt owed to a Federal agency. This subpart establishes procedures to implement IRS offsets. Borrowers referred to IRS for offset will continue to be serviced as required by § 1951.312 of subpart G of part 1951 of this chapter.

[54 FR 966, Jan. 11, 1989]

§ 1951.122 Finance Office screening.

The FmHA or its successor agency under Public Law 103–354 Finance Office will screen the accounts of all borrowers potentially eligible for IRS Offset. FmHA or its successor agency under Public Law 103–354 field offices will further screen these accounts based on the following ineligibility criteria. The Finance Office will determine the appropriate date for this screening based on IRS deadlines.

(a) *General.* All past due single family housing (SFH) and farmer program

(FP) accounts are eligible for IRS Offset unless they meet one or more of the following criteria:

(1) Account has been referred to OGC for foreclosure and, based on the legal opinion required by §1951.103(c), a collection by offset would jeopardize the litigation under State law. Existence of a foreclosure action pending flag is not a determining factor.

(2) Account has been discharged in bankruptcy or is under the jurisdiction of a bankruptcy court and the debt has not been reaffirmed. Existence of a bankruptcy action pending flag is not a determining factor.

(3) Account has a suspend code.

(4) Account has been assigned to a collection agency.

(5) Account is past due by less than $25, or if the borrower has multiple loans, the net amount past due is less than $25.

(6) Borrower is a Federal employee and collection is feasible under salary offset.

(7) Borrower was indebted to FmHA or its successor agency under Public Law 103–354 prior to entering full time active duty military service and the account is being serviced in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1950–C.

(8) Account is current under a subject to approved adjustment (SAA).

(b) *Single Family Housing Borrowers.* In addition to the criteria set forth in §1951.122(a), the following criteria are for delinquent SFH borrowers:

(1) Borrower has one loan and it is less than 3 monthly payments delinquent (or, if annual borrower, the equivalent of less than 3 monthly payments for annual payments past due) or more than 9 years delinquent.

(2) Borrower has multiple loans, and the net amount past due is less than 3 monthly payments on the delinquent loans (or the equivalent of 3 monthly payments for annual payment borrowers).

(3) Account is under a moratorium.

(4) Account has an Additional Payment Agreement (APA) in effect and payments under the APA are less than 3 months past due.

(c) *Farmer Program Borrowers.* In addition to the criteria set forth in §1951.122(a), the following criteria are for delinquent FP borrowers:

(1) Borrower is a partnership or corporation and/or is identified in the accounting system by an employer Identification Number (EIN rather than a Social Security Number (SSN).

(2) Account is less than 90 days past due.

(d) *Servicing Condition Requirements for Farmer Program Borrowers.* The FP accounts remaining after screening from §1951.122 (a) and (c) are eligible for IRS offset only if either of the following servicing conditions takes place, whichever comes first:

(1) Borrower has received any combination of Attachments 3 through 10 of Exhibit A of subpart S of this part; and the borrower did not request an appeal of the decision; any appeal has been concluded; or

(2) Borrower's account(s) has been accelerated.

[55 FR 38035, Sept. 17, 1990, as amended at 55 FR 52037, Dec. 19, 1990]

§1951.123 Field office screening.

Accounts determined by computer screening in the Finance Office to be potentially eligible will be referred to the IRS and to the appropriate FmHA or its successor agency under Public Law 103–354 County Office for review. If the County Office is aware that any account should be removed for any of the reasons set forth in §1951.122, the County Office will remove the account in accordance with the instructions accompanying the list, ''Borrowers Eligible for Offset (prior to 60-day notice).'' Borrowers who are removed by the County Office will not receive an offset letter, and no further action is necessary concerning borrowers removed. The Finance Office will remove those accounts identified as ineligible by County Offices and provide this information to IRS in accordance with IRS deadlines and procedures.

[54 FR 967, Jan. 11, 1989, as amended at 55 FR 38036, Sept. 17, 1990]

§1951.124 Notice to borrowers.

The Finance Office will send FmHA or its successor agency under Public Law 103–354 Form Letter 1951–6 to each

borrower who still appears to be eligible for IRS offset after County Office screening and a computer screening using the latest account information that is available. This letter must be mailed to ensure that borrowers receive their letters no later than October 15. Borrowers will have 60 days from the date of receipt to provide evidence in writing to the County Supervisor that their debt is less than 3 months delinquent or that the debt is not legally enforceable. Borrowers who reduce their debt to less than 3 months past due during this 60-day period will not be offset.

[54 FR 967, Jan. 11, 1989, as amended at 55 FR 38036, Sept. 17, 1990]

§ 1951.125 Processing borrowers' requests not to exercise IRS offset.

If a borrower responds to FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–6 within 60 days from the date of receipt, the County Supervisor will review the borrower's reasons for believing that the debt is either less than 3 months delinquent or is not legally enforceable. After such determination, the County Supervisor will send the borrower FmHA or its successor agency under Public Law 103–354 Form Letter 1951-C-9 advising the borrower if offset will be exercised.

[55 FR 38036, Sept. 17, 1990, as amended at 55 FR 52037, Dec. 19, 1990]

§ 1951.126 Final referral to IRS.

All accounts not eliminated will be sent to IRS for offset and Report Code 865, Borrower Accounts Submitted to IRS for Offset Report, sent to each appropriate County Office. Each County Office will review the list on Report Code 865 upon receipt, and each week thereafter. This weekly review will continue until September 1 for the previous year's submission, or until action has been taken on each account (offset or removal). If any of the events listed under § 1951.122 of this subpart occurs, immediately submit Form FmHA or its successor agency under Public Law 103–354 1951–43, ''Adjustment of Accounts Referred for IRS Offset,'' in accordance with the FMI for that form. All accounts referred to the IRS for offset will be reported to a credit bureau by the Finance Office.

[55 FR 38036, Sept. 17, 1990, as amended at 55 FR 52037, Dec. 19, 1990]

§ 1951.127 Processing of amounts offset.

After IRS effects an offset, IRS will notify the Finance Office. The Finance Office may deduct an amount equal to IRS' processing costs from the amount offset to reimburse the Agency for the cost of processing the offset, will credit the borrower's account for the amount required and will notify the appropriate County Office. The County Supervisor will review Report Code 222–C, Weekly Offset Report (Cash Collections IRS Offset), to ensure that any borrower who would have been eliminated from offset due to the provisions of § 1951.122 of this subpart was not subjected to an offset. If the offset was not correct, the County Supervisor will immediately notify the Finance Office of any such offsets using FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5. This Form Letter will be processed by the Finance Office and a refund, including the processing fee, will be sent to the borrower. If the offset is correct, Finance and County Office records will be adjusted accordingly.

[54 FR 967, Jan. 11, 1989, as amended at 55 FR 38036, Sept. 17, 1990]

§ 1951.128 Receipt of Finance Office/IRS offset reports and listings.

The Finance Office will provide a copy of the reports or listings in § 1951.129 through § 1951.135 of this subpart to each servicing county. County Supervisors are responsible for ensuring the field offices review each report and respond to the timeframes as indicated.

[55 FR 38036, Sept. 17, 1990]

§ 1951.129 Borrowers eligible for offset (prior to 60-day notice).

This listing includes borrowers eligible for offset after Finance Office screening. The field office will screen all borrowers in accordance with § 1951.122 of this subpart. Borrowers meeting any of the ineligibility criteria must be eliminated by drawing a

line through the borrower's name. When all borrowers have been reviewed for offset eligibility, the original list must be sent to the Chief, Computer Resources Branch, mail code FC–353, in the Finance Office. These lists must be received no later than 1 month after the date of receipt, since the Finance Office will use the information provided to generate letters to borrowers informing them of potential IRS offset. No borrowers may be added to this list by the field office. A copy of this list should be retained by each field office. If a borrower is ineligible for IRS offset due to any of the exclusion criteria in §1951.122 and that borrower's account does not reflect that exclusion criteria in the accounting system, the field offices must ensure that the account be updated immediately.

[55 FR 38036, Sept. 17, 1990]

§1951.130 Borrowers sent due process notices for IRS/Credit Bureau referrals.

This listing includes those borrowers remaining eligible for offset after field office screening and who were sent notices of the intent to offset their tax refund. The notice advises the borrower that they have 60 days from the date of receipt of the letter in which to provide written information to their FmHA or its successor agency under Public Law 103–354 County Supervisor to show that offset should not be exercised. A borrower who has provided written notification and it has been determined the he/she meets the criteria under §1951.122 of this subpart must be eliminated by drawing a line through the borrower's name on the listing. When all borrowers have been reviewed for offset eligibility, the original must be sent to the Chief, Computer Resources Branch, mail code FC–353, in the Finance Office. These lists must be received no later than 2 months after the date of receipt, since the Finance Office will use the information provided on these lists to create the IRS annual certification tape. No borrowers may be added to this list by the field office. A copy of this list should be retained by each field office. If a borrower is ineligible for IRS offset due to any of the exclusion criteria in §1951.122 and that borrower's account does not reflect that exclusion criteria in the accounting system, the field offices must ensure that the account be updated immediately.

[55 FR 38037, Sept. 17, 1990]

§1951.131 Form FmHA or its successor agency under Public Law 103–354 389–833, Borrower Accounts Submitted to IRS for Offset Report, RC 865.

This report lists borrowers remaining eligible for offset after the 60-day notice period and who were referred to IRS for offset. This report should be retained by the field office and referred to when decreasing an amount referred for offset or deleting a borrower from IRS offset using Form FmHA or its successor agency under Public Law 103–354 1951–43.

[55 FR 38037, Sept. 17, 1990]

§1951.132 Form FmHA or its successor agency under Public Law 103–354 389–760, Annual Unprocessable Report IRS Offset, RC 822–C.

This report lists those borrowers who were referred to IRS for offset, but were returned by IRS as evidenced by the applicable error code. These borrowers will *not* be offset by IRS. This report should be retained by each field office. It is not necessary to complete Form FmHA or its successor agency under Public Law 103–354 1951–43 for borrowers listed on this report.

[55 FR 38037, Sept. 17, 1990]

§1951.133 Form FmHA or its successor agency under Public Law 103–354 389–761, Annual No Match Report IRS Offset, RC 822–D.

This report lists those borrowers who were referred to IRS for offset, but were returned by IRS as evidenced by the applicable error code. These borrowers will *not* be offset by IRS. This report should be retained by each field office. It is not necessary to complete Form FmHA or its successor agency under Public Law 103–354 1951–43 for borrowers listed on this report.

[55 FR 38037, Sept. 17, 1990]

§ 1951.134 Form FmHA or its successor agency under Public Law 103–354 389–764, Weekly Offset Report (Cash Collections) IRS Offset, RC 222–C.

This report lists those borrowers whose income tax refund was offset by IRS and the amount offset. Except for a minimal processing fee that may be deducted, all monies collected from an offset will be applied toward the borrower's delinquent loan(s). If an offset does not repay all of the delinquent amount, the borrower is subject to additional offsets if more than one tax year return is filed.

This report should be retained by each field office and referred to if it has been determined a borrower has been erroneously offset. The field office should use the amount offset from this report when following the instructions outlined in § 1951.127 for refunding the offset to the borrower.

[55 FR 38037, Sept. 17, 1990]

§ 1951.135 Form FmHA or its successor agency under Public Law 103–354 389–763, Weekly Claims Report IRS Offset, RC 222–D.

This report lists those borrowers whose spouses were issued a refund by IRS. These borrowers filed a joint tax return and incurred the debt separately from their spouses who had no legal responsibility for the debt and who had income and withholding and/or estimated tax payments. The report shows the actual amount offset for the borrower only. The spouses' portion of the income tax refund was not offset. It is not necessary to prepare FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5 for these borrowers since the borrower's spouse has already received a refund from IRS. Upon receipt of this report, field offices should annotate on RC 222–C (§ 1951–134) the actual amount offset for those borrowers listed in this report. This report should be retained by each field office.

[55 FR 38037, Sept. 17, 1990]

§§ 1951.136—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 Insured Business Programs Loans and Grants

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

§ 1951.201 Purpose.

This subpart prescribes the Rural Economic and Community Development (RECD) mission area policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; 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; Insured 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 in subpart E of part 4284 of this title; and Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title. RECD State Offices act on behalf of the Rural Housing Service, the Rural Business–Cooperative Service and the Rural Utilities Service as to loan and grant programs formerly administered by the Farmers Home Administration, the Rural Development Administration, and the Rural Electrification 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.

[61 FR 3781, Feb. 2, 1996]

§ 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.

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

§ 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 Form FmHA or its successor agency under Public Law 103–354 442–31 or 1942–31, ''Association Water or Sewer System Grant Agreement.'' Grant agreements with a revision date on or after January 29, 1979, require that the grantee request disposition instructions from FmHA or its successor agency under Public Law 103–354 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.

§ 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.

[55 FR 4399, Feb. 8, 1990, as amended at 56 FR 25351, June 4, 1991]

§ 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) (l) 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 only with the borrower's written permission. If more than one lender indicates an interest in providing credit, the borrower has the right to select a lender.

(2) If any borrower does not consent to the Agency contacting lenders directly on their behalf, the borrower must make formal application to at least two local lenders who typically finance operations similar to that of the borrower. The borrower is responsible for any application fees. Letters of denial or rejection from lenders without formal application being made will not be accepted by the Agency. The borrower has 60 days from the date the borrower receives the prospectus

information to make application and receive a response from lenders. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

§ 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; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this part 1951. However, decisions involving NP applicants, borrowers or property are reviewable by the next level supervisor.

§ 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 Leaseback/Buyback and Homestead Protection, 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 Leaseback/Buyback and Homestead Protection programs 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 FmHA or its successor agency under Public Law 103–354 assistance to purchase a single family residence. The application is not complete until all information requested by FmHA or its successor agency under Public Law 103–354 is received.

(b) *Fees.* A nonrefundable application fee must be submitted with the application. In addition, credit reports will be ordered to determine the eligibility of NP applicants requesting FmHA or its successor agency under Public Law 103–354 credit. A nonrefundable credit report fee will be charged the applicant. The amounts of these fees change periodically; current fees will be quoted by FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 debt is not paid in full; or FP 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 county office personnel upon request.

(f) *Interest rate.* The SFH/NP interest rate in effect at the time of loan approval will be charged on all NP assumptions and credit sales involving a single family residence. 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. For the Leaseback/Buyback program, the FP/NP farmer program interest rate for farm real estate in effect at the time of loan approval will be charged. 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 FmHA or its successor agency under Public Law 103–354 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) *Single family residence.* (i) When a purchaser does not own an adequate home and intends to occupy the house, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (g)(1)(i) of this section, the amortization period will not be for more than 10 years unless FmHA or its successor agency under Public Law 103–354 determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(iii) When a presently indebted NP owner/occupant wishes to purchase another property which he/she intends to occupy, the term may be for a period not to exceed 30 years on the condition that the existing debt is reamortized for a period not to exceed 10 years less the number of years the loan has been outstanding. If the existing loan has been outstanding for more than 10 years, the loan must be paid off.

(2) *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, FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 retains the same lien priority.

(3) *Farm property (chattels security).* The note amount will be amortized over a period not to exceed 5 years.

(4) *Farm property (Leaseback/Buyback).* The note amount will be amortized over a period not to exceed 25 years.

(5) *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, FP operation requirements, and consent to junior lien encumbrance will be deleted.

(i) *Security.* The security requirements for an NP loan on a single family residence will be in accordance with subpart A of part 1944 of this chapter. 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 an FmHA or its successor agency under Public Law 103–354 program loan on the same type property, except the purchaser must pay his/her own closing costs.

§ 1951.456 [Reserved]

§ 1951.457 Payments.

(a) *Receiving payments.* Borrowers indebted for a Single Family residence or who have purchased property under the Homestead Protection program will mail their payments directly to the address shown on the coupon. Borrowers who bring or send regular payments to the County Office will be instructed to mail them directly to the address shown on their coupon. Borrowers who bring in cash payments will be charged a fee necessary to convert the cash to a money order. If the fee is not paid, it will be deducted from the payment. Borrowers indebted for a farm loan(s), including property purchased under the Leaseback/Buyback program will mail or bring their payments to the County Office.

(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]

§ 1951.458 Servicing real estate taxes.

In this section, ''taxes'' include assessments which, if not paid, will become a lien on the property. Borrowers are required to pay the taxes on FmHA or its successor agency under Public Law 103–354 security property when they become due. Security instruments for FmHA or its successor agency under Public Law 103–354 credit provide that the borrower will escrow funds for the payment of taxes if requested by FmHA or its successor agency under Public Law 103–354. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. Monthly payment borrowers will be required to escrow, except that, a borrower who is also indebted for an FP program loan will *not* be required to escrow. Failure to pay the taxes is a default of the loan convenants. Borrowers who have not paid their taxes will be notified by FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 will *not* voucher for taxes on NP loans

except to protect the Government's security interest. FmHA or its successor agency under Public Law 103–354 will advance funds for the payment of taxes as follows:

(a) *Borrowers required to escrow for taxes.* Taxes will be paid as they become due from the borrower's escrow account. If a borrower's escrow account contains sufficient funds, all discounts will be taken advantage of when it is determined by FmHA or its successor agency under Public Law 103–354 to be in the best financial interest of the borrower and the Government. If a borrower has insufficient funds in his/her escrow account to pay the taxes when due, the escrow servicer will request the borrower to pay an amount equal to the difference between the taxes due and the escrow balance in a lump sum within 30 days after notification. If the borrower fails to remit the amount requested, the amount will be advanced and charged to the borrower's account as a recoverable cost. When initially establishing a borrower on an escrow system, NP accounts can be reamortized provided taxes for 1 or more years are vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes.

(b) *Foreclosure-pending cases*—(1) *Borrowers not required to escrow.* Where State law permits property will be sold at foreclosure sale subject to outstanding taxes. Where taxes must be paid up to the foreclosure sale date, payment should be deferred until the date for the foreclosure sale is set unless the taxing authority scheduled a tax sale sooner. This permits a single advance to be processed and allows flexibility for a management decision if it is later determined, due to such considerations as high tax rate, length of time required to foreclose, and possible vandalism or other loss, there is no recovery to be made. If a tax sale is scheduled while foreclosure is pending, FmHA or its successor agency under Public Law 103–354 will either pay the taxes by voucher in accordance with paragraph (c) of this section or allow the property to be sold at the tax sale, as determined to be in the Government's best interest.

(2) *Borrowers required to escrow for taxes.* Taxes will continue to be paid as outlined in paragraph (a) of this section until the property is acquired by FmHA or its successor agency under Public Law 103–354.

(c) *Processing tax advances.* When a borrower's taxes are to be paid by an escrow servicer, an advance will be drawn from FmHA or its successor agency under Public Law 103–354 to cover the escrow shortage. When a borrower's taxes are to be paid by FmHA or its successor agency under Public Law 103–354, the advance will be charged to the borrower's account as an unamortized cost item. A tax advance will bear interest at the rate which is in effect on the initial loan or the lowest loan number within the fund code still outstanding.

§ 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.

(a) *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.

(b) *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.

(c) *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.

(d) *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.

(e) *Conversion.* The act of changing a borrower's account from DIAS to PASS.

(f) *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.

(g) *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.

(h) *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).

(i) *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.

(j) *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.

(k) *Occupancy surcharges.* A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. These surcharges will be collected from the tenant by the borrower on the same day and in addition to regular rents. The amounts to be collected will be in accordance with exhibit B of this subpart.

(l) *Overage.* This term refers to both ''overage'' and ''surcharge'' described in exhibit H to subpart C of part 1930 of this chapter.

(m) *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.

(n) *Payment reception date.* The day of the month the payment is received in the District Office.

(o) *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.

(p) *Promissory note installment.* The unrounded amortized installment shown on the promissory note, conversion agreement, assumption agreement or reamortization agreement, whichever is currently in effect.

(q) *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.

(r) *Refund payment.* Payments from unused loan funds which are applied to principal on the end of the loan account.

(s) *Regular payment.* All monthly payments scheduled according to PASS. Does not include extra payments, advance regular payments, refund payments or voluntary additional principal payments.

(t) *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.

(u) *Subsidy credit.* The difference between a borrower's monthly promissory note installment and the monthly subsidized installment.

(v) *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]

§ 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 or occupancy surcharge 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) Any occupancy surcharge due FmHA or its successor agency under Public Law 103–354 as described in exhibit B of this subpart.

(v) 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, occupancy surcharges, 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, occupancy surcharge, 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]

§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 [Reserved]

§ 1951.509 Occupancy surcharges.

(a) *Authorization to Collect Occupancy Surcharge.* Public Law 101–235 enacted December 15, 1989, and amended by Public Law 101–625, prescribes provisions for FmHA or its successor agency under Public Law 103–354 to collect an additional monthly amount from borrowers on all initial section 515 loans made or insured pursuant to a contract entered into on or after December 15, 1989.

(1) A contract entered into for this purpose is when a completed Form FmHA or its successor agency under Public Law 103–354 1944–51, ''Multiple Family Housing Obligation—Fund Analysis,'' is properly delivered to the borrower on or after December 15, 1989. (That delivery date is the date entered in Item 51 on Form FmHA or its successor agency under Public Law 103–354 1944–51).

(2) The term *occupancy surcharge* shall be used hereafter to describe this additional monthly charge.

(b) *Occupancy Surcharge Payments.* These monthly payments shall be made from project income which will be collected from tenants or from subsidy which the tenant will be entitled to. The amount of surcharge assessed per unit, in the initial year of operation will be $2 per unit. This surcharge assessment will increase by $2 per unit each year thereafter for 19 years. The amount of the surcharge assessment which the tenant pays will be based on the income level of each tenant household. Tenant households who pay more than 30 percent of their annual adjusted income in rent and utilities will not be required to pay occupancy surcharge.

(1) Annual increases will cease 20 years from the date of the first surcharge payment due on the initial or oldest loan in the project.

(2) Surcharge payments will continue after the annual increase period has expired, but surcharge unit assessments will remain at the levels established at year 20 of the initial loan for the remaining life of the loan.

(3) If a subsequent loan is made and the initial loan in the project is subject to occupancy surcharge, the annual increase period will still expire 20 years from the first surcharge payment due on the initial loan.

(c) *Increases in Tenant Contribution Due to Occupancy Surcharges.* Borrowers/Managers are responsible for initiating and monitoring surcharge annual increases and all surcharge increases and decreases due to change in tenant contributions. These changes require no prior review by FmHA or its successor agency under Public Law 103–354. All tenants must be notified of any changes in their surcharge contribution in the following manner:

(1) Tenants moving into newly constructed projects in their first year of operation should be informed of the occupancy surcharge requirements when their lease and initial tenant certification is signed. They should also be apprised at that time of possible surcharge changes based on their income levels.

(2) When there are surcharge changes due to income changes and regular recertifications, the current signed tenant certification showing the level of surcharge due will serve as notification of the change.

(3) Tenants who experience surcharge changes due to the annual $2 per unit increase on the surcharge anniversary date must be sent a notification of the change in accordance with exhibit B of this subpart.

(d) *Occupancy Surcharge Account.* Occupancy surcharge monies collected by FmHA or its successor agency under Public Law 103–354 will be deposited in the Rural Housing Insurance Fund (RHIF) in such a manner as to accrue interest on the total amount of funds collected. These monies will be made

available only for payments of principal and interest on guaranteed equity loans made under the authorization of section 515 of the HUD Act of 1989. Payments from the occupancy surcharge account will only be in amounts necessary to ensure that additional project expense from the incurred guaranteed equity loan does not raise rent payments above prescribed maximum rent levels necessary to operate the project. Any monies not expended in the project from which the payments were made will be used in other projects to make payments of principal and interest on a guaranteed equity loan.

(e) *Occupancy Surcharge Takeout.* The method for allowing payments on these guaranteed equity loans out of the occupancy surcharge account will be forthcoming a such time as needed and will conform with appropriate legislative requirements in effect at that time.

(f) *Collection of Occupancy Surcharge by FmHA or its successor agency under Public Law 103–354.* The policies and methods for collecting surcharge are set forth in exhibit B of this subpart.

[56 FR 66961, Dec. 27, 1991]

§ 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, occupancy surcharge 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, occupancy surcharge 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, occupancy surcharge 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, occupancy surcharge 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, occupancy surcharge 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]

§ 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]

EXHIBITS TO SUBPART K

EXHIBIT A—[RESERVED]

EXHIBIT B—OCCUPANCY SURCHARGE PAYMENTS

I. Objectives

This exhibit prescribes the methods for arriving at monthly occupancy surcharge rates for tenants in Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) section 515 projects. This exhibit affects all initial loans made or insured pursuant to a contract entered into (when a properly completed Form FmHA or its successor agency under Public Law 103–354 1944–51, ''Multiple Family Housing Obligation—Fund Analysis,'' is delivered to the borrower. This delivery date is the date entered in item 51 on the 1944–51) on or after December 15, 1989.

II. Eligible Projects

A. Initial loans made pursuant to contracts entered into on or after December 15, 1989, will be subject to all occupancy surcharge requirements contained within this exhibit.

B. Subsequent loans will not be subject to occupancy surcharge unless the initial loan in the project is subject to occupancy surcharge.

C. Project consolidations will make the new consolidated project subject to occupancy surcharge when one or more of the loans are subject to occupancy surcharge and will be handled in accordance with subpart B of part 1965 of this chapter.

III. Initial Understanding With Borrower

All RRH and RCH applicants will be informed at the application stage of the Agency's occupancy surcharge requirements and procedures. All borrowers will be advised that all occupancy surcharge charges must comply with this Exhibit.

IV. Initial Understanding With Tenant

Tenants moving into projects that are subject to occupancy surcharge requirements should be informed by the borrower/manager of those requirements when the lease and initial tenant certification are signed by the tenant. They should also be apprised at that time of possible surcharge changes based on tenant household income levels.

V. Surcharge Payment Due Dates

The first monthly occupancy surcharge payment and all payments thereafter will have the same due dates as amortized loan installment due dates. Surcharges will be based on tenants in residence on the first of the month prior to the payment due date.

VI. Defining Occupancy Surcharge

Occupancy surcharge is a monthly charge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. The surcharge assessment due will be collected from borrowers by FmHA or its successor agency under Public Law 103–354 and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date the initial loan was made or insured.

The amount of surcharge assessed in the initial year will be $2 per unit, per month, with annual increases of $2 per unit for a 19 year period. At the expiration of the 20 year period, annual increases will stop but the surcharge payment will continue at that established rate for the remaining life of the loan.

The residing tenant will only be required to pay the portion of the surcharge assessment that would be included within 30 percent of their annual adjusted gross income.

Example: (No RA Available for Unit)

Basic Rent for Project—$200 per month

Occupancy Surcharge Assessment for Year One is $2

Net Tenant Contribution (NTC)—$195

Tenant Pays—$200—No Occupancy Surcharge (To pay any portion of the $2 would have put the tenant over 30 percent of their annual adjusted income).

Borrowers will not be required to pay the unpaid portion of the surcharge assessment that exceeds the tenant contribution.

Vacant units will not be subject to surcharge payments but will be subject to annual increases in unit surcharge rates on surcharge anniversary dates.

VII. Adjustments to Occupancy Surcharge Due to Changes In Tenant's Income

A. If a tenant's income increases, and that tenant was not previously paying surcharge at the maximum level assessed to the unit, they may become subject to paying a higher level of surcharge. This amount of surcharge increase is not to exceed the maximum surcharge assessed to the unit by annual increases.

B. If a tenant's income decreases and that decrease will cause the level of surcharge previously paid to exceed 30 percent of their annual adjusted income, the surcharge payments will be decreased accordingly.

C. Annual increases in occupancy surcharges will always be in $2 increments but tenants may qualify to pay any portion of the surcharge unit assessment, rounded up to the nearest $1.

Example: Basic Rent for Project—$200 per month

Occupancy Surcharge Assessment for Year 2 is $4

Tenant NTC—$203

Tenant Pays $200 + $3 Occupancy Surcharge

VIII. Tenants Receiving Rental Assistance (RA)

Tenants receiving RA will always be subject to the maximum occupancy surcharge assessments because their rent contributions will never exceed 30 percent of their annual adjusted gross income.

Example: Basic Rent in Project—$200 per month

Tenant NTC = $150

Year One—Tenant Pays $150 and RA Pays $52 = $202 ($50 Basic Rent + $2 Surcharge)

Year Two—Tenant Pays $150 and RA Pays $54 = $204 ($50 Basic Rent + $4 Surcharge)

If the tenant continues to receive RA, annual increase surcharge assessments will continue to be paid from RA.

IX. Tenants Paying Overage

Tenants paying overage will be subject to maximum surcharge assessments until their rent, utilities and surcharge equals 30 percent of their annual adjusted gross income. The amount of overage tenants pay will reduce by the amount of surcharge assessed to the unit.

Example: Basic Rent for Project is $200 per month

Tenants NTC—$210 (No change in income throughout example)

Year One—Tenant Pays $210 ($200 basic + $2 Surcharge + $8 overage)

Year Two—Tenant Pays $210 ($200 basic + $4 Surcharge + $6 overage)

Year Five—Tenant pays $210 ($200 basic + $10 Surcharge + $0 overage)

Year Six—Tenant Pays $210 ($200 + $10 Surcharge) While the unit surcharge increases to $12, the tenant experienced no surcharge annual increase because, at this point, 30 percent of their annual adjusted gross income will only cover rent, utilities and a $10 occupancy surcharge.

X. Tenants Paying Market Rent

Tenants paying market rent will pay up to the maximum surcharge assessments plus any annual increases until rent, utilities and the surcharge level equals 30 percent of their annual adjusted gross income.

NOTE: An easy formula to use for market tenants is:

Take the lesser figure of Tenant's 30 Percent or Maximum Contribution (Market plus Surcharge).

Minus Basic Rent.

Minus Occupancy Surcharge unit assessment.

Balance is Overage.

Example: Basic Rent is $200 per month, Market Rent is $425 per month

Tenant NTC—$430 (no change in income throughout example)

Tenant's maximum contribution is $425 plus surcharge rate

Year One—Tenant Pays $427 ($425 Market Rent + $2 Surcharge) minus basic Rent minus Surcharge = $225 Overage

Year Two—Tenant Pays $429 ($425 Market Rent + $4 Surcharge) minus Basic Rent minus Surcharge = $225 Overage

Year Three—Tenant Pays $430 ($425 Market Rent + $5 Surcharge) minus Basic Rent minus Surcharge = $224 overage

Year Four—Tenant Still Pays $430. Tenant did not pay surcharge annual increase for this year because they are now paying 30 percent of their annual adjusted gross income for rent, utilities and surcharge.

XI. Projects Receiving Rental Assistance From Sources Other Than FmHA or its successor agency under Public Law 103–354

A. Projects subject to occupancy surcharge provisions where tenants are receiving sources of rental assistance other than from FmHA or its successor agency under Public Law 103–354 (private project RA, HUD Section 8, State Funded RA, etc.) should be handled on a case-by-case basis and in consultation with the National Office.

B. Whether occupancy surcharge will be paid by rental assistance coming from sources other than FmHA or its successor agency under Public Law 103–354 is dependent upon the terms of the contracts from which the funds are expended.

XII. Annual Increases of Occupancy Surcharges

A. The annual surcharge increases will continue for a period of 19 years from the first surcharge anniversary date of the loan in the project that established the surcharge.

B. After the 19 year annual increase period expires, tenants will continue surcharge payments for the remaining life of the loan at the unit rate established on the anniversary date of year 19. The tenant will continue to pay the portion of that unit rate that is within 30 percent of their annual adjusted gross income.

XIII. Surcharge Anniversary Date

The surcharge anniversary date is the effective date for the $2 per unit annual increase assessment. This date will always be established one year from the first surcharge payment due. The first surcharge payment is due at the same time the first amortized loan installment is due which is one month from the Amortized Effective Date (AED).

Example:

Loan Closed—10/12/91

AED Date—11/01/91

1st Amortized Payment Due—12/01/91

1st Surcharge Payment Due—12/01/91

Surcharge Anniversary Date—12/01 for all Subsequent Years

No Further Annual Increases after Year 2011

XIV. Occupancy Surcharge Changes

A. Changes in the amount of surcharge tenants pay due to income changes, the regular tenant recertification process and surcharge anniversary increases will always be handled as separate actions, even though they could be effective on the same date. Examples of change in tenant surcharge payments are:

1. Changes in tenant income during the year can increase or decrease the portion of the assessed surcharge per unit which the tenant must pay.

2. The amount of surcharge paid by the tenant can increase or decrease on the yearly recertification date of Form FmHA or its successor agency under Public Law 103–354 ''Tenant Certification'' if the tenants income has changed.

3. The amount of surcharge paid by the tenant can increase on the surcharge anniversary date.

4. Tenants paying market rent may experience a increase/decrease in the amount of cash they pay for surcharge as a result of the anniversary increase and any income changes.

B. When there are surcharge changes due to income changes and regular recertifications, the current signed tenant certification showing the level of surcharge due will serve as notification of the change.

C. Prior to the project anniversary date, all current Forms FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification'' must be reviewed for any changes occurring during the year that

would change the status of the tenant related to a surcharge annual increase. Surcharge anniversary reviews must be accomplished by the borrower/manager in a timely manner. The process requires no prior review by FmHA or its successor agency under Public Law 103–354 and should be handled in accordance with the following:

1. Prior to the surcharge anniversary date established for the project, all current tenant certifications on file must be reviewed.

2. All tenants in the project will be sent a notification that the surcharge unit assessment has increased by $2, that a review of their income has occurred and notice of any change in their contribution brought about by the surcharge annual increase. Tenants who will actually experience an increase in their Net Tenant Contribution (tenants paying market rent) should be notified at least 30 to 60 days (or in accordance with State or local statutes) prior to the effective date of the increase. These notifications should do the following:

a. Make all tenants aware of the review of their tenant certification and of any changes in the amount of RA they receive, overage they pay or any changes in cash they pay as a result of the review.

b. Offer the tenants an opportunity to meet with management to discuss the changes brought about by the review. (The point of discussion should be based solely on information contained on the tenant certification since the occupancy surcharge requirement is mandated by law).

D. If there are surcharge changes due the tenant as a result of the surcharge anniversary date, it should be manually recorded on the current tenant certification by marking through the old recorded surcharge rate and inserting the new rate.

XV. Responsibility To Pay Occupancy Surcharge

A. Payment of occupancy surcharge must be a viable part of the lease agreement between the tenant and the borrower/manger in accordance with paragraph VIII A 3 of exhibit B of subpart C of part 1930 of this chapter.

B. Nonpayment of occupancy surcharge by the tenant is a violation of that lease and can be used as grounds for eviction.

C. If the borrower/manager has correctly followed the certification procedure as outlined in paragraph VII F of exhibit B of subpart C of part 1930 of this chapter, and there is still no current valid Tenant Certification on file for the tenant at the time of the surcharge anniversary review, and it is determined the fault of the tenant, the tenant will automatically be subject to paying market rent plus the maximum surcharge assessed to the unit. The tenant should be notified of this action in accordance with paragraph VII F 6 c of exhibit B of subpart C of part 1930 of this chapter.

D. The District Director can authorize a waiver of occupancy surcharge while eviction is being actively pursued up to resolution of the eviction action in two instances.

1. When there is not a valid tenant certification on file and it is the fault of the tenant.

2. When the tenant refuses to pay occupancy surcharge.

E. If it is concluded that the lack of current tenant certification is the fault of the borrower/manager, then the borrower/manager (project) must pay market rent plus the maximum occupancy surcharge due for that unit until there is a current certification.

XVI. Subsequent Loans

A. If the initial loan in the project is subject to occupancy surcharge, all other loans in the project will be subject to occupancy surcharge.

B. Subsequent loans, made for any purpose, will not subject a project to paying occupancy surcharge if the initial loan in the project is not subject to occupancy surcharge.

C. If units are added with a subsequent loan and the project is subject to surcharge because of the initial loan, the anniversary date for the project will remain the same as the one already established by the initial loan. See paragraph XII A for how occupancy surcharge increases apply, and paragraph XII B for period of duration of collection.

1. Tenants moving into the new units will be subject to the level of surcharge assessment already reached for the project by annual increases.

2. The first surcharge payment for the new tenants will begin when their first rent payment for the project is due.

3. On the project anniversary date, all Tenant Certifications for the project will be checked for tenant eligibility for any occupancy surcharge changes.

XVII. Consolidations of Projects Subject to Occupancy Surcharge

A. If none of the loans in any of the projects to be consolidated are subject to the occupancy surcharge provisions, the new consolidated project will not be subject to occupancy surcharge.

B. If one of the projects being consolidated is subject to the occupancy surcharge provisions and one project is not, the following conditions apply:

1. The total units in the project after consolidation will be subject to the occupancy surcharge.

2. The level of the surcharge assessment for the consolidated project will be the same as the assessment for the oldest project already subject to the surcharge. (EXAMPLE:

If the project with the oldest surcharge is in its fourth year, the assessment for all units in the new consolidated project will begin at $8 per unit).

3. All tenants in the project, who were not previously subject to surcharge but will now be subject to surcharge because of the consolidation, must be notified 30 to 60 days prior to the first surcharge payment due date.

4. All leases not previously modified to include occupancy surcharge must be modified.

5. The first occupancy surcharge payment for the new consolidated project is due when the first new amortized loan installment is due for the project.

6. The anniversary date established for the project already subject to the occupancy surcharge will be the anniversary date for the new consolidated project.

7. The annual surcharge increase period will expire twenty (20) years from the due date of the first occupancy surcharge payment for the first project that was subject to the assessment prior to consolidation.

C. If all projects being consolidated are subject to the occupancy surcharge provisions, but have different anniversary dates and different twenty (20) year expiration dates, the following conditions apply:

1. The earliest anniversary date of the projects being consolidated will be the anniversary date for the newly consolidated project.

Example:

Project 01–1: Anniversary Date on 10/1/90
Project 02–2: Anniversary Date on 5/1/91
Consolidated Project Anniversary Date is 10/1

2. The beginning level of the surcharge assessment for the consolidated project will be the same as the project with the earliest surcharge payment due date.

Example:

Project 01–1 First Surcharge Payment 10/1/90
Project 02–2 First Surcharge Payment 5/1/91
Date of Consolidation 12/1/91
Project 01–1 is in the 2nd Year of Surcharge
Tenants in project 02–2 will be assessed $4 per unit, effective 1/1/92
All tenants in the consolidated project will be reviewed for the surcharge anniversary increase on 10/1/92

3. The annual surcharge increase period will expire twenty (20) years from the due date of the first occupancy surcharge payment for the newest loan of the projects being consolidated.

XVIII. Surcharge Collection Process

A. Project owners/managers will collect the occupancy surcharge amount from tenants at the same time they collect monthly rents.

B. Project owners/managers will collect information from Forms FmHA or its successor agency under Public Law 103–354 1944–8 and report the amount of surcharge due FmHA or its successor agency under Public Law 103–354 on Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance,'' both as a project total and per unit amounts.

C. Project owners will remit the collected amount to FmHA or its successor agency under Public Law 103–354 when they remit their monthly loan payments as a part of that payment. The method of RA ''netting'' will also apply to occupancy surcharges.

D. If occupancy surcharges are not remitted to FmHA or its successor agency under Public Law 103–354 in correct amounts and in the specified timely manner, and the project account becomes delinquent as a result, late fees, if applicable, will be assessed to the account.

E. FmHA or its successor agency under Public Law 103–354 will remit the collected amount to the Finance Office in accordance with the prescribed collection process in FmHA or its successor agency under Public Law 103–354 Instruction 1951–B and of 1951–K of this subpart.

XIX. Tracking Responsibilities

A. The occupancy surcharge monies collected nationwide by FmHA or its successor agency under Public Law 103–354 will be deposited in the Rural Housing Insurance Fund (RHIF) and will accrue interest to the account on the total amount of funds collected.

B. FmHA or its successor agency under Public Law 103–354 will track occupancy surcharge balances by project through the use of the Automated Multi-Housing Accounting System (AMAS).

C. FmHA or its successor agency under Public Law 103–354 will report to borrowers the amount of surcharge collected per project once a year on Form FmHA or its successor agency under Public Law 103–354 1951–54, ''Annual Statement of Account.''

[56 FR 66962, Dec. 27, 1991; 57 FR 1313, Jan. 13, 1992, as amended at 58 FR 40956, July 30, 1993]

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:

(1) *B&I*—Business and Industry

(2) *CSA*—Community Services Administration

(3) *EIS*—Environmental Impact Statement

(4) *FmHA or its successor agency under Public Law 103–354*—Farmers Home Administration or its successor agency under Public Law 103–354

(5) *HHS*—U.S. Department of Health and Human Services

(6) *IRP*—Intermediary Relending Program

(7) *OCS*—Office of Community Services

(8) *OIG*—Office of Inspector General

(9) *OGC*—Office of the General Counsel

(10) *RDLF*—Rural Development Loan Fund

(11) *USDA*—United States Department of Agriculture

§ 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 FmHA or its successor agency under Public Law 103–354.

(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 as outlined in § 1948.116(b) of part 1948, subpart C.

(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.

§ 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 reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA or its successor agency under Public Law 103–354 at its option may change this requirement to semiannual reports. These reports shall contain information only on the RDLF/IRP loan funds, or if other funds are included, the RDLF/IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one RDLF/IRP loan, from FmHA or its successor agency under Public Law 103–354, a separate report shall be made for each of these RDLF/IRP loans. The reports will include:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–4,

''Report of IRP/RDLF Lending Activity'' (available in the FmHA or its successor agency under Public Law 103–354 National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(ii) Project Progress Review Narrative.

(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.

§ 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 Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) will use in servicing most Farmer Program 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. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. For the purposes of 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 Farmer Program Non-Program (NP) loans. Examples of primary loan service actions that FmHA or its successor agency under Public Law 103–354 may take 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 set-aside easements, or a combination of these actions. Examples of preservation loan service actions that FmHA or its successor agency under Public Law 103–354 may take are leaseback/buyback and/or homestead protection. 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.

[57 FR 18626, Apr. 30, 1992, as amended at 58 FR 228, Jan. 5, 1993]

§1951.902 General.

(a) *Supervision and servicing.* It is a primary objective of the Agency to provide supervised credit to borrowers in financial difficulty in a manner that will assure the maximum opportunity for the borrower's recovery and at the same time, get the best net recovery for the Government. Supervision and servicing is a continuing process that begins the day a farmer comes into the FmHA or its successor agency under Public Law 103–354's credit program. Providing supervised credit to farmers has two objectives; to help the farmers work out of financial difficulty so they can move to private sector credit, and to minimize costs to the Government. The continuing process of supervision and servicing can be described as phases a borrower's account may go through during the borrower's tenure with FmHA or its successor agency under Public Law 103–354. There are five possible phases which are summarized under paragraph (b) of this section. This summary provides only a general outline of the servicing process. It will not be construed as providing substantive or procedural rights or obligations to the extent of any conflict with other FmHA or its successor agency under Public Law 103–354 regulations. Adverse decisions made during the servicing process are subject to appeal procedures set out in subpart B of part 1900 of this chapter.

(b) *Phases*—(1) *Phase (I).* The borrower is current or can be current on payments but is in financial distress. The borrowers will be notified of available servicing options in accordance with §1951.908 of this subpart. FmHA or its successor agency under Public Law 103–354 will carefully analyze the farming operation at least annually to determine the cause of any financial deterioration. Remedial action needed to reverse the trend will be identified. The use of rescheduling and/or reamortization at regular interest rates

and terms will be considered in an effort to keep the borrower from becoming delinquent. If those options will not provide the assistance needed, the borrower will be considered in Phase II.

(2) *Phase (II).* In Phase II, additional restructuring options are available. In addition to rescheduling and/or reamortization, limited resource interest rates, deferrals, including ST loans, and an easement in exchange of debt will be considered. The borrower will be considered in Phase III when the accounts are 30 days behind schedule. The borrower will be notified of the available primary, preservation loan servicing and debt settlement programs in accordance with § 1951.907 of this subpart.

(3) *Phase (III).* In Phase III, in addition to all of the servicing options considered in Phases I and II, the borrower at this point, is considered for a debt writedown. FmHA or its successor agency under Public Law 103–354 determines whether or not the best recovery to the Government is by keeping the farmer on the farm or by liquidation. To do this, FmHA or its successor agency under Public Law 103–354 compares the present value of the restructured debt to the net recovery value of the collateral as defined in this subpart. If the calculations show that the present value of the payments to be received on the restructured debt are greater than or equal to the net recovery value of the collateral, FmHA or its successor agency under Public Law 103–354 will offer to restructure the debt. FmHA or its successor agency under Public Law 103–354 also will consider any nonessential assets that the borrower may own. If a feasible plan of operation cannot be developed, will send the borrower information concerning any available State mediation program or meeting of creditors. If a feasible plan cannot be developed through mediation or a meeting of creditors, the borrower will be notified of FmHA or its successor agency under Public Law 103–354's intent to accelerate the account and offer the borrower the opportunity to retain the security property by paying FmHA or its successor agency under Public Law 103–354 the net recovery value (buyout). The borrower will be in Phase IV at this point.

(4) *Phase (IV).* When all combinations of primary servicing have been fully and carefully considered and liquidation is the only course of action, the borrower will be considered in Phase IV which is the beginning of the liquidation process. Before acceleration, FmHA or its successor agency under Public Law 103–354 will offer preservation loan service options to borrowers. These options include both an opportunity to lease or buy back the property that is subject to foreclosure. The borrower can apply for debt settlement when conveying the property, either by sale at market value or voluntary conveyance to FmHA or its successor agency under Public Law 103–354. Debt settlement procedures are set out in subpart B of part 1956 of this chapter.

(5) *Phase (V).* After acceleration and foreclosure, the borrower is considered in Phase V. This Phase begins when the property securing the borrower's debt to FmHA or its successor agency under Public Law 103–354 passes into FmHA or its successor agency under Public Law 103–354 inventory. If FmHA or its successor agency under Public Law 103–354 acquires the property, Preservation Loan Service Programs will be offered to the borrower.

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* County Supervisors will make full use of the National automated tracking system to track and manage the FP 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 County Supervisor except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FP loans must be recommended by the FmHA or its successor agency under Public Law 103–354 County Committee (except where the debt has been discharged through bankruptcy), approved by the FmHA or its successor agency under Public Law 103–354 State Director or the FmHA or its successor agency under Public Law 103–354 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. County Supervisors are authorized to accept a buyout payment when the borrower(s) pays the net recovery value of the FmHA or its successor agency under Public Law 103–354 security set forth in §1951.909 of this subpart. Only State Directors are authorized to approve writedown and buyout in accordance with §1951.909 of this subpart. Only State Directors are authorized to release a divorced spouse from liability on the debt in accordance with §1951.909(a) of this subpart. County Supervisors are authorized to consolidate and reschedule/reamortize or defer a borrower's loans only one time. If subsequent reschedulings/reamortizations and/or deferrals are necessary, approval must be in writing by the District Director.

§§1951.904—1951.905 [Reserved]

§1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has or is presently operating the farm and has outstanding obligations to the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) under any Farmer Program loan(s), without regard to whether the loan has been accelerated, but 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 FmHA or its successor agency under Public Law 103–354 debt. Non-program (NP) borrowers are not considered borrowers for 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 subpart, it shall also be construed to cover property which secured other Farmer Programs loans.

Debt settlement. The settlement of debts owed the United States for FmHA or its successor agency under Public Law 103–354 Farmer programs, Single-Family Housing and Multiple Family Housing programs. The types of debt settlement programs are: compromise, adjustment, cancellation and chargeoff. These programs are administered in accordance with the provisions of subpart B of part 1956 of this chapter.

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.

Entity members. For purposes of leaseback/buyback, entity members are stockholders of a corporation, partners of a partnership, joint operators of a joint operation and members of a cooperative, provided that the shareholders of the corporation, partners of the partnership, joint operators of a joint operation or members of a cooperative must be exclusively members of the same family. To be considered members of the same family, the members of an entity must be related by blood or marriage.

Farm plan. Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' or other plans or documents acceptable to FmHA or its successor agency under Public Law 103–354 that will accurately reflect the production and financial management of the farming operation for one production cycle. FmHA or its successor agency under Public Law 103–354 will not require the use of consolidated financial statements.

Farmer Program (FP) 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).

Feasible plan. A feasible plan is a plan based upon the applicant's or borrower's actual records that show the farming operation's actual income, production and expenses. Income tax returns and supporting documents (hereafter called income tax records) must be submitted to verify the actual records. The records, including income tax records, must be for the most recent 5-

year period or if the borrower has been farming less than 5 years, the records for the period which the borrower has farmed. For borrowers who have been farming for less than 5 years, the borrower's actual records will be used along with other available records in the order listed in § 1924.56 to complete a 5-year history. Future production yields will be based on a 5-year average of the most recent past 5 years' actual production yields. Borrowers that have yields affected by disasters in at least 2 of the 5 most recent years' actual production may exclude the crop year with the lowest actual yield. In accordance with § 1924.56, if the applicant's remaining disaster year's 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 that year. 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 farm program 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 all taxes which are due during the projected farm business accounting period.

(2) Meet scheduled payments on all debts, except as provided in § 1941.14 of subpart A of part 1941 of this chapter for annual production loans or subordinations made to delinquent borrowers.

(3) Meet up to 105 percent, but not less than 100 percent, of the scheduled payments on all debts, except as provided in § 1941.14 for annual production loans or subordinations made to a delinquent borrower submitting a ''NEW APPLICATION.'' The Agency will assume that a borrower needs up to 105 percent of the scheduled payments on all the debts for the business accounting period in order to meet the obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the projected income is less than 105 percent of the scheduled payments. In no case will a borrower receive restructuring if projected income is less than 100 percent of scheduled payments.

(4) 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 who 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 financially distressed if the borrower 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 including Net Recovery Buyout, and Leaseback/Buyback. A borrower is considered to have acted in ''good faith'' if the borrower has demonstrated honesty and sincerity in carrying out the agreements on Form FmHA 1962–1 (available in any Agency office) and any other written agreements with the Agency. Findings of a lack of good faith will be based on violations within the borrower's control. These actions will demonstrate the borrower's intent to violate written agreements with the Agency. The Agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion by 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 determination was the disposition of normal income security, as defined in § 1962.4, 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 the Agency could have approved according to § 1962.17.

Homestead Protection. This refers to the right of a former owner 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 Farmer Program 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.

Leaseback/buyback property. Real farm and ranch property and any off-farm principal residence(s) of the operator(s) which secured an FP loan. Any off-farm principal residence(s) of the former borrower(s) and/or owner(s), who are not the operator(s) of the farm or ranch property, are not considered leaseback/buyback property.

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. Loan service program means a Primary Loan Service Program or a Preservation Loan Service Program for FP borrowers.

New application. An application submitted by a borrower 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 assets which FmHA or its successor agency under Public Law 103–354 does not have a lien on and which the borrower has an ownership interest in, 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 for further guidance.); and

(2) Are not exempt from judgment creditors or in a bankruptcy action. Each State 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 the laws for their State.

NonProgram (NP) loan. An NP loan results when loan(s) are made to ineligible applicants and/or transferees in connection with loan assumptions and sale of surplus inventory properties at ineligible terms after first being offered for public sale by sealed bid or auction. A borrower is not considered to have a NON-PROGRAM loan, if the borrower is found to be ineligible after receiving the loan, when the reason the borrower was originally determined eligible by FmHA or its successor agency under Public Law 103–354 or by a court of law, was due to a mistake on FmHA or its successor agency under Public Law 103–354's part.

Preservation loan service program. Preservation loan service program means:

(a) Homestead protection as described in §1951.911 of this subpart, and

(b) Leaseback or buyback of farm land as described in §1951.911 of this subpart.

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 charges, or both, of the loan; or

(4) Any combination of actions listed in the paragraphs 4 (i), (ii), and (iii) of this definition.

(i) *Consolidate.* Consolidate means to combine and reschedule 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.

(ii) *Deferral.* Deferral is an approved delay in making regularly scheduled

payments, including softwood timber (ST) loan.

(iii) *Limited Resource Program.* The limited resource program is a reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

(iv) *Reamortization.* Reamortization means to rearrange the installment payments of a real estate loan and may include changing the interest rate and terms of the loan made for subtitle A purposes.

(v) *Reschedule.* Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for subtitle B purposes.

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

[57 FR 18626, Apr. 30, 1992, as amended at 61 FR 35929, July 9, 1996]

§ 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 that are 30 days late on the payments.* (1) A borrower who has failed to make all or a part of a payment which is due for 30 or more calendar days after the due date, as listed on the 540 or 580 delinquency reports, will be sent exhibit A of this subpart with attachments 1 and 2 within 15 days of receiving the report. If the borrower submits attachment 2 with a complete application as described in paragraph (f)(1) of this section, the application will be processed in accordance with § 1951.909 of this subpart. The borrower will not be renotified when the account becomes 180 days delinquent. If the borrower submits an incomplete application see paragraph (f) of this section.

(2) If the borrower does not submit attachment 2 of exhibit A of this subpart with a completed application within 60 days, the application will not be processed. The borrower will be renotified when 180 days delinquent in accordance with paragraph (d) of this section.

(d) *Notification of borrowers 180 days delinquent.* Farmer Program borrowers who are 180 days delinquent, as listed on the 540 or 580 delinquency report, will be sent exhibit A of this subpart with attachments 1 and 2 within 15 days of receiving the report, by certified mail, return receipt requested unless they are already being processed for servicing in accordance with paragraph (c) of this section. If the borrower submits an incomplete application see paragraph (f) of this section for procedures on requesting additional information. Borrowers who are 180 days delinquent and have also violated their loan agreements with FmHA or its successor agency under Public Law 103–354 will be handled in accordance with paragraph (e) of this section. In addition to the requirements set forth above, FmHA or its successor agency under Public Law 103–354 County Supervisors will provide attachments 1 and 2 of exhibit A of this subpart to Farmer Program borrowers, as set forth below:

(1) At the time an application is made for participation in an FmHA or its successor agency under Public Law 103–354 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 FP borrower, whether delinquent or not, 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 FmHA or its successor agency under Public Law 103–354 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,

(e) *Notification of borrowers in nonmonetary default or for delinquent borrowers also in non-monetary default or when a prior or junior lienholder is foreclosing and FmHA or its successor agency under Public Law 103–354 is notified of the foreclosure.* Farmer Program 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 U.S. Attorney, no loan servicing action will be taken without the U.S. Attorney's concurrence as set forth in §1962.49 of subpart A of part 1962 of this chapter. If the borrower has filed bankruptcy, the account will be serviced in accordance with instructions from OGC. Any servicing request will be processed as indicated in §1951.909 of this subpart. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final FmHA or its successor agency under Public Law 103–354 appeal decision, that does not result in a resolution on the loan defaults, the account will be accelerated as set forth in §1955.15 of subpart A of part 1955 of this chapter.

(f) *Request for primary and preservation loan service programs.* (1) To request consideration for Primary and Preservation Loan Service Programs FP 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 FmHA or its successor agency under Public Law 103–354 County Office within 60 days after receiving the notices with the forms required by this paragraph for a completed application. If the borrower submits an incomplete application within the 60 days, the County Supervisor will immediately contact the borrower to request any additional information needed for a complete application. The County Supervisor will inform the borrower what information must be submitted, and that it must be submitted within 60 days of the date the borrower received the initial notices. The borrower also will be informed of the expiration date for submitting information. The County Supervisor's request for additional information will be documented in the case file.

(2) If the borrowers were sent attachments 3 and 4 and do not request servicing within 60 days or a hearing to appeal the nonmonetary default within 30 days, FmHA or its successor agency under Public Law 103–354tion in accordance with §1955.15 of subpart A of part 1955 of this chapter.

(3) If borrowers were sent exhibit A and attachments 1 and 2 of this subpart when they are 180 days delinquent and do not submit a completed application within the 60-day time period, the County Supervisor 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 paragraph (c) of this section or §1951.908 of this subpart. For borrowers receiving attachments 9 and 10 or 9–A and 10–A, after the expiration of appeal rights, FmHA or its successor agency under Public Law 103–354 will proceed with liquidation in accordance with §1955.15 of subpart B of part 1955 of this chapter. The account will not be accelerated until any appeal has been concluded.

(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 County Supervisor 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 3 days following the date of first-class mailing.

(5) An application for loan service programs will include the following forms (available in any FmHA or its successor agency under Public Law 103–354 office), records and information:

(i) 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,'' including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA or its successor agency under Public Law 103–354 debt.

(ii) Form FmHA or its successor agency under Public Law 103–354 410–8, ''Applicant Reference Letter.''

(iii) Form FmHA or its successor agency under Public Law 103–354 410–9, ''Statement Required by the Privacy Act.''

(iv) Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' or any other plan acceptable to FmHA or its successor agency under Public Law 103–354 that sets forth a plan of operation. A copy of the commodity prices used by FmHA or its successor agency under Public Law 103–354 will be included with the forms sent to the borrower. The County Supervisor will assist the borrower in the use of these prices.

(v) Form(s) FmHA or its successor agency under Public Law 103–354 440–32, ''Request for Statement of Debts and Collateral.''

(vi) Form(s) FmHA or its successor agency under Public Law 103–354 1910–5, ''Request for Verification of Employment.''

(vii) Form FmHA or its successor agency under Public Law 103–354 1924–1, ''Development Plan,'' if development is planned. Plans, specifications, and cost estimates must be attached to Form FmHA or its successor agency under Public Law 103–354 1924–1. When development is required to comply with ''Highly Erodible and Wetland'' requirements, estimated costs and the conservation plan developed by SCS will be used to satisfy this requirement. If Form FmHA or its successor agency under Public Law 103–354 1924–1 is submitted with the application the County Supervisor will assist the borrower in completing the plan and advise the borrower of any additional information that is needed.

(viii) Form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification,'' is included as part of the complete application after being completed by SCS. (This form is available at SCS County Offices.)

(ix) Form SCS CPA–26, ''Highly Erodible Land and Wetland Determination,'' if not previously on file with FmHA or its successor agency under Public Law 103–354 for the farm operation(s). This form is included as part of the complete application after being completed by SCS. (This form is available at SCS County Offices.)

(x) An ASCS 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 Easement program. This information does not need to be provided if the applicant does not want to be considered for conservation easement at this time.

(xi) The most recent five years income tax returns and supporting documents unless the borrower has been farming for less than five years. If the farmer has been farming for less than 5 years, income tax returns and supporting documents for the tax years immediately preceding the year of application during which the borrower farmed will be provided. Income tax returns and supporting documents will be returned to the borrower when the request has been processed. A copy of the income tax returns and supporting documents will be stamped ''Confidential'' and filed in the borrower's FmHA or its successor agency under Public Law 103–354 file, and not released outside of the U.S. Department of Agriculture without approval of the Regional Attorney.

(xii) The County Supervisor will provide the borrower with copies of the above forms when exhibit A is forwarded. When requested by the borrower, copies of FmHA or its successor agency under Public Law 103–354 regulations and the forms manual inserts (FMI) will be provided within 10 days of the request. The borrower's County Office case file will be documented to provide a record that the FmHA or its

successor agency under Public Law 103–354 regulations were sent.

(xiii) Form FmHA or its successor agency under Public Law 103–354 1956–1, ''Application for Settlement of Indebtedness.'' This form need not be provided if the borrower does not want to be considered for debt settlement. The borrower can apply for debt settlement any time in accordance with subpart B of part 1956 of this chapter.

(6) 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 paragraph (c) of this section or §1951.908 of this subpart. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

§1951.908 Servicing financially distressed current borrowers.

A Borrower That Is Financially Distressed, But Is Not Yet Delinquent on FmHA or its successor agency under Public Law 103–354 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 of this subpart or if the borrower otherwise requests servicing, the FmHA or its successor agency under Public Law 103–354 official will provide the borrower with attachments 1 and 2 of exhibit A of this subpart. It will be documented in the file that the borrower was provided the attachments.

(b) *Eligibility*. In order to be considered for servicing in accordance with this section, the borrower must submit to FmHA or its successor agency under Public Law 103–354 within 60 days attachment 2 of exhibit A of this subpart and a complete application in accordance with the requirements of paragraph (f)(1) of this section.

(1) The eligibility requirements of §1951.909(c) (1) and (2) of this subpart apply to servicing under this section.

(2) Eligible financially distressed borrowers who are current on their FmHA or its successor agency under Public Law 103–354 payments may be considered for the Primary Loan Service Programs described in §1951.909(e) (1), (2), and (3) of this subpart.

(3) Financially distressed borrowers that are not delinquent are not eligible for the writedown of debt or buyout described in §1951.909 of this subpart.

(c) *Processing the application*. The County Supervisor must process a completed application and notify the borrower of the decision within 90 days of receiving the application.

(1) Current borrowers will only be considered for the Primary Loan Servicing Programs described in §1951.909(e) (1), (2), and (3) of this subpart for consolidation, rescheduling, reamortization and deferral of Farmer Program loans. The County Supervisor must use the FmHA or its successor agency under Public Law 103–354 computer program Debt and Loan Restructuring System (DALR$) in accordance with exhibit J–1 of this subpart to determine if a feasible plan can be developed as defined in §1951.906. The County Supervisor will assist the borrower in developing the necessary farm and home plans.

(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 to notify the borrower of the favorable decision. The borrower must notify FmHA or its successor agency under Public Law 103–354 of acceptance of 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 the offer the loan restructuring will be processed in accordance with §1951.909(e)(1), (2), and/or (3) of this subpart, as applicable.

(3) If a feasible plan cannot be developed, the borrower will be informed of the reasons for the adverse decision and given appeal rights in accordance with subpart B of part 1900 of this chapter. The DALR$ printout will be attached to the letter. The borrower will be notified by exhibit A of subpart B of part 1924 of this chapter of the right to release of normal income security as provided for in §1962.17 of subpart A of part 1962 of this chapter.

(4) If the borrower does not apply for primary loan servicing, does not accept the offer for restructuring or does not appeal an adverse decision, and later becomes 30 days past due on the FmHA or its successor agency under Public

Law 103–354 payment, the borrower will be sent new notices as described in § 1951.907 of this subpart.

(5) Release of proceeds from the sale of normal income security must be provided as set forth in § 1962.17 of subpart A of part 1962 of this chapter for both financially distressed and delinquent borrowers until the account is accelerated.

§ 1951.909 Processing Primary Loan Service Programs requests.

For Borrowers Who Submit New Applications Also See § 1951.910 of This Subpart.

(a) *FmHA or its successor agency under Public Law 103–354 responsibilities.* (1) Within 90 days after receipt of attachment 2 or 4 and a completed application in accordance with § 1951.907(f) of this subpart, the County Supervisor will consider all primary service programs options in this subpart. The County Supervisor must use the FmHA or its successor agency under Public Law 103–354 computer program, ''Debt and Loan Restructuring System (DALR$),'' in accordance with exhibit J for borrowers who applied before November 28, 1990, or exhibit J–1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan for the borrower. Borrowers who request loan servicing and who have disposed of all the FmHA or its successor agency under Public Law 103–354 security, including Collection-Only borrowers, will be processed in accordance with subpart B of part 1956 of this chapter. If the borrower's completed application for primary loan servicing includes a request for the Farm Debt Restructure and Conservation Set-Aside Easement Program, as indicated by the borrower's submission of the information required in § 1951.907 (f)(2)(x) of this subpart, the County Supervisor will determine if the borrower is eligible based on criteria as set forth in exhibit H of this subpart. If the borrower is eligible, the County Supervisor will make an estimate of the inputs needed to permit the DALR$ computer program to make the calculations of feasibility of the Conservation Set-Aside Easement. The assumptions used to establish the estimates will be documented in the borrower's case file and will be based on the County Supervisor's knowledge of the borrower's farm, land values, the borrower's repayment ability, and the proposed easement 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 of the individuals has withdrawn from the operation, the State Director will consider upon the recommendation of the County Supervisor, the release of liability for the individual that has withdrawn from the operation provided that conditions of paragraphs (a)(2) (i) through (iv) of this section are met. Any adverse decision under this paragraph is appealable according to subpart B of part 1900 of this chapter.

(i) A divorce decree or property settlement document did not make the withdrawing party responsible for the loan payments.

(ii) The withdrawing party's interest in the security is conveyed to the person with whom the loan will be continued; and

(iii) It can be clearly documented that the person withdrawing does not have any repayment ability for repaying the loan, and does not own any nonessential assets as defined in § 1951.906 of this subpart.

(iv) The State Director completes part 1 and 3 on form FmHA or its successor agency under Public Law 103–354 1965–8, Release from Personal Liability.

(3) If the borrower's completed application for Primary Loan Servicing includes a request for a waiver from the training required in paragraph (c)(5) of this section, the County Committee will, prior to the County Supervisor's offer of any Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set forth in § 1924.74 of subpart B of part 1924 of this chapter.

(b) *Adverse determination.* (1) If the County Supervisor or 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. These notices list and explain the options available to the borrower.

(2) Borrowers sent notices on or after November 28, 1990, who do not buyout at the net recovery value or who indicate in writing that they do not wish to buyout at the net recovery value, will automatically be considered for debt settlement if the borrower submitted an ''Application For Debt Settlement.'' Any appeal of a primary loan servicing denial will be completed before FmHA or its successor agency under Public Law 103–354 begins any further processing of the borrower's Debt Settlement and/or Preservation Loan Service Programs request. Once the appeal is concluded and if the adverse decision on restructuring is upheld, the borrower will be considered for the Debt Settlement and/or Preservation Loan Service Programs. FmHA or its successor agency under Public Law 103–354 will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of subpart B of this chapter. Homestead Protection and/or Leaseback/Buyback will be processed in accordance with §1951.911 of this subpart. No acceleration or foreclosure will occur until the appeal process has been completed for servicing and/or debt settlement requests timely submitted under this subpart.

(3) Borrowers who submitted new applications may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the FmHA or its successor agency under Public Law 103–354 appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors. If the borrower does not negotiate the FmHA or its successor agency under Public Law 103–354 appraisal, the borrower will be given the opportunity to appeal the FmHA or its successor agency under Public Law 103–354 appraisal by checking the appropriate block for an appeal on attachment 6–A of exhibit A or attachment 2 of exhibit F of this subpart.

(c) *Eligibility*. The County Supervisor or approval official authorized by §1951.903(b) of this subpart must find that the borrower who has applied for Primary Loan Service Programs meets all of the following requirements:

(1) The delinquency or financial distress does exist and any delinquency is due to circumstances beyond the control of the borrower due to a reduction in income which reduces the operator's cash flow to a point where outflows exceed inflows, and which causes the need for Primary Loan Service Programs. A reduction of income does not by itself mean that the borrower is eligible. Acceptable circumstances for reductions of income beyond the control of the borrower include:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm; or

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower 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 the repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith as defined in §1951.906 of this subpart.

(3) Borrowers who do not meet the eligibility requirements of this section will be notified of the adverse decision by sending the borrower attachments 5 and 6, or 5–A and 6–A, of exhibit A of

this subpart, as appropriate. These notices provide the opportunity to appeal.

(4) Borrowers that have sufficient nonessential assets to bring the FmHA or its successor agency under Public Law 103–354 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 subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. The training requirement applies to all primary loan servicing programs, except for net recovery buyout offers. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator holding a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the borrower has previously been required to obtain training, the borrower must be enrolled in and attending, or have satisfactorily completed, the training required to be considered eligible.

(d) *FmHA or its successor agency under Public Law 103–354's feasibility determinations.* The County Supervisor must determine:

(1) That the borrower will be able to develop a feasible plan as defined in § 1951.906 of this subpart;

(2) That the loan, if restructured, will result in a net recovery to the Government, during the term of the loan as restructured, that will be equal to or greater than the net recovery value to the Government from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison to net recovery to the Government, however, will not be made when establishing conservation easements under Exhibit H of this subpart.

(e) *Primary loan service programs.* Any FP borrower may request Primary Loan Service Programs described in this subpart at any time. However, borrowers must show that they are not able to pay their debt as scheduled before FmHA or its successor agency under Public Law 103–354 will approve Primary Loan Service Programs. FmHA or its successor agency under Public Law 103–354 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 must be entered into DALR$ as if they were cancelled. Debt writedown will only be used for delinquent borrowers who cannot develop feasible plans of operations without debt 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 County Supervisor determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the County Supervisor 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 FmHA or its successor agency under Public Law 103–354's graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no FmHA or its successor agency under Public Law 103–354 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 County Supervisor 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 County Supervisor 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 and interest rate will be consolidated;

(viii) EM actual loss loans will not be consolidated;

(ix) The County Supervisor will not consolidate a loan serviced under subpart L of this part 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 20 years from the date of the original note.

(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 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) 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) 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.* This subsection explains how the FmHA or its successor agency under Public Law 103–354 County Supervisor can reamortize existing loans. When the County Supervisor determines that a reamortization action will assist in the orderly collection of the loan, the County Supervisor 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 FmHA or its successor agency under Public Law 103–354's 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 subpart will not be reamortized during the deferral period unless the deferral is cancelled;

(vii) Terms of repayment of reamortized loans are as follows:

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The FmHA or its successor agency under Public Law 103–354's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(viii) Interest:

(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.

(B) At the time of the reamortization, an FO or SW loan may be changed to a limited resource interest rate if:

(*1*) The borrower meets the requirements for a limited resource interest rate, and

(*2*) A feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section.

(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 FmHA or its successor agency under Public Law 103–354 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 by FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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) *FmHA or its successor agency under Public Law 103–354's determinations.* The FmHA or its successor agency under Public Law 103–354 approval official must:

(A) Determine that the borrower meets the eligible 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 County Supervisor 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 County Supervisor 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 County Supervisor 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 County Supervisor 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) *FmHA or its successor agency under Public Law 103–354 loan deferral considerations.* The County Supervisor will assist the borrower in completing

a typical-year plan. If there is no typical year, the County Supervisor 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 County Supervisor 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)–(C) [Reserved]

(D) Six months prior to the end of the deferral period the County Supervisor 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 FmHA or its successor agency under Public Law 103–354 debt.

(E) The County Supervisor must notify the Finance Office of any cancellation of a deferral by letter.

(vii) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by §1924.55, the County Supervisor 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 part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will, in writing, ask the borrower to sign a Form FmHA or its successor agency under Public Law 103–354 440–9, ''Supplementary Payment Agreement,'' within 30 days of the date of the written request. The letter will provide the borrower with the right to appeal. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the County Supervisor 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. If the borrower does not sign a Form FmHA or its successor agency under Public Law 103–354 440–9 or appeal the request for a supplement payment within the required time, and/or does not honor the terms and conditions of the repayment agreement, such actions will be considered abuse of the program. The borrower's account will be handled as set forth in §1951.907(e) of this subpart.

(4) *Writedown of Agency loans.* The following conditions shall be met in order for a borrower to get writedown of FmHA or its successor agency under Public Law 103–354 loans:

(i) No other Primary Loan Service Program including deferral nor any combination thereof will produce a feasible plan that will permit the borrower to continue the operation;

(ii) A borrower who submits a New Application and only has outstanding loans with original promissory notes dated after January 6, 1988, has a lifetime limit of either ONE writedown or ONE buyout. Any writedown or buyout or buyout which resulted from an application submitted before November 28, 1990, will not be counted towards this limitation;

(iii) A borrower who submits a New Application and has any outstanding loans with original promissory notes dated on or before January 6, 1988, and has NEVER received deferral, writedown, or buyout on any loans after that date, my receive two writedowns or buyouts, or one of each. If such borrower receives buyout, the loans dated on or before January 6, 1988, will be satisfied or terminated in accordance with this section. If the borrower obtains a new loan(s) after receiving a buyout, the borrower could receive a (second) writedown or buyout in accordance with paragraph (e)(4)(ii) of this section. If the borrower first receives a deferral or writedown, instead of buyout, the borrower could receive a (second) writedown or buyout in accordance with paragraph (e)(4)(iv) of this section;

(iv) A borrower who submits a New Application and has any outstanding loans with original promissory notes dated on or before January 6, 1988, and HAS received deferral, writedown, or buyout on any loan after that date may receive one (more) writedown or buyout;

(v) A borrower who submits a New Application has a total lifetime limit for writedown or writeoff of $300,000 regardless of the number of writedowns

or buyouts the borrower receives under this section. The amount of any writedown or writeoff which resulted from an application submitted before November 28, 1990, will not be counted towards this $300,000 limit;

(vi) Writedowns received through bankruptcy, debt settlement, or conservation easements will not be counted toward the lifetime limitations in paragraphs (e)(4)(ii) through (e)(4)(v) of this section;

(vii) A feasible plan, as defined in § 1951.906 of this subpart, 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;

(viii) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(ix) The borrower must agree to a Shared Appreciation Agreement if the loan(s) is secured by real estate;

(x) Loans written down with the Primary Loan Servicing Programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section; and

(xi) Borrower must agree to a lien on certain assets as provided in § 1951.910 of this subpart, including nonessential assets where the NRV of these assets was not paid to Agency. The Agency lien will be taken only at the time of closing the restructured Agency loans.

(f) *Determining value of net recovery from involuntary liquidation.* Within 90 days of the County Supervisor's receipt of a complete application which requests Primary and Preservation Loan Service Programs, the County Supervisor must make the calculations required in this section. For new applications as defined in § 1951.906 of this subpart, nonessential assets will be considered in accordance with § 1951.910(a) of this subpart.

(1) The County Supervisor will use the computer program, DALR$, to determine the net recovery to the Government equivalent to involuntary liquidation of the collateral securing the FmHA or its successor agency under Public Law 103–354 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 County Supervisor 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 subpart E of part 1922 of this chapter for real estate property, and on Form FmHA or its successor agency under Public Law 103–354 440–21, ''Appraisal of Chattel Property'' (available in any FmHA or its successor agency under Public Law 103–354 office). The County Supervisor 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 FmHA or its successor agency under Public Law 103–354. 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 FmHA or its successor agency under Public Law 103–354 (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 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). 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 FmHA or its successor agency under Public Law 103–354 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)(2) 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 FmHA or its successor agency under Public Law 103–354 1962–1 or released in writing by FmHA or its successor agency under Public Law 103–354, minus the value of any prior lienholder's interest. Collateral not in possession of the borrower is defined as any property specified in any FmHA or its successor agency under Public Law 103–354 security instruments for such borrower's FmHA or its successor agency under Public Law 103–354 debt that the borrower has disposed of and that FmHA or its successor agency under Public Law 103–354 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 of this chapter. The value of any collateral that is not in the possession of the borrower will be determined by the County Supervisor 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, FmHA or its successor agency under Public Law 103–354 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. FmHA or its successor agency under Public Law 103–354 appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) The State Directors 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. State Directors also will issue a State supplement of estimated costs and average holding time to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. State Directors will consult with State 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 FmHA or its successor agency under Public Law 103–354 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. County Supervisors 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 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).

(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 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 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 County Supervisor will forward to the State Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The County Supervisor will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Director's authorization to the County Supervisor to proceed with the writedown will be evidenced by the State Director's signature affixed to the original copy of the DALR$ printout returned to the County Supervisor. Within 90 days after receiving a complete application, the County Supervisor 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 FmHA or its successor agency under Public Law 103–354's offer to restructure the debt or appeal such offer, the right to request a copy of the FmHA or its successor agency under Public Law 103–354 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 County Supervisor 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 FmHA or its successor agency under Public Law 103–354's offer to restructure the debt without requesting an appeal or negotiation, the County Supervisor 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 by returning attachment 2 of exhibit F of this subpart and loses the appeal, 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–A 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 County Supervisor 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 Request For 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 easement.* If the borrower previously returned attachment 2 or 4 to exhibit A of this subpart within 60 days, requesting a Farm Debt Restructure and Conservation Set-Aside Easement Program, by submitting an ASCS photo of the farm showing the portion of the farm and approximate acres to be considered in their request, the County Supervisor will proceed with processing the request for debt relief. The request will be processed as set forth in exhibit H of this subpart. If the borrower did not previously submit a request for this servicing action, the borrower can make a request for the easement at this time by submitting the ASCS photo indicating that portion of the farm and appropriate acres to be considered. The borrowers must submit the ASCS photo to FmHA or its successor agency under Public Law 103–354 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 Set-Aside Easement Programs, the County Supervisor 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 Request For 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 appraisal in accordance with paragraph (i) of this section. The borrower may request a copy of the FmHA or its successor agency under Public Law 103–354 appraisal. FmHA or its successor agency under Public Law 103–354 must participate in USDA Certified Mediation Programs whether or not the borrower responds to exhibit E of this subpart. Any negotiation of the FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 County Supervisor will document such determination in the case file, and the County Supervisor 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 FmHA or its successor agency under Public Law 103–354 sends attachments 5 and 6, or attachments 5–A and 6–A, of exhibit A of this subpart. Any appeal may challenge FmHA or its successor agency under Public Law 103–354'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 FmHA or its successor agency under Public Law 103–354 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 County Supervisor 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) *Net recovery buyout.* The following notification and processing provisions also apply to buyout as offered in attachments 5 and 5–A of exhibit A of this subpart.

(i) Borrowers who applied for Primary and Preservation Loan Service Programs before November 28, 1990, have 45 days after the receipt of the notification of ineligibility for Primary Loan Service Programs to buyout their loans at NRV. Eligible borrowers who submit new applications will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service Programs to buyout their loans at NRV.

(ii) The present value of the restructured loan must be less than the NRV to receive buyout.

(iii) FmHA or its successor agency under Public Law 103–354 will not provide insured or guaranteed credit for a buyout.

(iv) A borrower who submits a New Application and only has outstanding loans with original promissory notes dated after January 6, 1998, has a lifetime limit of either ONE writedown or ONE buyout. Any writedown or buyout which resulted from an application submitted before November 28, 1990, will not be counted towards this limitation.

(v) A borrower who submits a New Application and has any outstanding loans with original promissory notes dated on or before January 6, 1988, and has NEVER received deferral, writedown, or buyout on any loans after that date, may receive two writedowns or buyouts, or one of each. If such borrower receives buyout, the loans dated on or before January 6, 1988, will be satisfied or terminated in accordance with this section. If the borrower obtains a new loan(s) after receiving a buyout, the borrower could receive a (second) writedown or buyout in accordance with paragraph (h)(4)(iv) of this section. If the borrower first receives a deferral or writedown, instead of buyout, the borrower could receive a (second) writedown or buyout in accordance with paragraph (h)(4)(vi) of this section;

(vi) A borrower who submits a New Application and has any outstanding loans with original promissory notes dated on or before January 6, 1988, and HAS received deferral, writedown, or buyout on any loan after that date may receive one (more) writedown or buyout;

(vii) A borrower who submits a New Application has a total lifetime limit for writedown or writeoff of $300,000 regardless of the number of writedowns or buyouts the borrower receives under this section. The amount of any writedown or writeoff which resulted from an application submitted before November 28, 1990, will not be counted towards this $300,000 limit.

(viii) Writedowns received through bankruptcy, debt settlement, or conservation easements will not be counted toward the lifetime limitations in paragraphs (h)(4)(iv) through (h)(4)(vii) of this section.

(ix) The borrower must have acted in good faith as defined in § 1951.906 of this subpart.

(x) Prior to the buyout at NRV, the borrower who has real estate security must, as a condition of the sale, enter into a written recapture agreement covering all real estate security. Borrowers who applied for Primary and Preservation Loan Service Programs before November 28, 1990, will execute exhibit C of this subpart, ''Net Recovery Buyout Recapture Agreement,'' for a term of 2 years. Borrowers who submitted new applications will execute exhibit C–1 of this subpart, ''Net Recovery Buyout Recapture Agreement,'' for a term of 10 years.

(xi) The County Supervisor will process the net recovery buyout payment to the borrower's loan accounts on Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittance,'' as a miscellaneous collection and will input the information to establish an equity record via the FmHA or its successor agency under Public Law 103–354 field office computer terminal system.

(xii) A new mortgage or deed of trust will be taken for the best lien obtainable on the real estate that served as security for the FmHA or its successor agency under Public Law 103–354 loans. The new mortgage or deed of trust will describe exhibit C or C–1, as appropriate, and the amount due under the

net recovery buyout recapture agreement. The new mortgage or deed of trust will secure repayment of the net recovery buyout recapture agreement.

(xiii) The old mortgage or deed of trust will be released in accordance with paragraph (k) of this section.

(xiv) The County Supervisor will obtain the State Director's authorization for the writeoff of the debt for the buyout in accordance with paragraph (h)(1) of this section for the writedown of debt.

(i) *Administrative appeals and negotiation of appraisals*—(1) *Appeals.* The time limit for the borrower to pay FmHA or its successor agency under Public Law 103–354 NRV 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. Such appeal decision letter will be sent to the borrower by the hearing officer or review officer by certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office which services the loans by the hearing and/or review officer.

(2) *Appeal process.* (i) If the administrative appeal process results in a determination that the borrower is eligible for Primary Loan Servicing, the County Supervisor will process the request pursuant to section 1900.59(d) of subpart B of part 1900 of this chapter in accordance with the appeal/review officer's decision within 60 days of receiving the decision. The information used to implement the appeal officer's decision will be the information the appeal officer used in making the decision on the appeal, unless stated otherwise by the appeal officer in the final appeal decision letter. In cases of debt restructure resulting from favorable decisions on 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. However, the debt writedown or writeoff can never exceed the lifetime limit of $300,000 in accordance with §1951.909 of this section. If implementation of the appeal officer's decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the County Supervisor will take the following steps. The interest that accrued after the adverse decision will be applied to the FmHA or its successor agency under Public Law 103–354 debt as a noncash credit. The time period covered by the noncash credit is from the effective date on the DALR$ printout for the initial adverse decision to the date of closing of the transaction unless otherwise specified by the appeal officer. The noncash credit will be applied to the accrued interest for this time period for each loan affected by the transaction. The County Supervisor will notify the Finance Office of the noncash credit in accordance with the ADPS manual.

(ii) If the administrative appeal process results in a determination that the borrower is ineligible for Primary Loan Servicing, the borrower will be sent exhibit K and attachment 1 of this subpart, advising the borrower of FmHA or its successor agency under Public Law 103–354's intent to continue processing the application for Preservation Loan Service Programs, as set forth in §1951.911 of this subpart, and 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 of this subpart within 15 days of the date that exhibit K of this subpart is sent, the County Supervisor will continue to process the borrower's request. 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 Service and any Debt Settlement request. If the borrower returns attachment 1 of exhibit K of this subpart within 15 days of the date exhibit K of this subpart is sent, the account will be accelerated or foreclosure will proceed in accordance with §1955.15 of subpart A of part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under §1941.14 of subpart A of part 1941 of this chapter.

(3) *Appraisal appeals.* (i) If a borrower appeals the current market appraisal completed by FmHA or its successor agency under Public Law 103–354, the borrower may obtain an appraisal by an independent appraiser selected from a list of three names provided by the

FmHA or its successor agency under Public Law 103–354 County Supervisor. A borrower who submitted a new application may appeal the FmHA or its successor agency under Public Law 103–354 appraisal if the borrower has not previously negotiated the appraisal under paragraph (i)(4) of this section. The appeal may be requested by checking the appropriate block on attachments 6–A of exhibit A or attachment 2 of exhibit F of this subpart. The borrower may appeal the current market appraisal, and/or 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. If possible, the borrower should submit a copy of the independent appraisal to the FmHA or its successor agency under Public Law 103–354 County Supervisor and the hearing officer prior to the appeal hearing. The borrower will have access to the case file as set forth in §1900.56(a)(2) of subpart B of part 1900 of this chapter and may request a copy of the FmHA or its successor agency under Public Law 103–354 appraisal. The independent appraisal will be considered by the appeal officer. For those States that have mandatory certification/licensing requirements, the independent appraiser must be a State certified general appraiser.

(ii) For those States that have voluntary certification/licensing requirements not later than December 31, 1992, the independent appraiser must be a State certified general appraiser in accordance with FIRREA. Until that time, the independent appraiser must meet at least one of the following qualifications as determined by the FmHA or its successor agency under Public Law 103–354 County Supervisor:

(A) Certification by a National or State Appraisal Society;

(B) 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; or

(C) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(iii) The appraisal report also must conform to subpart E of part 1922 of this chapter for real estate and Form FmHA or its successor agency under Public Law 103–354 440–21 for chattels.

(iv) If either the County Supervisor or the borrower discover any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison of the appraisals the necessary corrections may be made if they both agree to the corrections and initial the corrections. Either the County Supervisor or the borrower, depending upon who discovers the error, must contact the other one for a meeting to approve the corrections.

(v) If the FmHA or its successor agency under Public Law 103–354's appraisal and the borrower's independent appraisal vary in value by not more than five percent, the borrower must select the appraisal he or she wants FmHA or its successor agency under Public Law 103–354 to use for the request for servicing under this subpart. This will be the final appraisal. It cannot be appealed.

(4) *Negotiation appraisals.* A borrower who submits a new application may object to an FmHA or its successor agency under Public Law 103–354 appraisal used to make a favorable or unfavorable restructuring decision by requesting to negotiate the appraisal. Negotiation of appraisals is offered in exhibits E and F of this subpart as discussed in subsection (h) of this section. Such borrower may negotiate the FmHA or its successor agency under Public Law 103–354 appraisal only one time. All appraisals used in the negotiations must reflect the value of the property as of the same timeframe of the FmHA or its successor agency under Public Law 103–354 initial appraisal. If either the County Supervisor or the borrower discover any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison of the appraisals the necessary corrections may be made if they both agree to the corrections and initial the corrections. Either the County Supervisor or the borrower, depending upon who discovers the error, must contact the other one for a meeting to approve the corrections.

(i) The borrower can request the list of independent appraisers from the County Supervisor on attachment 2 of exhibits E and F of this subpart. The borrower has 30 days after requesting negotiation to provide FmHA or its successor agency under Public Law 103–354 with a copy of his or her independent appraisal. The borrower must pay for this independent appraisal. The independent appraiser does not need to be on FmHA or its successor agency under Public Law 103–354's list of qualified appraisers. The borrower's independent appraiser and appraisal report, however, must meet the qualifications described in paragraph (i)(3)(ii) of this section. If the FmHA or its successor agency under Public Law 103–354's appraisal and the borrower's independent appraisal vary in value by not more than five percent, the borrower must select the appraisal he or she wants to use for the request for servicing under this subpart. This is the final appraisal. It cannot be further negotiated or appealed.

(ii) After receiving the borrower's independent appraisal, the FmHA or its successor agency under Public Law 103–354 County Supervisor will give the borrower a list of qualified, independent appraisers from which to select an appraiser for the third appraisal if the borrower's independent appraisal differs from the FmHA or its successor agency under Public Law 103–354 appraisal by more than five percent. The borrower will select one appraiser from the FmHA or its successor agency under Public Law 103–354 approved list of qualified appraisers to conduct the third appraisal. The appraiser cannot be the same appraiser that conducted either the FmHA or its successor agency under Public Law 103–354 appraisal or the borrower's independent appraisal. The appraiser also must meet the qualifications set out in paragraph (i)(3) of this section. The borrower, the appraiser and the FmHA or its successor agency under Public Law 103–354 County Supervisor 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 FmHA or its successor agency under Public Law 103–354 440–21 for chattels. The borrower will submit to the County Supervisor the original or a copy of the third appraisal and its attachments and the appraiser's bill. The FmHA or its successor agency under Public Law 103–354 payment will be processed for FmHA or its successor agency under Public Law 103–354's one-half share of the cost as a nonrecoverable cost in accordance with the provisions of FmHA or its successor agency under Public Law 103–354 Instruction 2024–P (available in any FmHA or its successor agency under Public Law 103–354 office). The borrower is responsible for paying the appraiser directly the remaining one-half of the cost of the appraisal.

(iii) Following the completion of the third appraisal, the three appraisals (the FmHA or its successor agency under Public Law 103–354 appraisal, the borrower's independent appraisal and the third appraisal done for negotiation) will be compared by the County Supervisor. The two appraisals that are the closest in value will be averaged by the County Supervisor. These appraisals may be reviewed by the borrower, if requested, and the average value will become the final appraised value. If the borrower or the County Supervisor discover any mathematical or property description errors in the appraisals at the time of the review, the necessary corrections may be made in accordance with paragraph (i)(3) of this section.

(j) *Processing of writedown.* Borrowers who are eligible for Primary Loan Service Programs with writedown will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the writedown must take place simultaneously. The borrower and County Supervisor will complete exhibit D to this subpart, ''Shared Appreciation Agreement.'' Exhibit D provides for recapture as specified in §1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the writedown. The FmHA or its successor agency under Public Law 103–354 DALR$ computer program will be used to determine the notes to be written down.

(1) A separate Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA or its successor agency under Public Law 103–354 1940–17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA or its successor agency under Public Law 103–354 1940–17 in accordance with the provisions in the ADPS manual when establishing an equity record.

(4) A Form FmHA or its successor agency under Public Law 103–354 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA or its successor agency under Public Law 103–354 Finance Office to return the original note so that it is in the County Office before Form FmHA or its successor agency under Public Law 103–354 1940–17 is processed.

(5) The FmHA or its successor agency under Public Law 103–354 field office will process the reamortization or consolidation via the FmHA or its successor agency under Public Law 103–354 field office computer terminal system in accordance with Form FmHA or its successor agency under Public Law 103–354 1940–17, and complete exhibit D of this subpart.

(6) The original (old) note(s) will be marked ''Rescheduled or Reamortized with Writedown Debt'' and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation 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 will be filed as indicated above.

(7) A lien will be taken on assets in accordance with § 1951.910 of this subpart.

(k) *Real estate liens.* If the writedown of the borrower's real estate debt results in all debts to FmHA or its successor agency under Public Law 103–354 being written down, FmHA or its successor agency under Public Law 103–354 real estate liens will be maintained and will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of net recovery in a buyout, the original mortgage or deed of trust will be released on real estate for the FmHA or its successor agency under Public Law 103–354 loans bought out. The notes will be marked ''Satisfied at Net Recovery Value'' and returned to the debtor or the debtor's legal representative. Net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non-real estate liens.* If a borrower's FmHA or its successor agency under Public Law 103–354 loan(s) were not secured by real estate, there will be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of the NRV in a buyout, the original security instruments will be released on chattel security for the FmHA or its successor agency under Public Law 103–354 loans bought out. These notes will be marked ''Satisfied at Net Recovery Value'' and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing debts written off as a result of Primary Servicing debt writedown or buyout at NRV will be returned to the debtor or to the debtor's legal representative. The notes will be returned at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a buyout, the original and copies of the notes will be marked ''Satisfied by Approved Net Recovery Buyout.'' For writedown, the original and copies of the notes will be marked ''Satisfied by Approved Debt Writedown.'' If a note is only partially written-down, the note will be returned to the debtor or debtor's legal representative when the note is paid in

full. The original and copies of such notes will be marked ''Satisfied by Approved Partial Writedown.''

[57 FR 18626, Apr. 30, 1992, as amended at 58 FR 30104, May 26, 1993; 58 FR 44752, 44753, Aug. 25, 1993; 58 FR 69200, Dec. 30, 1993; 61 FR 35929, July 9, 1996]

§1951.910 Consideration of borrower's other assets for NEW APPLICATIONS.

If the County Supervisor finds that a delinquent borrower has other assets that are not serving as collateral for the FmHA or its successor agency under Public Law 103–354 debt, the County Supervisor will determine if the assets are nonessential assets 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. FmHA or its successor agency under Public Law 103–354 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-FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form FmHA or its successor agency under Public Law 103–354 440–21, ''Appraisal of Chattel Property,'' (available in any FmHA or its successor agency under Public Law 103–354 office) for chattels. If the borrower disagrees with the FmHA or its successor agency under Public Law 103–354 appraisal, the borrower 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 FmHA or its successor agency under Public Law 103–354 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 County Supervisor will indicate the values of both the NRV of nonessential assets and FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 account current, then FmHA or its successor agency under Public Law 103–354 will add the NRV of these assets to the NRV of the FmHA or its successor agency under Public Law 103–354 collateral according to §1951.909(f) of this subpart. FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its

successor agency under Public Law 103–354 debt and then FmHA or its successor agency under Public Law 103–354 will recalculate the debt restructuring without considering the NRV of the nonessential assets. If the borrower does not sell these assets, FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 as security at the time FmHA or its successor agency under Public Law 103–354 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 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 FmHA or its successor agency under Public Law 103–354 lien will be taken only at the time of closing the restructured FmHA or its successor agency under Public Law 103–354 loans.

[57 FR 18626, Apr. 30, 1992, as amended at 58 FR 44753, Aug. 25, 1993; 59 FR 25803, May 18, 1994]

§ 1951.911 Preservation Loan Service Programs.

(a) *Leaseback/buyback.* This section contains the policies and procedures pertaining to the FP Leaseback/Buyback Program. The FP Leaseback/Buyback Program will permit the previous owner of real farm and ranch property, including any off-farm principal residence of the former operator, which was security for an FP loan(s) to have the first opportunity to lease or purchase the leaseback/buyback property from FmHA or its successor agency under Public Law 103–354. If FmHA or its successor agency under Public Law 103–354 has only chattel property the as security, preservation servicing will not be offered. In addition, any off-farm residence(s) of the former borrower(s) and/or owner(s), who is not the operator(s) of the farm or ranch property, is not considered leaseback/buyback property. If the previous owner is not interested in leasing or purchasing the property, preference for leaseback/buyback will be given to the spouse or child of the previous owner who are actively engaged in farming (if the previous owner was an individual); and entity members (if the previous owner is an entity that is composed exclusively of members of the same family) who are actively engaged in farming; and after them to the immediate previous family-size operator (lessee). CONACT property that is acquired on or after January 6, 1988, that secured an FmHA or its successor agency under Public Law 103–354 loan will be considered for leaseback/buyback under this section. CONACT property acquired prior to January 6, 1988, will also be considered under this section, but only if the former owner/previous operator was not advised of his or her leaseback/buyback rights under FmHA or its successor agency under Public Law 103–354's previous leaseback/buyback regulation. If there is a conflict between leaseback/buyback and FmHA or its successor agency under Public Law 103–354's Homestead Protection Program,

priority will be given to the application for homestead protection with respect to the lease of the borrower's principal dwelling. The same application may be considered for both leaseback/buyback and homestead protection if requested. The applicant can obtain homestead protection under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program. The authorities contained in this section supplement subparts A, B and C of part 1955 of this chapter and provide information that is necessary to administer the Leaseback/Buyback Program. 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 the reservation in which such real estate is located is treated differently than real property located outside a reservation. See § 1955.66(d) of subpart B of part 1955 of this chapter for further details.

(1) *Notification*. 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 mailing.

(i) When a borrower(s) becomes at least 30 days behind schedule on an FmHA or its successor agency under Public Law 103–354 loan(s), the borrower will be sent exhibit A with attachments 1 and 2 of this subpart. The sending of this exhibit and attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Service. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Loan Service Programs and other servicing options by sending attachments 5 and 6 or 5–A and 6–A of exhibit A of this subpart, as applicable. If a borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal, or fails to pay FmHA or its successor agency under Public Law 103–354 the net recovery value of the property, the borrower will be advised by use of exhibit K with attachment 1 of this subpart that FmHA or its successor agency under Public Law 103–354 will continue with the processing of Preservation Loan Service Programs, if applicable, unless the borrower returns attachment 1 of exhibit K within 15 days of the date of the exhibit.

(ii) When FmHA or its successor agency under Public Law 103–354 acquires real farm and ranch property, including the principal residence of the former operator, which secured an FP loan, the former owner will be sent exhibit O of this subpart within 30 days from the date of acquisition. The former owner has 180 days from the date FmHA or its successor agency under Public Law 103–354 acquired the real farm and ranch property, including any off-the-farm principal residence of the former operator, to apply for leaseback/buyback, unless State laws provide for a longer period. The exhibit will be sent certified mail, return receipt requested. If the former borrower/owner entered into a leaseback/buyback agreement (exhibit N of this subpart) prior to FmHA or its successor agency under Public Law 103–354 acquisition of the real property, and such agreement has not terminated, exhibit O will not be sent. The notification letter to an owner who is an individual will inform the owner that if the owner is not interested in leaseback/buyback, the owner's spouse or child, if actively engaged in farming, may be eligible for leaseback/buyback. If the farm or ranch was owned by an entity, the stockholders or partners of which are exclusively members of the same family, the notification letter will inform the owner that if the owner is not interested in leaseback/buyback, the entity members who are actively engaged in farming may be eligible for leaseback/buyback. It will be the responsibility of the owner to inform his or her spouse and/or children or the entity members about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date

of acquisition unless State redemption laws prescribe a longer period. The notification letter sent to the previous owner will also request the previous owner to notify the County Supervisor if the security was operated by a lessee at the time it was taken into inventory and, if so, to notify the County Supervisor of the name and address of that lessee. If the farm property is located within an Indian Reservation, and the former owner is a member of such Indian tribe, the Indian Tribe will be notified of the potential availability of the farm property for lease or purchase by sending exhibit B of subpart B of part 1955 of this chapter. The Indian tribe will be notified at the same time as the previous owner.

(iii) If the previous owner provides FmHA or its successor agency under Public Law 103–354 with the name of the immediate previous operator (lessee), or if the County Supervisor is aware that the property was leased by the owner and knows the name and address of such immediate previous operator (lessee), the operator will be notified of leaseback/buyback by use of exhibit P of this subpart. This letter will be sent certified mail, return receipt requested. The County Supervisor will send exhibit P of this subpart to the operator (lessee) within 30 days after the 190-day period or applicable period under State redemption laws has expired. The County Supervisor, however, may notify the operator (lessee) prior to the 190-day period after acquisition of the property or applicable period under State redemption laws if the previous owner, spouse and all children (if the former owner was an individual), and entity members (if the former owner was an entity) inform the County Supervisor, in writing, that they are not interested in purchasing or leasing the property. The operator (lessee) will be given 30 days from the date he or she is notified about leaseback/buyback to notify the County Supervisor, in writing, of their intent to participate in leaseback/buyback.

(iv) The rights regarding the lease or purchase of property provided by this section and accorded a person or entity described above may be freely and knowingly waived by such person or entity. Exhibit Q of this subpart will be used by each person or entity that wishes to waive their rights to leaseback/buyback.

(2) *Priority*. (i) FmHA or its successor agency under Public Law 103–354 shall give priority for the Leaseback/Buyback Program in the following order:

Priority 1.—The immediate previous owner of the acquired property.

Priority 2.—If actively engaged in farming:

a. The spouse or child of the previous owner if the previous owner was an individual;

b. If the previous owner was an entity, to the entity members of the corporation, partnership, joint operation or cooperative.

Priority 3.—The immediate previous family-size farm operator of the security. (If the farm property is located within an Indian Reservation and the former owner is a member of such tribe, see § 1955.66(d) of subpart B of part 1955 of this chapter for leaseback/buyback rights of the Tribe.)

(ii) Within each of the foregoing priorities, if there is more than one individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (*e.g.*, one individual wants to purchase and the other individual wants to rent), priority within the category will be given to an individual who wants to purchase all the leaseback/buyback property, either for cash or by credit sale. There is no preference for a cash sale over a credit sale. If there are two or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), the County Committee will make the selection of the lessee and/or purchaser 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. The random selection of the County Committee is not an appealable item for those individuals that are not the successful lessee and/or purchaser.

(iii) If there are individuals in different priority categories who inform the County Supervisor, in writing, of their intention to participate in the

leaseback/buyback program, the County Supervisor will first consider the eligibility for leaseback/buyback of individuals in the highest priority in which there is interest before considering individuals in the lower priority. If an individual in a higher priority is eligible, the individuals in the lower priority will be notified by the County Supervisor that an individual with higher priority has been selected. This is not an appealable item.

(iv) The inventory property will not be leased or sold until any appeals are exhausted.

(v) The rights afforded individuals under the Leaseback/Buyback Program will only be offered once after the property comes into FmHA or its successor agency under Public Law 103–354 inventory. If a previous owner, previous owner's spouse or child, an entity member (if the previous owner was an entity held exclusively by members of the same family), or immediate previous family-size operator (lessee) leases the property and does not exercise the option to purchase and the lease terminates, no other individuals will be offered the property under the Leaseback/Buyback Program. These individuals, however, may lease or purchase the property when it becomes available for lease or sale in accordance with subparts B and C of part 1955 of this chapter.

(3) *Receiving applications.* (i) Borrowers who return attachment 2 of exhibit A of this subpart and a completed application as outlined in §1951.907(f) of this subpart will have their applications processed for Primary Loan Service Programs before considering the application for leaseback/buyback. The County Supervisor will automatically consider the borrower for Preservation Loan Service Programs if the use of Primary Loan Service Programs will not allow the borrower to develop a feasible plan of operation.

(ii) Borrowers who return attachment 2 of exhibit A of this subpart must also be the owners of the real property to be considered for leaseback/buyback. Such borrowers will also be advised by attachment 5 or 5–A of exhibit A of this subpart, as appropriate, of the availability of Preservation Loan Service Programs.

(iii) Former owners who wish to make application for leaseback/buyback must make application within 180 days or applicable period under State redemption law after the date FmHA or its successor agency under Public Law 103–354 acquires the property. Such application will be made as outlined in §1951.907(f) of this subpart.

(iv) The spouse or child of a former owner or entity members must make application for leaseback/buyback within 190 days or applicable period under State redemption laws after the date FmHA or its successor agency under Public Law 103–354 acquires the property. Such application will be made as outlined in §1951.907(f) of this subpart.

(v) Operators must make application for leaseback/buyback within 30 days of receipt of exhibit N of this subpart. Such application must be made as outlined in §1951.907(f) of this subpart.

(4) *Eligibility.* The County Supervisor will determine the applicant's eligibility.

(i) Any applicant for leaseback/buyback who either (1) first applied for primary servicing on or after November 28, 1990, or (2) first applied for leaseback/buyback on or after November 28, 1990, without first applying for primary servicing, and who is also the borrower/former owner, must have acted in good faith as defined in §1951.906 of this subpart.

(A) If a good faith determination has already been made in connection with the borrower/former borrower's request for primary servicing of his or her loan pursuant to the definition in §1951.906 of this subpart, such determination will be binding on the borrower/former borrower's request for leaseback/buyback. In such case of a denial of leaseback/buyback when the borrower/former borrower had previously been denied primary loan servicing because of a determination that the borrower/former borrower has not acted in good faith, the denial of leaseback/buyback will not be appealable. NOTE: If the lack of good faith determination was made prior to November 28, 1990, for primary servicing, which was based on the sole fact that the borrower disposed of normal income security before October 14, 1988, without FmHA or its

successor agency under Public Law 103–354 consent, and it has been determined the proceeds were used for essential household and farm operating expenses of which the borrower would have been entitled to a release of income proceeds in accordance with § 1962.17(b)(2)(iii) and exhibit E of subpart A of part 1962 of this chapter, such a lack of good faith determination will not be binding for a leaseback/buyback application filed on or after November 28, 1990.

(B) If the borrower/former borrower had not previously been considered for primary servicing and no good faith determination had been previously made, then the County Supervisor will initially determine if the borrower/former borrower acted in good faith, as defined in § 1951.906 of this subpart. Disposal of normal income security prior to October 14, 1988, without FmHA or its successor agency under Public Law 103–354's consent, will not constitute a lack of good faith if the proceeds were used to pay essential household and farm operating expenses and the borrower would have been entitled to a release of income proceeds in accordance with § 1962.17(b)(2)(iii) and exhibit E of subpart A of part 1962 of this chapter.

(ii) The previous owner is the individual(s) or entity that held fee title to the property at the time FmHA or its successor agency under Public Law 103–354 acquired the property. The previous owner, as an applicant for leaseback/buyback, may be an operator of larger than a family-size farm and may be a different individual or entity than the former borrower, but the owner must have pledged the farm as security for a CONACT loan.

(iii) The spouse and child of the previous owner (if the previous owner was an individual) are next on the priority list. Child includes the son or daughter of a previous owner of property that has been acquired by FmHA or its successor agency under Public Law 103–354 and who is of legal age to enter into a binding contract. The spouse and/or any child who apply for leaseback/buyback must have been actively engaged in farming at the time of application for leaseback/buyback. The applicant may be an operator of larger than a family-size farm.

(iv) Entity members (if the previous owner was an entity) must be members of the entity which is owned exclusively by members of the same family and must have been actively engaged in farming at the time of application for leaseback/buyback. Ths applicant may be an operator of larger than a family-size farm.

(v) Previous operator must have been the operator (lessee) of the farm property at the time FmHA or its successor agency under Public Law 103–354 acquired the farm property from the former owner (lessor) and be an operator of not larger than a family-size farm after execution of any lease or purchase agreement. The applicant does not need to be an FmHA or its successor agency under Public Law 103–354 borrower.

(vi) All applicants must meet the application requirements of paragraph (a)(3) of this section.

(vii) Except as provided in § 1951.911(a)(2) (ii) and (iii), if the County Supervisor determines that the applicant is not eligible for leaseback/buyback, the applicant will be advised of appeal rights in accordance with subpart B of part 1900 of this chapter.

(5) *Processing applications prior to acquisition of property*. (i) An owner may apply for leaseback/buyback and/or homestead protection at any time before FmHA or its successor agency under Public Law 103–354 acquires the owner's property, provided that an application for pre-acquisition leaseback/buyback will not prevent FmHA or its successor agency under Public Law 103–354's continued processing of an acceleration or foreclosure of the account. All applications made for pre-acquisition leaseback/buyback must be in writing. If application is made for both leaseback/buyback and homestead protection, consideration will be given to both options and the borrower will be notified of both decisions simultaneously. Concurrently with the execution of the pre-acquisition Leaseback/Buyback Agreement, the borrower will deliver a completed Form FmHA or its successor agency under Public Law 103–354 1955–1 to FmHA or its successor agency under Public Law 103–354. The Leaseback/Buyback Agreement is subject to the provisions of subpart A of

part 1955 of this chapter. If FmHA or its successor agency under Public Law 103–354 acquires title to the leaseback/buyback property during the processing of a preacquisition leaseback/buyback agreement, processing of the agreement will be terminated and the owner will be given leaseback/buyback rights pursuant to paragraph (a)(1)(ii) of this section.

(A) If the owner has requested leaseback, the County Supervisor will determine if the owner can fulfill the terms and conditions of the lease. If the County Supervisor determines that the owner cannot fulfill the terms and conditions of the lease and/or the owner fails to submit the information requested on exhibit K of this subpart within 30 days of the date which appears on exhibit K, leaseback will be denied, and appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Supervisor determines that the owner can fulfill the terms and conditions of the lease, the County Supervisor and the owner will enter into a Leaseback/Buyback Agreement (exhibit N of this subpart) to lease the property to the owner if and when FmHA or its successor agency under Public Law 103–354 acquires title. The lease will contain an option to purchase the property. A copy of Form FmHA or its successor agency under Public Law 103–354 1955–20, ''Lease of Real Property,'' will be attached to the agreement as an exhibit. The agreement will provide that FmHA or its successor agency under Public Law 103–354's obligation to enter into a lease/sale of the property is contingent on FmHA or its successor agency under Public Law 103–354 acquiring fee title to the property. The agreement will contain a provision that if the lease/sale does not close within 2 years from the date of the agreement, the agreement (and FmHA or its successor agency under Public Law 103–354's obligation to lease/sell) will end.

(B) If the owner has requested buyback of the property as a credit sale on eligible rates and terms, the County Committee will determine the owner's eligibility in accordance with subpart A of part 1943 of this chapter and the County Supervisor will determine the feasibility of the proposed operation before entering into the Leaseback/Buyback Agreement. If the County Committee determines that the owner is not eligible or the County Supervisor determines that the owner's proposed operation and purchase is not feasible, and/or the owner fails to submit the information requested on exhibit K of this subpart within 15 days of the date which appears on exhibit K, and buyback is denied, appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Committee determines the owner is eligible for a credit sale on eligible rates and terms and the County Supervisor determines that the owner's proposed operation and purchase is feasible, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA or its successor agency under Public Law 103–354 1955–45, ''Standard Sales Contract—Sale of Real Property by the United States'':

''FmHA or its successor agency under Public Law 103–354's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA or its successor agency under Public Law 103–354's obligations are contingent on the owner meeting FmHA or its successor agency under Public Law 103–354's credit sale criteria for eligible rates and terms, creditworthiness and repayment ability at the time the credit sale is ready to close.''

(C) If the owner has requested buyback of the property as a credit sale on ineligible rates and terms, the County Supervisor will determine eligibility and feasibility before entering into the Leaseback/Buyback Agreement. If the County Supervisor determines that the owner is not eligible, that the purchase is not feasible, and/or the owner fails to submit the information requested on exhibit K of this subpart, buyback will be denied, and appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Supervisor determines that the owner is eligible for a credit sale on ineligible rates and terms, when the security is taken into inventory, the County Supervisor will enter into a conditional credit sale

with the owner. The following conditions will be inserted on Form FmHA or its successor agency under Public Law 103–354 1955–45:

''FmHA or its successor agency under Public Law 103–354's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA or its successor agency under Public Law 103–354's obligations are contingent on the owner meeting FmHA or its successor agency under Public Law 103–354's credit sale criteria for creditworthiness and repayment ability at the time the credit sale is ready to close. The credit sale will close as soon as possible after FmHA or its successor agency under Public Law 103–354 acquires title to the security and any other contingencies are satisfied.''

(D) If the owner has requested buyback of the property by paying cash, the County Supervisor will enter into Form FmHA or its successor agency under Public Law 103–354 1955–45 with the owner subject to the following contingency which will be inserted in Form FmHA or its successor agency under Public Law 103–354 1955–45: ''FmHA or its successor agency under Public Law 103–354's obligation to close the sale is contingent on its acquiring title to the property within 2 years from the date of the agreement.''

(E) In the event FmHA or its successor agency under Public Law 103–354 is not able to obtain title to the property upon the signing of the Leaseback/Buyback Agreement, the borrower is unwilling to voluntarily convey the property and/or FmHA or its successor agency under Public Law 103–354 determines it is unable to accept a voluntary conveyance, FmHA or its successor agency under Public Law 103–354 will continue with the acceleration of the indebtedness and foreclosure of the property. The Leaseback/Buyback Agreement does not obligate FmHA or its successor agency under Public Law 103–354 to take the property into FmHA or its successor agency under Public Law 103–354 inventory if it is not in FmHA or its successor agency under Public Law 103–354's financial interest to do so.

(ii) If the owner has requested leaseback/buyback of the real property, FmHA or its successor agency under Public Law 103–354 may, as a part of an agreement, permit the owner to voluntarily convey the real property and chattels to FmHA or its successor agency under Public Law 103–354 and immediately lease or credit sale the real property back to the former owner. FmHA or its successor agency under Public Law 103–354 may sell all the chattel property back to the former owner on credit in accordance with § 1955.124 of subpart C of part 1955 of this chapter. These agreements are subject to the following items being concluded before completing any transaction:

(A) Based on the market value of the property and FmHA or its successor agency under Public Law 103–354's potential recovery value, it is determined to be in the Government's best interest to acquire title to the property. Exhibit G of subpart A of part 1955 of this chapter will be used to determine if it is in the Government's best financial interest to accept the voluntary conveyance;

(B) Any remaining debt after conveyance of the chattel and of real estate property will be debt settled in accordance with subpart B of part 1956 of this chapter;

(C) The County Committee must determine that the former owner is eligible for any proposed credit sale on eligible rates and terms;

(D) The County Supervisor must determine that the former owner has repayment ability and creditworthiness for a credit sale or sufficient experience, management skills, and financial resources to assure a reasonable prospect of success in the farming operation for leaseback; and

(E) If the property contains wetlands, floodplains, and/or highly erodible land, necessary deed restrictions will be placed on the property as set forth in exhibit M of subpart G of part 1940 of this chapter and subparts B and C of part 1955 of this chapter.

(iii) All conveyances of fee title and/or a leasehold interest, which involves a voluntary conveyance, leaseback/buyback and/or homestead protection will be executed simultaneously.

(6) *Processing leaseback requests.* The applicant must furnish the necessary

financial information as set forth in § 1951.907(f) of this subpart, to assist the County Supervisor in determining if a feasible plan of operation can be developed. If the County Supervisor determines the applicant can meet the terms of the lease and has sufficient experience, management skills and financial resources to assure a reasonable prospect of success in the farming operations, the County Supervisor may approve the lease on Form FmHA or its successor agency under Public Law 103–354 1955–20.

(i) The term of the lease may be from 1 to 5 years. The lessee will select the term of the lease. Leases may be for cash or crop share. If the lessee is able to pay the cash lease payment at the time the lease is executed, a feasible plan is not required.

(ii) All leases under the leaseback/buyback program will contain an option to purchase. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA or its successor agency under Public Law 103–354 1955–20. The purchase price (option price) will be the appraised market value at the time the option is exercised as set forth in subpart E of part 1922 of this chapter and supported by a current appraisal on Form FmHA or its successor agency under Public Law 103–354 1922–1, ''Appraisal Report—Farm Tract.'' The option to purchase may be exercised any time during the term of the lease. All options expire when the lease ends.

(iii) Leaseback property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount. The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income. The amount of the rental will be determined by the County Supervisor. Prior to entering into a Leaseback/Buyback Agreement, the County Supervisor will advise the applicant, by letter, of the rent amount. If the leaseback applicant disagrees with the proposed rental, the applicant can appeal in accordance with subpart B of part 1900 of this chapter.

(iv) The lease payments will not be applied toward the purchase price.

(7) *Processing buyback request.* The applicant must furnish the necessary financial information in accordance with § 1951.907(f) of this subpart to assist the County Supervisor in determining if the applicant can meet the terms of any purchase agreement. If the applicant has requested the property to be financed with a credit sale, a determination will need to be made if the applicant has sufficient experience, management skills and financial resources to assure a reasonable prospect of success.

(i) Title clearance and loan closing will be handled in accordance with subpart B of part 1927 of this chapter and the terms specified in Form FmHA or its successor agency under Public Law 103–354 1955–49.

(ii) The purchase price will be the appraised market value as set forth in subpart E of part 1922 of this chapter and supported by a current appraisal on Form FmHA or its successor agency under Public Law 103–354 1922–1.

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and a credit sale processed in accordance with subpart C of part 1955 of this chapter or NP terms in accordance with subpart J of part 1951 of this chapter. The interest rate will be the current rate 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).

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in subpart A of part 1943 of this chapter. If this value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA or its successor agency under Public Law 103–354 may finance the purchase of the property

with a credit sale on ineligible terms of not less than ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed 25 years. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

(8) *Special provisions.* The County Supervisor must take into consideration the following provisions:

(i) The rights afforded an individual or entity under FmHA or its successor agency under Public Law 103–354's Leaseback/Buyback program are for the total farm property. Farm property will not be subdivided for lease or purchase for such persons or entity. If the property is larger than a family-size farm, and no person or entity exercises leaseback/buyback rights, the property will then be subdivided and sold in accordance with subpart C of part 1955 of this chapter.

(ii) If the inventory property selected for leaseback/buyback is subject to homestead protection rights by someone other than the selected individual, FmHA or its successor agency under Public Law 103–354's obligation to enter into the lease or close the sale will be contingent on FmHA or its successor agency under Public Law 103–354's prior compliance with all local laws, ordinances and regulations, if any, governing the subdivision of land. The homestead protection property must be a separate parcel. The homestead protection property will be excluded from the leaseback/buyback property. If necessary, FmHA or its successor agency under Public Law 103–354 will grant and/or retain for the benefit of adjoining property, reasonable easements for ingress, egress, utilities, water rights, etc;

(iii) If the property contains lands that are wetlands and/or floodplains, the prospective lessee or purchaser will be informed by FmHA or its successor agency under Public Law 103–354 of its presence and location, along with the USDA restrictions regarding its use, as set forth in exhibit M of subpart G of part 1940 of this chapter and subparts B and C of part 1955 of this chapter. The provisions of a purchase agreement or a lease agreement for farm inventory property that is ''highly erodible land,'' as determined by the Soil Conservation Service (SCS), must contain, as requirements of the lease or sale, conservation practices specified by the SCS and approved by FmHA or its successor agency under Public Law 103–354 as a condition of the lease or sale. If the land is under an Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program (CRP) contract, the purchaser/lessee shall assume the CRP contract. This requirement shall be included as a provision in all leases or sale documents entered into pursuant to the Leaseback/Buyback Program;

(iv) In the event of any conflict between any provisions of the FmHA or its successor agency under Public Law 103–354 Leaseback/Buyback Program, as outlined in this section and any provisions of State law providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of land to any other person, such provision of the State law shall prevail. State supplements will be prepared with the assistance of OGC as necessary, to provide guidance to FmHA or its successor agency under Public Law 103–354 officials as to how to comply with the State laws. 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);

(v) 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 farm property under this section. As soon as a lease payment is delinquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights of the lessee to possession and occupancy of the property, including the right to exercise the option to purchase, will be terminated. Likewise, for crop share leases where the lessee fails to provide accurate records of production, the lessee will be advised in writing that such records must be provided

to FmHA or its successor agency under Public Law 103–354 within 30 days, otherwise the lease will be terminated. If the crop production records are not furnished or the past due lease payment is not received within the 30 days, the County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to subpart B of part 1900 of this chapter. The lessee may continue to occupy the property under the terms of the lease during an appeal of the termination decision. FmHA or its successor agency under Public Law 103–354 will comply with all applicable State and local laws governing eviction from the property;

(vi) Denial of applications for or disputes over terms and conditions of a lease or purchase agreement under the Leaseback/Buyback Program, are appealable pursuant to subpart B of part 1900 of this chapter. Disputes over appraisals for leaseback/buyback will be handled in accordance with §1951.909 (i)(3) or (i)(4) of this subpart, as applicable, and §1900.53(c) of subpart B of part 1900 of this chapter, as applicable; and

(vii) For additional guidance on the acquisition, management and sale of inventory farm property (CONACT property), the County Supervisor should refer to subparts A, B and C of part 1955 of this chapter.

(b) *Homestead protection*. This paragraph contains the policies and procedures pertaining to the FP Homestead Protection Program. The Homestead Protection Program is a ''Preservation Loan Service Program'' as set forth in this subpart. A borrower or former borrower who had or has an FP loan secured by the real property containing the dwelling owned by the borrower and used as the borrower's principal residence may apply for homestead protection before or after FmHA or its successor agency under Public Law 103–354 acquires the property. Farm real property that is in FmHA or its successor agency under Public Law 103–354 inventory as of the effective date of this regulation or is acquired in the future that secured a FP loan to individuals or entities will be considered for homestead protection as set forth in this subpart. If there is a conflict between applicants for leaseback/buyback (see §1951.911(a)) and homestead protection, priority will be given to the application for homestead protection. An applicant can apply for both homestead protection and leaseback/buyback at the same time. The applicant can obtain the homestead protection property under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program.

(1) *Purpose*. The purpose of the Homestead Protection Program is to permit a borrower or former borrower who is eligible for homestead protection to retain their dwelling through a lease and/or purchase. Such lease and/or purchase could permit a borrower or former borrower to have a home which could be a headquarters which could provide an opportunity to continue to farm and reestablish a feasible farming operation.

(2) *Notification and processing*. When a borrower(s) becomes at least 30 days delinquent on an FmHA or its successor agency under Public Law 103–354 loan(s), the borrower(s) will be sent exhibit A with attachments 1 and 2 of this subpart. Sending of this exhibit and attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Service. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Service Programs and other servicing options by sending attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable. If the borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal or fails to pay FmHA or its successor agency under Public Law 103–354 the net recovery value of the property, the borrower will be advised by the use of exhibit K with attachment 1 of this subpart, that FmHA or its successor agency under Public Law 103–354 will continue with the processing of Preservation Service Programs, if applicable. A borrower who desires to apply will request homestead protection in accordance with the provisions of §1951.907 of this subpart before the property is acquired and paragraph

(b)(2)(iii) of this section after the property is acquired. A borrower who desires to participate in the program must request homestead protection by applying in accordance with § 1951.907(f) of this subpart or paragraph (b)(2)(iii) of this section. A borrower who meets the eligibility requirements in 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 to the property is acquired.

(i) *General.* (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 County Supervisor will review the borrower's proposed homestead protection property and will make a physical inspection of the property, if necessary. If the County Supervisor does not agree with the proposed shape or size of the property, the County Supervisor and borrower will agree on an alternate size and shape for the property.

(C) If the borrower and the County Supervisor cannot agree on the proposed shape and size of the property, the County Supervisor will make the determination. The borrower may appeal pursuant to subpart B of part 1900 of this chapter.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible by the County Supervisor, the County Supervisor 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)(7) and (b)(8)(ii)(B) of this section.

(ii) *Processing homestead protection before FmHA or its successor agency under Public Law 103–354 acquires title.* (A) A borrower will be considered for eligibility for homestead protection when it is determined that the Primary Loan Service Programs cannot help. Exhibit K with attachment 1 of this subpart will be sent to the borrower. The borrower must indicate the buildings and land to be included in the request for homestead protection in order to continue the processing of his/her application. If the County Supervisor determines the borrower is eligible for homestead protection, the County Supervisor and the borrower will enter into a Homestead Protection Program Agreement (exhibit L of this subpart) to lease the Homestead Protection property to the borrower if and when FmHA or its successor agency under Public Law 103–354 acquires title. A copy of Form FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 1955–1 to FmHA or its successor agency under Public Law 103–354. The Homestead Protection Program Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If FmHA or its successor agency under Public Law 103–354 acquires title to the homestead protection property 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) FmHA or its successor agency under Public Law 103–354's obligation to lease the dwelling to the borrower will also be contingent on FmHA or its successor agency under Public Law 103–354's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. The Agreement will contain a provision that if FmHA or its successor agency under Public Law 103–354 cannot satisfy the foregoing conditions within 2 years from the date of the agreement, the agreement (and FmHA or its successor agency under Public Law 103–354's obligation to lease with option to purchase) will terminate. In

the event an agreement has been entered into, but title to the property has not been conveyed to FmHA or its successor agency under Public Law 103–354 (or FmHA or its successor agency under Public Law 103–354 has determined it is not in its financial interest to accept title), FmHA or its successor agency under Public Law 103–354 will continue with the acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit FmHA or its successor agency under Public Law 103–354's ability to foreclose on the property provided all the terms of the agreement have been met except that the title has not been conveyed to FmHA or its successor agency under Public Law 103–354.

(iii) *Application for homestead protection after FmHA or its successor agency under Public Law 103–354 acquires title.* When FmHA or its successor agency under Public Law 103–354 acquires title to the farm property, the borrower will be sent exhibit M of this subpart, by certified mail, return receipt requested, within 30 days from the acquisition date. The borrower must request homestead protection by notifying the County Supervisor in writing not later than 90 days after FmHA or its successor agency under Public Law 103–354 acquires the property. The borrower must give the County Supervisor the information set forth in §1951.907 (f) of this subpart and indicate the buildings and land to be included in the request for homestead protection.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form FmHA or its successor agency under Public Law 103–354 1955–20 after FmHA or its successor agency under Public Law 103–354 acquires title to the property. Form FmHA or its successor agency under Public Law 103–354 1955–20 will be completed in accordance with §1951.911(b)(8) and the FMI.

(3) *Eligibility.* The County Supervisor will make the determination on eligibility. In order to qualify for homestead protection the borrower must meet the following eligibility requirements:

(i) An applicant for Homestead Protection must be an individual borrower who was personally liable for the Farmer Program loan that was secured in part by the Homestead Protection property, or in the case where a nonborrower owner of the homestead protection property pledged the property to secure the FP loan, the owner of the property. The applicant must also be or have been the owner of the Homestead Protection property. The Farmer Program loan could have been made to an individual or to an entity, as long as the applicant for homestead protection was a member of the entity and was personally liable for the Farmer Program loan. A member of an entity who is or was personally liable for a Farmer Program 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 homestead protection property;

(ii) When more than one member of an entity was personally liable for a Farmer Program 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 a Farmer Program 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 farms of similar size, type of operation and locality. For the purpose of this subparagraph and subparagraph (iv) below, income from farming or ranching operations will include rent paid to the borrower 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. In determining whether or not the gross farm income was reasonably

commensurate with the farm size and location and local agricultural conditions, the borrower's records will be analyzed. When the borrower applies for homestead protection the borrower will give the County Supervisor 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 County Supervisor from information relating to yields, expenses and prices found in the borrower's County Office case file, ASCS 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 the gross annual income of the borrower and any spouse of the borrower in at least 2 of the 6 calendar years preceding the calendar year in which the application for homestead protection 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 the applicant had to leave the property 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. The applicant must also agree to all the terms and conditions set forth in paragraph (b)(8) of this section and in Form FmHA or its successor agency under Public Law 103–354 1955–20.

(4) *Transfer of homestead protection rights.* The applicant's rights to 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 of the applicant if the spouse agrees to comply with the terms and conditions of the lease by executing a new lease on the same terms and conditions.

(5) *Appeal rights.* If the County Supervisor determines that the applicant is not eligible for homestead protection or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition, the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded. If more than one applicant is found eligible for homestead protection, but the County Supervisor grants homestead protection to only one applicant, the successful applicant will be notified that he or she will be required to participate in any appeal hearing arising out of the County Supervisor's decision or lose the right to seek review if the hearing officer reverses the County Supervisor's decision selecting the applicant for homestead protection.

(6) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division of the homestead protection property into a separate legal lot as required by State and local laws. All environmental considerations required under the provisions of 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 FmHA or its successor agency under Public Law 103–354. Such costs 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). No repairs or improvements will be paid for by FmHA or its successor agency under Public Law 103–354 except as provided for in § 1955.64(a) of subpart B of part 1955 of this chapter.

(iii) If necessary, FmHA or its successor agency under Public Law 103–354 will grant and/or retain for the benefit

of adjoining property reasonable easement(s) for ingress, egress and utilities, water rights, etc.

(7) *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 County Supervisor.

(i) The County Supervisor will develop and maintain, in the County Office operational file, a list of independent appraisers. See § 1951.909(i) (3) and (4) of this subpart.

(ii) The cost of such an appraisal will be handled in accordance with paragraph (b)(6)(ii) of this section.

(iii) Independent appraisals are appealable.

(8) *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 FmHA or its successor agency under Public Law 103–354 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. The County Supervisor will document in the case file a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(B) Lease payments will be retained by the Government 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).

(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 retention property under this section. As soon as a lease payment is delinquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights of the lessee to possession and occupancy of the property including the right to exercise the option to purchase will be terminated. The County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to subpart B of part 1900 of this chapter. The lessee will continue to occupy the dwelling under the terms of the lease during an appeal of the termination decision. FmHA or its successor agency under Public Law 103–354 will comply with all applicable State and local laws governing eviction from residential property.

(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. This stipulation will be added to the lease. The act of an applicant exercising his or her rights under the Leaseback/Buyback Program is not considered as interfering with the Government's efforts to lease or sell the property.

(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 FmHA or its successor agency under Public Law 103–354 County Supervisor a signed, written statement notifying FmHA or its successor agency under Public Law 103–354 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 in the lease to purchase the property, the purchase price will be the current market value of the homestead protection property. The current market value will be determined by an appraisal in accordance with paragraph

(b)(7) 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)(7) of this section.

(C) The homestead protection property may be sold for cash or financed with a credit sale. At the time the lessee exercises the option the lessee must notify the County Supervisor if he or she wants to purchase the property for cash or finance it through a credit sale from FmHA or its successor agency under Public Law 103–354.

(D) If a credit sale is involved, the applicant must furnish the County Supervisor the information set forth in § 1951.907(f) of this subpart to assist in determining whether or not the applicant has adequate repayment ability.

(9) *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 part 1951 of this chapter.

(10) *Closing.* A credit sale will be closed in accordance with subpart J of part 1951 of this chapter.

(11) *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.

(12) *State supplements.* State supplements will be prepared with the assistance of OGC, as necessary, to comply with State laws 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).

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of part 1951 of this chapter.

[57 FR 18626, Apr. 30, 1992, as amended at 57 FR 36591, Aug. 14, 1992; 57 FR 47257, Oct. 15, 1992; 58 FR 44752, 44753, Aug. 25, 1993; 58 FR 52651, Oct. 12, 1993; 58 FR 64455, Dec. 8, 1993]

§ 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 of accounts restructured under Primary Loan Service Programs.

(a) *Servicing Shared Appreciation Agreements.* (1) The County Office will input, via the FmHA or its successor agency under Public Law 103–354 field office terminal system, an equity record. The County Office will process

this transaction in accordance with the provisions in the ADPS manual and the information in exhibit D of this subpart, ''Shared Appreciation Agreement.''

(2) The borrower's account will be credited with the amount of debt written down.

(3) Six months prior to the end of the Shared Appreciation Agreement, not to exceed 10 years, the Finance Office will notify the County Supervisor of the expected final date of the recapture.

(4) The County Supervisor will establish a follow-up on Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' to review the County real estate records every 24 months starting from the date of the Shared Appreciation Agreement to determine if the borrower has sold the real estate property covered by the agreement or transferred title to such property. The results of the review will be recorded in the borrower's County office case file.

(5) If the County Supervisor determines that the borrower has sold the real estate or transferred title, an appraisal of the real estate will be completed. If the appraisal indicates that there is a positive value between the current market value at the time the Shared Appreciation Agreement was signed and the current market value at the time the borrower conveyed the real estate or transferred title, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(i) The amount of recapture due;

(ii) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower);

(iii) Appeal rights as set forth in subpart B of part 1900 of this chapter;

(iv) If the borrower disagrees with the FmHA or its successor agency under Public Law 103–354 appraisal, the borrower may appeal the appraisal. If the borrower appeals the current market appraisal, he/she may request an independent appraisal. If the difference between the FmHA or its successor agency under Public Law 103–354 appraisal and independent appraisal is not more than five percent, the borrower must choose the appraisal to be used to process the request. The borrower will select an appraiser from the list of FmHA or its successor agency under Public Law 103–354 approved appraisers. The selection of the appraiser must be made by the borrower within 15 days of the receipt of the recapture due letter;

(v) Any appeal under this section will be concluded prior to any further action by FmHA or its successor agency under Public Law 103–354; and

(vi) If the borrower does not appeal within 30 days or does not pay the amount, FmHA or its successor agency under Public Law 103–354 will proceed as set forth in § 1951.907(e) of this subpart.

(b) *Recapture under Shared Appreciation Agreements.* Recapture of any appreciation will take place at the end of the term of the agreement, or sooner, if the following occurs:

(1) On the conveyance of the real estate security by the borrower; however, transfer of title to the spouse of the borrower on the death of such borrower, will not be treated by FmHA or its successor agency under Public Law 103–354 as a conveyance. Recapture will take place if the surviving spouse conveys the subject property, or at the end of the term of the recapture agreement, whichever comes first;

(2) On the repayment of the loans;

(3) If the borrower/spouse ceases farming operations; or

(4) Five months prior to the end of the term of the Shared Appreciation Agreement. The County Supervisor will inform the borrower by letter of the following:

(i) The date the recapture is due;

(ii) The borrower must select an FmHA or its successor agency under Public Law 103–354 approved appraiser from the list provided to establish the current market value of the property subject to recapture;

(iii) The cost of such appraisal is to be shared equally by FmHA or its successor agency under Public Law 103–354 and the borrower; and

(iv) The borrower must inform FmHA or its successor agency under Public Law 103–354 of the appraiser selected within 15 days from the date of the letter indicated in paragraph (a)(5)(iv) of this section.

(c) *Procedures for recapture at the end of Shared Appreciation Agreement:* (1) The borrower will be notified by certified mail, return receipt requested, of the recapture amount due and payable. This notification letter will also include the recapture calculations and appeal rights. If the borrower cannot obtain satisfactory financing to pay the recapture, the amount to be recaptured will be identified on a new promissory note as a non-program loan at ineligible rates and terms. If the borrower is financially capable of paying the recapture, as determined by the FmHA or its successor agency under Public Law 103–354 County Committee and the payment is not made by the borrower within 180 days from the date due, the borrower's account will be treated as delinquent and FmHA or its successor agency under Public Law 103–354 will send attachments 1 and 2 of exhibit A of this subpart. The FmHA or its successor agency under Public Law 103–354 field office will input via the field office terminal system the information to establish a recapture receivable account in the Finance Office.

(2) 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.''

(3) When the full amount of the shared appreciation and the remaining FmHA or its successor agency under Public Law 103–354 indebtedness have been paid and credited to the borrower's account, the borrower will be released from personal liability. Notes evidencing debts and shared appreciation agreements will be marked ''Paid in Full'' 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 the usual manner.

(4) 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.

§ 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 FmHA or its successor agency under Public Law 103–354 Debt Restructuring Support Teams (DRST).

(a) *State Office DRST.* Each State Director shall form DRSTs to be deployed when unusually large numbers of Primary and Preservation Servicing applications are received. DRSTs shall assist in expediting the processing of both Primary and Preservation Loan Service Program applications.

(1) State Directors shall use the DRSTs formed in their State(s) and all other FmHA or its successor agency under Public Law 103–354 personnel within their State(s) in processing Primary and Preservation Loan Service applications. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request assistance.

(2) Upon request of a State Director, the Administrator will consider detailing DRSTs from other States to assist in processing Primary and Preservation Loan Service applications.

(3) State DRSTs will consist of a team leader and team members, selected by the State Director.

(4) State DRSTs will be trained as follows:

(i) The National Office will participate in training meetings or workshops for DRST leaders as requested; and

(ii) States will be responsible for training and keeping the State team currently informed on all phases of processing applications for Primary and Preservation Programs.

(5) Each State Director will issue a State supplement establishing a DRST for the State(s) under his/her jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Assistant Administrator, Farmer Programs.

(b) *National Office DRST Leaders.* The National Office will establish a cadre of DRST team leaders.

(1) National Office team leaders will be used as follows:

(i) Assisting State Directors in training of FmHA or its successor agency under Public Law 103–354 field personnel, other USDA personnel, and temporary personnel in the processing of Primary and Preservation Loan Service Program applications;

(ii) Assisting State Directors in the organizing and expediting of assistance to eligible applicants; and

(iii) Leading DRSTs in areas with an unusually large volume of Primary and Preservation Loan Service Program applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of the processing of Primary and Preservation Loan Service Program applications.

§ 1951.918 FmHA or its successor agency under Public Law 103–354 Debt Restructuring Assessment Teams (DRAT).

The State Director will deploy DRATS on a continuing basis to monitor debt restructuring processing activities in order to minimize processing errors, especially in calculating net recovery and writedown calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and Auditors from the Office of Inspector General, if they desire to participate. The

team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Offices. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure. The Assistant Administrator, Farmer Programs, will monitor States quality control procedures.

§§ 1951.919—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 0575.0133. 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# 0575–0133), Washington, DC 20503.

EXHIBITS TO SUBPART S

EXHIBIT A—NOTICE OF THE AVAILABILITY OF LOAN SERVICE AND DEBT SETTLEMENT PROGRAMS FOR DELINQUENT FARM BORROWERS

Note to County Supervisor: This exhibit will be sent to all borrowers who are 30 days behind schedule on their farmer program payments and to all such borrowers who become 180 days behind schedule and do not respond to the 30-day notice.

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. Farmers who are more than 30 days late in making payments have several options.

I. Loan Service Programs Available

Primary loan service programs are intended to adjust the debt so that you can continue farming and the FmHA or its successor agency under Public Law 103–354 will receive a better recovery on the money it loaned you.

Preservation loan service programs are intended to help farmers who may lose their land to FmHA or its successor agency under Public Law 103–354 get their farmland and/or their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must notify FmHA or its successor agency under Public Law 103–354 within 60 days of getting this notice if you want these programs.

If you are less than 180 days delinquent when you receive this notice and do not respond, you will be renotified when you become 180 days delinquent. However, if you timely respond, you will not be renotified when you become 180 days delinquent.

How to Apply

To apply, you must complete and return the required forms you get with this notice, including your signed Acknowledgement Of Notice Of Program Availability within the 60-day time limit.

How Soon Will You Know if You Qualify

FmHA or its successor agency under Public Law 103–354 has 90 days to process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan service programs options

(2) A summary of preservation loan service programs

(3) A summary of debt settlement programs

(4) The forms you need to apply for services

(5) Information on how to get copies of FmHA or its successor agency under Public Law 103–354 regulations

(6) A description of the FmHA or its successor agency under Public Law 103–354 appeals process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 60 Days?

FmHA or its successor agency under Public Law 103–354 will take steps to begin the acceleration of your loan if you are more than 180 days delinquent. Acceleration of your loan is very severe. This means FmHA or its successor agency under Public Law 103–354 will take legal action to collect all the money you owe them.

After acceleration, FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 has a security interest. FmHA or its successor agency under Public Law 103–354 will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. FmHA or its successor agency under Public Law 103–354 may also take by administrative offset money which other federal agencies owe you.

Sincerely,

County Supervisor,

Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture.

ATTACHMENT 1—PRIMARY AND PRESERVATION LOAN SERVICE AND DEBT SETTLEMENT PROGRAMS PURPOSE

Note to County Supervisor:

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA or its successor agency under Public Law 103–354 contacts in regard to monetary, non-monetary default or in financial distress.

Purpose

These FmHA or its successor agency under Public Law 103–354 programs are to help you repay the loan and keep your farm property and settle your debt to FmHA or its successor agency under Public Law 103–354. 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 FmHA or its successor agency under Public Law 103–354 County Office for copies of the FmHA or its successor agency under Public Law 103–354 rules describing these programs. These rules must be given to you within 10 days.

Who Can Apply?

All ''farmer program 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: FmHA or its successor agency under Public Law 103–354 County Supervisors 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 and farm ownership loans with farm ownership 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. 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

FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 determines options 1–4 will not work for you.

NOTE: FmHA or its successor agency under Public Law 103–354 Softwood Timber Programs. Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1,000 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.

NOTE: Conservation Easements. Use of highly erodible land, wetlands, or wildlife habitat can be signed over to the Secretary of Agriculture for a reduction in your debt. The amount of land left after the conservation easement must be enough to continue your farming operation.

(6) Debt Writedown

This is not available to borrowers who are current in their loan payments.

Debt writedown means the FmHA or its successor agency under Public Law 103–354 debt you owe is reduced. FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 loans minus all of the expenses such as sale costs, attorneys' fees, management costs, taxes and payment of prior liens on the collateral that FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 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 you will have enough money to pay all of your family living and farming operating expenses and up to 105 percent but not less than 100 percent of your scheduled debt payments. FmHA or its successor agency under Public Law 103–354 will not deny your request if you cannot make the full 105 percent of your scheduled debt payments including making payments on your FmHA or its successor agency under Public Law 103–354 debt once part of the loan is written down. This means you must have a feasible plan of operation. FmHA or its successor agency under Public Law 103–354 will never write down more of the debt than is necessary for you to show a feasible plan.

The writedown is used only when the loan servicing programs listed in programs 1–5 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 loan(s) will be written down in addition to changing the payback period, and possibly the interest rate, using programs 1–5 above.

If all of your outstanding loans have original promissory notes dated after January 6, 1988, you can receive only one writedown or one buyout. If you have any outstanding loans with original promissory notes dated on or before January 6, 1988, and have never received a deferral, writedown, or buyout on

any loan after that date, you can receive two writedowns or buyouts, or one of each. If you have any outstanding loans with original promissory notes dated on or before January 6, 1988, and have received deferral or writedown after that date, or if you previously bought out loans dated on or before January 6, 1988, at the net recovery value, you can receive one additional writedown or buyout. In addition, you have a total lifetime limit of $300,000 for writedown and/or writeoff (with buyout), regardless of the number of writedowns and/or buyouts you may qualify for. Any writedown or buyout received on an application submitted before November 28, 1990, will not be counted toward the one writedown or buyout limit or the $300,000 limit.

II. Who Can Qualify for Primary Loan Service Programs

To qualify you must prove that:

(1) You cannot repay your FmHA or its successor agency under Public Law 103–354 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. FmHA or its successor agency under Public Law 103–354 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 such 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; and

(2) You have acted in ''good faith'' to keep your agreements with FmHA or its successor agency under Public Law 103–354 in that you have kept all written agreements with FmHA or its successor agency under Public Law 103–354 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.

(3) You must agree to give FmHA or its successor agency under Public Law 103–354 a lien on certain other assets for additional security for the FmHA or its successor agency under Public Law 103–354 debt. If you are offered restructuring and accept the offer, you must provide this lien at closing.

Who Will Decide if You Qualify?

The FmHA or its successor agency under Public Law 103–354 County Supervisor will decide if you qualify. The County Supervisor will decide whether you can pay as much or more on the loan as FmHA or its successor agency under Public Law 103–354 would get if they foreclosed and sold the collateral for the loan plus the value of any nonessential assets. To do this, the County Supervisor must decide whether the total payments of principal and interest on your adjusted debt will be at least as much as the ''recovery value'' explained under part I(6) above.

How Soon Will You Know?

Within 90 days from the day you apply you will get a copy of the County Supervisor's analysis and decision.

Can You Get Your Debts Written Down?

Only if FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 debt payments.

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement. 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.
- The shared appreciation agreement will not last longer than 10 years.

During this 10 years, FmHA or its successor agency under Public Law 103–354 will ask you to repay part of the debt written down if you do any of the following things:

(1) Sell or convey the real estate

(2) Stop farming

(3) Pay off the entire debt

If you do not do any of these things during the 10 years, FmHA or its successor agency under Public Law 103–354 will ask you to repay part of the debt written down at the end of the 10 years.

FmHA or its successor agency under Public Law 103–354 can only ask you to repay if the value of your real estate collateral goes up.

In the first four years of the agreement, FmHA or its successor agency under Public Law 103–354 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. However, FmHA or its successor agency under Public Law 103–354 can never 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 FmHA or its successor agency under Public Law 103–354 that you accept its offer to restructure your debt within 45 days of when you receive the offer.

(4) You must agree to meet, at your own cost, FmHA or its successor agency under Public Law 103–354'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. The County Committee may waive this requirement 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 or its successor agency under Public Law 103–354 1924–27, ''Request for Waiver of Borrower Training Requirements,'' and submit with your request for FmHA or its successor agency under Public Law 103–354 servicing. This training requirement is not applicable if you have previously received a waiver or you have successfully completed the required FmHA or its successor agency under Public Law 103–354 Borrower Training program.

III. Preservation Loan Service Programs

Purpose

These programs apply when the primary loan service programs cannot help you.

Programs Available

(1) *Homestead Protection.* (Keeping your farm home.) You may lease your farm home and outbuildings plus a limited amount of land. The limit on the land you can retain is up to 10 acres. The lease time will be for up to 5 years. The lease will include an option to buy back the property you lease.

(2) *Farmland Leaseback/Buyback.* You can either lease or buy back your farm and ranch real property. This includes any on farm residence, and any off farm principal residence of the farm operator which is pledged as security for your FmHA or its successor agency under Public Law 103–354 loan from FmHA or its successor agency under Public Law 103–354. (The lease will contain an option to buy.)

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm and/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) If FmHA or its successor agency under Public Law 103–354 has already taken your property, you must apply within 90 days of the date FmHA or its successor agency under Public Law 103–354 took your property. (FmHA or its successor agency under Public Law 103–354 must notify you within 30 days of taking your property.)

(5) You must be the owner or former owner of the property.

How to Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FmHA or its successor agency under Public Law 103–354 reasonable rent. The rent prices FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354, FmHA or its successor agency under Public Law 103–354 will evict you and force you to leave. Before FmHA or its successor agency under Public Law 103–354 forces you to leave, they must let you appeal. FmHA or its successor agency under Public Law 103–354 must also follow the laws of your state.

NOTE: You can buy back your property at current market value at any time during the lease. FmHA or its successor agency under Public Law 103–354 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 due to any placement of a wetland conservation easement.

V. How to Lease Back or Buy Back Farmland Property

Under certain conditions you may lease or buy back your farm and ranch real property. If you applied for primary loan servicing, and do not qualify (see part VIII below), you will automatically be considered for leaseback/buyback. You can enter into a preacquisition agreement for leaseback/buyback of your farm prior to FmHA or its

successor agency under Public Law 103–354 acquiring title to the property. To do this, you must convey your property to FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 will only accept the property if it is in the Government's financial interest. You can also apply if FmHA or its successor agency under Public Law 103–354 takes title to your farmland. If FmHA or its successor agency under Public Law 103–354 does not get title to your land because someone else buys it, you will not get leaseback/buyback.

You will have the opportunity to buy the farm during the period of the lease. You can buy the farm for cash or you may apply for FmHA or its successor agency under Public Law 103–354 financing of the purchase.

How Long Do I Have to Decide?

If FmHA or its successor agency under Public Law 103–354 takes your farmland, you will have 180 days after FmHA or its successor agency under Public Law 103–354 takes it to apply to purchase or lease your property. (Some states give you a longer time period.)

Who Can Apply to Buy or Lease Back?

(See next page for the order of these rights.)

(1) Buyback or leaseback rights apply to you, your spouse, and any one of your children if they also have been actively involved in farming.

(2) Members of family-held corporations if the corporation had the loan from FmHA or its successor agency under Public Law 103–354 and if the family member is actively engaged in farming.

(3) Members of family partnerships or joint operations who were responsible to pay the FmHA or its successor agency under Public Law 103–354 loan and if the family member is actively engaged in farming.

(4) A tenant operator (lessee) who operated the farm.

NOTE: You must notify your family of their right to lease or buy back. If you are an entity *i.e.*, partnership, corporation, etc., you must notify the entity members of this right. If you rented out the property when FmHA or its successor agency under Public Law 103–354 took it into inventory, please tell FmHA or its successor agency under Public Law 103–354 the name and address of the lessee. FmHA or its successor agency under Public Law 103–354 will then notify the lessee.

Your spouse and your children's rights, and the rights of entity members, exist only if FmHA or its successor agency under Public Law 103–354 takes the property into inventory.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FmHA or its successor agency under Public Law 103–354's inventory, may have restrictions and/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 farm and/or dwelling. These restrictions and encumbrances will be placed in leases and in deeds on farms containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

Order of Rights to Buy or Lease Back

(1) The former owner has first right. His/her right to be considered will last for 180 days from the time FmHA or its successor agency under Public Law 103–354 gets title to the land.

(2) The former owner's spouse or children (if the former owner was an individual) has the second right. However, if the former owner was an entity, then the entity members of a corporation, partnership, joint operation or cooperative have the second right to buy or lease back. Their right to be considered will last for 190 days (*i.e.*, 10 days more than owner's 180 days).

(3) The operator, if he/she is not owner of the property and was operating the property when FmHA or its successor agency under Public Law 103–354 took it into inventory, has the third right. The operator has 30 days after receipt of a notice about leaseback/buyback to notify FmHA or its successor agency under Public Law 103–354If the land is on an Indian reservation and was owned by a tribe member, FmHA or its successor agency under Public Law 103–354 will make special offers to tribal members. FmHA or its successor agency under Public Law 103–354 will do this after the time period for owner/family leaseback/buyback has passed.

Who Can Qualify for Buybacks Financed by FmHA or its successor agency under Public Law 103–354 or Leasebacks?

(1) You must have enough financial and management skills to show you will be successful in the farming operation.

NOTE: If you get financing from someone other than FmHA or its successor agency under Public Law 103–354, you will need to meet the requirement of the lender for financial and management skills.

(2) You must give FmHA or its successor agency under Public Law 103–354 a farm plan that shows you have a reasonable chance of being successful.

(3) The rental price must be based on reasonable rent for the same type of property in your area.

(4) The purchase price will be the property's appraised market value.

(5) You must have acted in ''good faith'' to keep your agreements with FmHA or its successor agency under Public Law 103–354 in that you have kept all written agreements with FmHA or its successor agency under Public Law 103–354 including those agreements for the use of proceeds and release of property used to secure the loan and your file shows no fraud, waste, or conversion.

VI. 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 preservation loan service programs. If you do not have FmHA or its successor agency under Public Law 103–354 collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FmHA or its successor agency under Public Law 103–354 may be settled for less than the amount you owe. You may apply for debt settlement at any time by submitting an application for debt settlement on Form FmHA or its successor agency under Public Law 103–354 1956–1.

Programs Available

(1) Compromise offer: A lump-sum payment of less than the total FmHA or its successor agency under Public Law 103–354 debt owed.

(2) Adjustment offer: One or more payments of less than the total amount owed to FmHA or its successor agency under Public Law 103–354. Your payments can be spread out over a maximum of five years if FmHA or its successor agency under Public Law 103–354 decides you will be able to make the payments as they become due.

(3) Cancellation: The final settlement of a debt without any payment. FmHA or its successor agency under Public Law 103–354 must determine there is no FmHA or its successor agency under Public Law 103–354 security or other assets from which FmHA or its successor agency under Public Law 103–354 can collect. You must be unable to pay any part of the debt now or in the future.

(4) Chargeoff: FmHA or its successor agency under Public Law 103–354 may use this option to write off debt and terminate collection activity without release of your personal liability for the FmHA or its successor agency under Public Law 103–354 debt. The same conditions for cancellation apply here.

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 debt and pay FmHA or its successor agency under Public Law 103–354 the present fair market value of your collateral along with any additional amount you are able to pay as determined by FmHA or its successor agency under Public Law 103–354. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FmHA or its successor agency under Public Law 103–354 will not finance a compromise or adjustment offer.

All debt settlements of farmer program loans must be recommended by the FmHA or its successor agency under Public Law 103–354 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. If you qualify, your application must also be approved by the FmHA or its successor agency under Public Law 103–354 State Director or the FmHA or its successor agency under Public Law 103–354 Administrator depending on the amount of the debt to be settled.

VII. How To Apply for Primary and Preservation Loan Servicing Programs

Application Forms

These forms should be included with this notice. If they are not, you can obtain them from the FmHA or its successor agency under Public Law 103–354 County Office or as directed below. The forms required are listed below.

Form number Title

(1) 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. (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals, corporations, or partnerships personally liable for the FmHA or its successor agency under Public Law 103–354 debt.)

(2) FmHA or its successor agency under Public Law 103–354 410–8 Application Reference Letters.

(3) FmHA or its successor agency under Public Law 103–354 410–9 Statement Regarding Privacy Act.

(4) FmHA or its successor agency under Public Law 103–354 431–2 Farm and Home Plan. You may request the County Supervisor to assist you in completing your plans.

(5) FmHA or its successor agency under Public Law 103–354 440–32 Request for Statement of Debts and Collateral.

(6) FmHA or its successor agency under Public Law 103–354 1910–5 Request for Verification of Employment.

(7) FmHA or its successor agency under Public Law 103–354 1924–1 Development Plan (if you are planning to make major changes in your farming operation). The County Supervisor can assist and advise you on any additional information that may be needed.

(8) FmHA or its successor agency under Public Law 103–354 1956–1 Application for Settlement of Indebtedness. (Complete this form only if you wish to apply for debt settlement.)

(9) SCS–CPA–026 Highly Erodible Land and Wetland Conservation Determination. (This form must be obtained from and completed in the Soil Conservation Service office.)

(10) AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification. (This form must be obtained from and completed in the Agricultural Stabilization and Conservation Service office.)

NOTE:

For Conservation Easement only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of your farm. Show approximate number of acres you wish to use for a conservation easement.

Time To Apply for Primary and Preservation Loan Servicing Programs

To apply, you must complete the appropriate forms and return them to the FmHA or its successor agency under Public Law 103–354 County office within 60 days from the date you received this notice. If you are less than 180 days delinquent and do not choose to return the forms, you will receive a second notice when you are 180 days delinquent.

If you are less than 180 days delinquent and you return the forms within the required time, you will not be renotified when you are 180 days delinquent.

VIII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the County Supervisor decides you are not eligible, you may request a meeting with the County Supervisor so he/she can explain the decision. If you think the County Supervisor's decision is wrong, you can tell him/her 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 County Supervisor.

Negotiation of the Appraisal

A negotiation of the appraisal is a process whereby the borrower objects to the FmHA or its successor agency under Public Law 103–354 appraisal, obtains an independent appraisal at their 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 FmHA or its successor agency under Public Law 103–354 appraisal, the borrower must choose one of these two appraisals for the County Supervisor to use to continue processing the request. Borrowers who request to negotiate the appraisal do not have rights to an FmHA or its successor agency under Public Law 103–354 appeal of the final 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, FmHA or its successor agency under Public Law 103–354 will help you try to get your other creditors to adjust your debts. This will be done by FmHA or its successor agency under Public Law 103–354 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, FmHA or its successor agency under Public Law 103–354 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. If you object to the FmHA or its successor agency under Public Law 103–354 appraisal, you may ask FmHA or its successor agency under Public Law 103–354 to negotiate the appraisal prior to mediation.

You Have the Right to Appeal

(1) *Appeal Hearing.* If you do not convince the County Supervisor that you should get primary loan servicing or were unable to resolve the problem through mediation, you have a right to appeal the decision. The County Supervisor must send you a letter after the meeting that explains his/her decision. The letter must also say you have 30 days to ask for an appeal hearing. You can present witnesses and documents and ask FmHA or its successor agency under Public Law 103–354 questions at the hearing. The appeal hearing is recorded, and you can get a copy of the transcript of the hearing if you pay for the copying costs.

(2) *Review.* If you do not win at the appeal hearing, FmHA or its successor agency under Public Law 103–354 must tell you why and let you ask for a review of that decision. The transcript and the documents used at the hearing will be reviewed when you ask for a review of the appeal hearing decision.

You May Buyout (Pay Off) Your Loan at the ''Recovery Value''

(1) *Recovery Value.* If the analysis of your debt shows that you cannot ''cash flow'' even if your debt to FmHA or its successor agency under Public Law 103–354 is reduced to the recovery value of the collateral, the County Supervisor will send you a letter saying you can buyout the loan by paying the ''recovery value.'' The recovery value is described in more detail in section I(6) of this notice.

(2) Limits. If all of your outstanding loans have original promissory notes dated after January 6, 1988, you can receive only one writedown or one buyout. If you have any outstanding loans with original promissory notes dated on or before January 6, 1988, and have never received a deferral, writedown, or buyout on any loan after that date, you can receive two writedowns or buyouts, or one of each. If you have any outstanding loans with original promissory notes dated on or before January 6, 1988, and have received deferral, writedown, or buyout after that date, you can receive one (additional) writedown or buyout. In addition, you have a total lifetime limit of $300,000 for writedown and/or writeoff (with buyout), regardless of the number of writedowns and/or buyouts you may qualify for. Any writedown or buyout received on an application submitted before November 28, 1990, will not be counted toward the one writedown or buyout limit or the $300,000 limit.

(3) *Eligibility.* To qualify you must prove that:

You cannot repay your FmHA or its successor agency under Public Law 103–354 delinquent debt which 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 pay off the loan at ''recovery value,'' you must pay FmHA or its successor agency under Public Law 103–354 within 90 days of the date you receive the offer. If you appeal the County Supervisor's decision not to give you primary loan servicing, this 90 days will not start until all appeal hearings and appeal reviews end.

(5) *Cash.* If you pay off the loan at net recovery value, you must pay in cash. FmHA or its successor agency under Public Law 103–354 will not make or guarantee a loan for this purpose.

(6) *You Must Sign a Net Recovery Buy Out Recapture Agreement.* The agreement asks you to repay all or part of the amount of your debt FmHA or its successor agency under Public Law 103–354 writes off if you sell or otherwise convey your real estate collateral. The amount you repay depends upon the market value of your real estate collateral on the date you sell or otherwise convey it.

The agreement will not last longer than 10 years.

Consideration for Preservation Loan Service Programs

You will be considered for preservation loan service programs 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 at recovery value.

FmHA or its successor agency under Public Law 103–354 will consider you for preservation loan service programs after the 90-day time period you have to pay off the loan at recovery value.

Consideration for Homestead Protection and/or Farmland Leaseback/Buyback Agreement

You will be considered for preservation loan service programs if you:

(1) Meet the conditions described above, and

(2) Agree to give FmHA or its successor agency under Public Law 103–354 title to your land at the time FmHA or its successor agency under Public Law 103–354 signs the written homestead protection and/or farmland leaseback/buyback agreement with you. FmHA or its successor agency under Public Law 103–354 will not accept title and will deny your preservation request if it is not in FmHA or its successor agency under Public Law 103–354's best financial interest to accept title. FmHA or its successor agency under Public Law 103–354 will figure the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FmHA or its successor agency under Public Law 103–354 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 buy.

FmHA or its successor agency under Public Law 103–354 may consider you for homestead protection and farmland leaseback/buyback on your real estate and, at the same time, consider you for buyback of your equipment and any other non-real estate collateral at market value.

Consideration for Debt Settlement Programs

If you wish to be considered for debt settlement, you will need to request and return a completed Form FmHA or its successor agency under Public Law 103–354 1956–1. You may request debt settlement at any time.

Usually, the most appropriate time for making this request is when FmHA or its successor agency under Public Law 103–354 has determined that Primary 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 FmHA or its successor agency under Public Law 103–354 loans, you may want to request debt settlement instead of primary and preservation loan servicing

IX. What Happens When You Are Turned Down for Preservation Loan Service Programs and/or Debt Settlement Programs?

You Can Appeal

If FmHA or its successor agency under Public Law 103–354 decides that you cannot get homestead protection and/or farmland leaseback/buyback and/or debt settlement you can ask for:

(1) A meeting with FmHA or its successor agency under Public Law 103–354 to discuss the decision, and

(2) An appeal hearing.

The Right to a Meeting

The County Supervisor will send you a letter telling you why FmHA or its successor agency under Public Law 103–354 decided not to give you homestead protection or farmland leaseback/buyback and/or debt settlement. That letter will give you 15 days to ask for a meeting with FmHA or its successor agency under Public Law 103–354.

The Right to an Appeal Hearing

If you do not convince FmHA or its successor agency under Public Law 103–354 at the meeting to change their decision. FmHA or its successor agency under Public Law 103–354 will send you another letter giving you 30 days to request an appeal hearing.

At the appeal hearing, you can contest FmHA or its successor agency under Public Law 103–354's rental price and its decision not to give you homestead protection and/or farmland leaseback/buyback. You can also contest FmHA or its successor agency under Public Law 103–354's decision to reject your debt settlement application.

The Right to a Review

If you do not win the appeal hearing. FmHA or its successor agency under Public Law 103–354 must let you ask for a further review. The recorded transcript of the hearing will be reviewed at this stage. You can get a copy of the transcript by paying the copying costs.

X. What Happens if You Do Not Win the Appeal for Preservation Loan Service Programs and/or Debt Settlement Programs?

FmHA or its successor agency under Public Law 103–354 will accelerate your loan account and call in the whole debt. FmHA or its successor agency under Public Law 103–354 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. FmHA or its successor agency under Public Law 103–354 will also repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. After acceleration, FmHA or its successor agency under Public Law 103–354 may also take by administrative offset money which other Federal Government agencies owe you.

FmHA or its successor agency under Public Law 103–354 will take these actions unless you do one of the following things with FmHA or its successor agency under Public Law 103–354's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FmHA or its successor agency under Public Law 103–354.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FmHA or its successor agency under Public Law 103–354 debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement. You may apply or reapply for homestead protection and farmland leaseback/buyback if FmHA or its successor agency under Public Law 103–354 gets title to your land or home through a foreclosure action or conveyance. You may re-apply for these programs even if you applied before and did not get one of these programs and were not successful on appeal. However, applications for leaseback/buyback or debt settlement filed after the 60-day time period provided in this notice will not delay acceleration and foreclosure.

ATTACHMENT 2—ACKNOWLEDGEMENT OF NOTICE OF PROGRAM AVAILABILITY

Note to County Supervisor

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs, and to every borrower FmHA or its successor agency under Public Law 103–354 contacts in regard to monetary default or financial distress.

I/We have been given a notice explaining the primary and preservation loan service and debt settlement programs.

The date on the notice was _____.

This notice explained that FmHA or its successor agency under Public Law 103–354 programs are available to help me keep my property and/or settle my debt with FmHA or its successor agency under Public Law 103–354.

I/We ask FmHA or its successor agency under Public Law 103–354 to consider me/us for all of these programs.

I understand that I will be notified of my rights to appeal after FmHA or its successor agency under Public Law 103–354 decides on my request.

_____

Signature

_____

Date

ATTACHMENT 3—NOTICE TO BORROWERS WITH NON-MONETARY DEFAULTS, NON-MONETARY DEFAULTS AND DELINQUENCY, OR THAT A PRIOR LIENHOLDER OR JUNIOR LIENHOLDER IS FORECLOSING

Note to County Supervisor

This attachment will be used to notify borrowers with non-monetary defaults, borrowers with both non-monetary and monetary defaults, and borrowers where a prior or junior lienholder is foreclosing.

Dear _____:

FmHA or its successor agency under Public Law 103–354 has reviewed your loan account. Our record shows:

☐ You are now $_____ behind on your payments. This is a violation of your loan agreement.

☐ You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is _____

_____

(Describe property.)

☐ You have stopped farming or ranching. This is a violation of your loan agreement.

☐ A foreclosure action has been filed against you by _____. This is a violation of your loan agreement.

☐ You have _____

_____

(Insert reasons for proposed action.)

FmHA or its successor agency under Public Law 103–354 Will Accelerate Your Loans

This means FmHA or its successor agency under Public Law 103–354 will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They may take by administrative offset money you are owed by other Federal agencies.

Steps You Can Take Before FmHA or its successor agency under Public Law 103–354 Accelerates Your Loans

You can apply for the programs described in attachment 1. These are called Primary and Preservation Loan Service and Debt Settlement Programs. You can also ask for a meeting. At this meeting you can explain why you think FmHA or its successor agency under Public Law 103–354's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to void acceleration and foreclosure. You can request loan servicing, debt settlement and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FmHA or its successor agency under Public Law 103–354's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property. Please read the section on debt settlement programs for guidance in requesting and receiving consideration of a request for debt settlement.

Forms Attached to This Notice

You will find:

(1) A summary of all primary loan service programs;

(2) A summary of preservation loan service programs;

(3) A summary of all debt settlement programs;

(4) Copies of the forms needed to apply;

(5) Advice on how to get copies of FmHA or its successor agency under Public Law 103–354 regulations; and

(6) A short description of the FmHA or its successor agency under Public Law 103–354 appeal process.

Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.

Purpose of Preservation Loan Service Programs

These programs are intended to help farmers who may lose their land to FmHA or its successor agency under Public Law 103–354 to get their farmland and their home back through a lease with an option to buy.

Purpose of Debt Settlement Programs

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 preservation loan service programs. If you do not have FmHA or its successor agency under Public Law 103–354 collateral you will need to apply for debt settlement only. Under these programs,

the debt you owe FmHA or its successor agency under Public Law 103–354 may be settled for less than the amount you owe. You may apply for debt settlement at any time by requesting and submitting an application for debt settlement on Form FmHA or its successor agency under Public Law 103–354 1956–1.

How to Apply for Loan Servicing

Complete attachment 4 and the appropriate forms included with this notice.

You must return these within 60 days of getting this notice.

Right to a Meeting

You have the right to meet with your FmHA or its successor agency under Public Law 103–354 County Official before they decide to accelerate your loan. You must check the box on attachment 4 saying you want a meeting. (Attachment 4 is the ''Response to Notice of Intent to Accelerate and Notice of Borrower Rights.'')

How to Ask for a Meeting

You must check the box on attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your County Office. Do this as soon as possible. It is wise to call also to set up the meeting.

NOTE: If you ask for loan servicing, the meeting will be delayed until a decision on your loan servicing request is made.

The Right to Appeal

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs and/or debt settlement.

How to Ask for an Appeal

Check the box on attachment 4 and mail it to your County Office within 30 days of getting this notice.

NOTE: If you do not check the box on the attachment 4 to ask for primary and preservation loan service programs, you will not be considered.

If you do not ask for a meeting you will not get one.

You may still appeal by asking for an administrative appeal on the attached form.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture

Date: _____

ATTACHMENT 4—RESPONSE TO NOTICE INFORMING ME OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S INTENT TO ACCELERATE MY LOAN

Note to County Supervisor

This attachment will be included with attachment 3, when contacting a borrower about non-monetary default, non-monetary default and delinquency, and when a prior or junior lienholder is foreclosing.

Notice of My Rights

To: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

From: _____

(Please print your name and address.)

I have read the notice informing me of FmHA or its successor agency under Public Law 103–354's intent to accelerate my loan which I received with this form.

I want to: (Check one or more of the following boxes)

☐ 1. Request a meeting with the FmHA or its successor agency under Public Law 103–354 County Office.

My phone number is _____.

I must return this form in 15 days.

I understand I do not lose my right to appeal by asking for a meeting.

☐ 2. Be considered for all primary and preservation loan service and debt settlement programs. I must return this form along with all applicable forms in 60 days.

☐ 3. Have an administrative appeal hearing. I understand that I will be contacted by FmHA or its successor agency under Public Law 103–354's National Appeals Staff to set up the appeal hearing date and give me more information. I must return this form in 30 days.

Date: _____

Signature: _____

(Sign here.)

Date

ATTACHMENT 5

Note to County Supervisor:

This attachment is used when notifying borrower who returned attachment 2 of Exhibit A, that FmHA or its successor agency under Public Law 103–354 cannot provide the assistance requested with the Primary Services Programs.

See §1951.909(h)(3)(i) and (ii).

Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights

Name and Address

(Dear (Borrower's Name): You are not eligible for debt restructuring.

I. ☐ FmHA or its successor agency under Public Law 103–354 has reviewed your application for primary loan servicing (debt restructuring).

You cannot get primary loan servicing because your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA or its successor agency under Public Law 103–354 help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA or its successor agency under Public Law 103–354 at least

$____ per year.

NOTE: The attached computer printout which summarizes FmHA or its successor agency under Public Law 103–354's calculations based on your application.

II. ☐ FmHA or its successor agency under Public Law 103–354 has reviewed your application and your case file. You have broken your agreement with FmHA or its successor agency under Public Law 103–354. Your Farm and Home Plan shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt payments if FmHA or its successor agency under Public Law 103–354 uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have broken your loan agreements with FmHA or its successor agency under Public Law 103–354.

You have broken loan agreements with FmHA or its successor agency under Public Law 103–354 in the following way:

☐ You are $_____ behind in your scheduled loan payments.

☐ You have sold or gotten rid of property you used to secure the FmHA or its successor agency under Public Law 103–354 loan without proper approval from FmHA or its successor agency under Public Law 103–354. This property is _____

_____

(Describe property.)

☐ You have stopped farming or ranching.

☐ You have _____

_____

III. FmHA or its successor agency under Public Law 103–354 Intends to Foreclose

FmHA or its successor agency under Public Law 103–354 will accelerate your loan because you are not eligible for primary loan servicing.

FmHA or its successor agency under Public Law 103–354 will take legal action to collect the money you owe.

FmHA or its successor agency under Public Law 103–354 may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA or its successor agency under Public Law 103–354 loan;

(2) Foreclose and sell your real estate mortgaged to FmHA or its successor agency under Public Law 103–354; this could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s);

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FmHA or its successor agency under Public Law 103–354.

IV. What You Can Do To Stop Foreclosure

Before FmHA or its successor agency under Public Law 103–354 can take action against you, you can;

(1) Request a meeting with the FmHA or its successor agency under Public Law 103–354 county official.

If you disagree with FmHA or its successor agency under Public Law 103–354's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA or its successor agency under Public Law 103–354 official. The county official can explain the FmHA or its successor agency under Public Law 103–354 decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section 1.

To ask for this meeting, check the box #1 on the ''Response Form: (Attachment 6).

Time Limit: You must return the ''Response Form'' to the county FmHA or its successor agency under Public Law 103–354 office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(2) Request an Appeal Hearing.

You may also request an appeal hearing to contest FmHA or its successor agency under Public Law 103–354's decision. At the hearing you may challenge the ways FmHA or its successor agency under Public Law 103–354 says you broke your loan agreements. You may also challenge FmHA or its successor agency under Public Law 103–354's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA or its successor agency under Public Law 103–354 believes you cannot present a feasible plan.

You can appear at the appeal hearing and present witnesses and documents to support your position.

You may also ask for an independent appraisal of your property used to secure the FmHA or its successor agency under Public Law 103–354 load. This independent appraisal may be important if you think FmHA or its successor agency under Public Law 103–354 has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA or its successor agency under Public Law 103–354 will give you three names of appraisers to choose from. Check box #3 on the ''Response Form'' if you want the independent appraisal.

If you request a meeting with the FmHA or its successor agency under Public Law 103–354 county official, you will be given a chance to appeal after this meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed ''Response Form.''

You may request both the meeting and the appeal hearing on the ''Response Form.'' Check box #2 on the ''Response Form'' to request an appeal hearing. If you ask for just the appeal hearing, you must return the ''Response Form'' to FmHA or its successor agency under Public Law 103–354 within 30 days of the date you received the letter.

(3) Buy Out the Loan at Recovery Value.

You have this option only if the recovery value is greater than the value of the restructed loan.

You [may] or [may not] buy out your FmHA or its successor agency under Public Law 103–354 loan(s) at the ''recovery value'' of the property securing the loan. The recovery value is $_____. The restructed loan(s) value is $_____.

NOTE: The attached computer printout which summarizes FmHA or its successor agency under Public Law 103–354's calculations.

If you are eligible and pay the recovery value, FmHA or its successor agency under Public Law 103–354 will write off the rest of your debt. If you are elgible to pay the recovery value, FmHA or its successor agency under Public Law 103–354 will require you to sign a recapture agreement. This agreement would allow FmHA or its successor agency under Public Law 103–354 to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 2 years of the agreement. FmHA or its successor agency under Public Law 103–354 can never recapture more than it wrote off.

Time limit. If you are eligible and want to buy out your loan(s) at the recovery value, you must pay FmHA or its successor agency under Public Law 103–354 within 45 days from the date you received this letter. You must pay FmHA or its successor agency under Public Law 103–354 in cash, money order, or certified check.

If you appeal FmHA or its successor agency under Public Law 103–354's decision, the 45-day period to buy out at recovery value will not start until all of the appeals are completed. Check box #4 on the ''Response Form'' if you want to buy out at recovery value.

(4) Consider for Homestead Protection and Farmland Leaseback/Buyback.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA or its successor agency under Public Law 103–354 will automatically consider you for Homestead protection and farmland leaseback/buyback. [You applied for these programs when you applied for primary loan servicing (debt restructing).] FmHA or its successor agency under Public Law 103–354 will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you.

Note to County Supervisor.

[1] Circle appropriate entry.

V. What Happens If You Do Not Respond?

If you do not respond to this letter by completing and returning the enclosed Attachment 6, ''Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights,'' FmHA or its successor agency under Public Law 103–354 will accelerate or continue with acceleration of your FmHA or its successor agency under Public Law 103–354 debts. This is very severe action FmHA or its successor agency under Public Law 103–354 will take any of the actions listed in Section III above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,

Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture.

ATTACHMENT 5–A—NOTICE OF INTENT TO ACCELERATE OR TO CONTINUE ACCELERATION AND NOTICE OF BORROWERS' RIGHTS

Note to County Supervisor

This attachment is used when notifying a borrower who returned attachment 2 or 4 of exhibit A, that FmHA or its successor agency under Public Law 103–354 cannot provide the assistance requested with the Primary Loan Services Programs.

(To Be Used for Applications Submitted on or After November 28, 1990)

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. ☐ FmHA or its successor agency under Public Law 103–354 Has Reviewed Your Application for Primary Loan Servicing (Debt Restructuring)

You cannot get primary loan servicing because your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA or its successor agency under Public Law 103–354 help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA or its successor agency under Public Law 103–354 at least $_____ per year.

NOTE: The attached computer printout summarizes FmHA or its successor agency under Public Law 103–354's calculations based on your application.

II. ☐ FmHA or its successor agency under Public Law 103–354 Has Reviewed Your Application and Your Case File

Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FmHA or its successor agency under Public Law 103–354 uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have not acted in good faith.

You have broken your loan agreements with FmHA or its successor agency under Public Law 103–354.

You have broken loan agreements with FmHA or its successor agency under Public Law 103–354 in the following way:

☐ You are $_____ behind in your scheduled loan payments.

☐ You have sold or gotten rid of property you used to secure the FmHA or its successor agency under Public Law 103–354 loan without proper approval from FmHA or its successor agency under Public Law 103–354. You have not acted in good faith. This property is _____

_____

(Describe property.)

☐ You have stopped farming or ranching.

☐ You have _____

_____

III. ☐ FmHA or its successor agency under Public Law 103–354 Has Reviewed Your Application and Case File

You have sufficient nonessential assets to bring your FmHA or its successor agency under Public Law 103–354 account current. The net recovery value of FmHA or its successor agency under Public Law 103–354's collateral is $_____. The net recovery value (NRV) of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____

_____

_____

NRVs

_____

_____

_____

The NRV is the current appraised market value minus any prior liens and any costs of sale such as taxes due, commissions and advertising costs.

The amount needed to bring your FmHA or its successor agency under Public Law 103–354 account current is $_____.

If you intend to sell the nonessential assets or borrow against their value to obtain the money to pay FmHA or its successor agency under Public Law 103–354 current, you must do so immediately so that you can pay FmHA or its successor agency under Public Law 103–354 current within 90 days from the date you receive this letter.

If you do not pay FmHA or its successor agency under Public Law 103–354 current within 90 days or appeal the adverse decision (see part VI of this notice), FmHA or its successor agency under Public Law 103–354 will accelerate your account (see part V). If you appeal the decision, the 90-day period to pay FmHA or its successor agency under Public

Law 103–354 current will not start until all the appeals are completed. You must check the appropriate block on the response form and return it to FmHA or its successor agency under Public Law 103–354 within the specified time limit. Since FmHA or its successor agency under Public Law 103–354 believes you have sufficient nonessential assets to bring your FmHA or its successor agency under Public Law 103–354 account current, you are not now eligible for net recovery buyout (option 5 on attachment 6–A). If you disagree, see part VI for an explanation of your rights.

IV. [ ] You have already received your lifetime limit for the number of writedowns and/or buyouts for which you are entitled.

[ ] Your writedown and/or writeoff of debt exceeded your lifetime limit of $300,000.

V. FmHA or its successor agency under Public Law 103–354 Intends to Foreclose

FmHA or its successor agency under Public Law 103–354 will accelerate your loan because you are not eligible for primary loan servicing.

FmHA or its successor agency under Public Law 103–354 will take legal action to collect the money you owe.

FmHA or its successor agency under Public Law 103–354 may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA or its successor agency under Public Law 103–354 loan;

(2) Foreclose and sell your real estate mortgaged to FmHA or its successor agency under Public Law 103–354. This could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s);

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FmHA or its successor agency under Public Law 103–354.

VI. What You Can Do to Stop Foreclosure

Before FmHA or its successor agency under Public Law 103–354 can take action against you, you can:

(1) Pay your FmHA or its successor agency under Public Law 103–354 account current.

(2) Request a meeting with the FmHA or its successor agency under Public Law 103–354 county official.

If you disagree with FmHA or its successor agency under Public Law 103–354's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA or its successor agency under Public Law 103–354 official. The county official can explain the FmHA or its successor agency under Public Law 103–354 decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

To ask for this meeting, check the box #1 on the Response Form: (attachment 6–A).

Time limit: You must return the ''Response Form'' to the county FmHA or its successor agency under Public Law 103–354 office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(3) Request an appeal hearing.

You may also request an appeal hearing to contest FmHA or its successor agency under Public Law 103–354's decision. At the hearing you may challenge the ways FmHA or its successor agency under Public Law 103–354 says you broke your loan agreements. You may also challenge FmHA or its successor agency under Public Law 103–354's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA or its successor agency under Public Law 103–354 believes you cannot present a feasible plan. You may also challenge FmHA or its successor agency under Public Law 103–354's decision that you are ineligible for debt restructuring because you have already received a writedown or buyout.

You can appear at the appeal hearing and present witnesses and documents to support your position.

If you did not previously negotiate your appraisal, you may ask for an independent appraisal of your property including any nonessential assets that FmHA or its successor agency under Public Law 103–354 says you own. This independent appraisal may be important if you think FmHA or its successor agency under Public Law 103–354 has put too high or too low a value on your property. You will have to pay for this appraisal. The FmHA or its successor agency under Public Law 103–354 County Supervisor will give you a list of three appraisers to choose from. Check box #3 on the ''Response Form'' if you want the independent appraisal. If the FmHA or its successor agency under Public Law 103–354 appraisal contains mathematical or property description errors, you and the County Supervisor can make the necessary corrections if you both agree to such changes.

If you submit an independent appraisal and it is within five percent of the value of the FmHA or its successor agency under Public Law 103–354 appraisal, you must select which of the two appraisals you want FmHA or its successor agency under Public Law 103–354 to use for your request. This will be the final appraisal. It cannot be appealed.

If you request a meeting with the FmHA or its successor agency under Public Law 103–354 county official, you will be given a chance to appeal after that meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed ''Response Form.''

You may request both the meeting and the appeal hearing on the ''Response Form.'' Check box #2 on the ''Response Form'' to request an appeal hearing. If you ask for just the appeal hearing, you must return the ''Response Form'' to FmHA or its successor agency under Public Law 103–354 within 30 days of the date you received the letter. If you are appealing the appraisal, you should, if possible, submit a copy of your independent appraisal to the hearing officer and the County Supervisor prior to the appeal hearing.

(4) Buy out the loan at recovery value.

You have this option only if the recovery value is greater than the value of the restructured loan(s), you cannot repay your FmHA or its successor agency under Public Law 103–354 debt due to circumstances beyond your control, and you have acted in good faith and tried to keep your loan agreement with FmHA or its successor agency under Public Law 103–354. In addition, buyout is subject to certain lifetime limitations regarding the maximum amount and number of benefits that can be received. A further explanation of these limits can be found in the Primary and Preservation Loan Service and Debt Settlement Programs Purpose notice which was sent to you earlier.

You [may] or [may not] buy out your FmHA or its successor agency under Public Law 103–354 loan(s) at the recovery value of the property securing the loan and any nonessential assets. The recovery value is $_____. The restructured loan(s) value is $_____.

Note to County Supervisor
Circle the appropriate entry.

NOTE: The attached computer printout summarizes FmHA or its successor agency under Public Law 103–354's calculations.

If you are eligible and pay the recovery value, FmHA or its successor agency under Public Law 103–354 will write off the rest of your debt up to $300,000. If you are eligible to pay the recovery value, FmHA or its successor agency under Public Law 103–354 will require you to sign a recapture agreement. This agreement would allow FmHA or its successor agency under Public Law 103–354 to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 10 years of the agreement. FmHA or its successor agency under Public Law 103–354 can never recapture more than it wrote off.

Time Limit. If you are eligible and want to buy out your loan(s) at the recovery value, you must pay FmHA or its successor agency under Public Law 103–354 within 90 days from the date you received this letter. You must pay FmHA or its successor agency under Public Law 103–354 in cash, money order, or certified check.

If you appeal FmHA or its successor agency under Public Law 103–354's adverse decision, the 90-day period to buy out at recovery value will not start until all of the appeals are completed. Check box #3 on the ''Response Form'' if you want to buy out at recovery value.

(5) Consideration for Homestead Protection, Farmland Leaseback/Buyback and Debt Settlement.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA or its successor agency under Public Law 103–354 will automatically consider you for Homestead protection and farmland leaseback/buyback. [You applied for these programs when you applied for primary loan servicing (debt restructuring).] FmHA or its successor agency under Public Law 103–354 will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you. If you applied for Debt Settlement by returning Form FmHA or its successor agency under Public Law 103–354 1956–1, FmHA or its successor agency under Public Law 103–354 will also consider you for this option now. If you did not apply for Debt Settlement before, you can apply now. Copies of Form FmHA or its successor agency under Public Law 103–354 1956–1 are available at your FmHA or its successor agency under Public Law 103–354 County Office.

VII. What Happens if You Do Not Respond

If you do not respond to this letter by completing and returning the enclosed attachment 6–A, ''Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights,'' FmHA or its successor agency under Public Law 103–354 will accelerate or continue with acceleration of your FmHA or its successor agency under Public Law 103–354 debts. This is a very severe action. FmHA or its successor agency under Public Law 103–354 will take any of the actions listed in Section V above to collect on your debt.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture

ATTACHMENT 6

Note to County Supervisor:

This attachment will always be sent with Attachment 5.

See §1951.909(h)(3)(i) and (ii).

Response to Notice Informing Me of FmHA or its successor agency under Public Law 103–354's Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FmHA or its successor agency under Public Law 103–354's intent to accelerate or continue with acceleration my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

☐ (1) Request a meeting with the FmHA or its successor agency under Public Law 103–354 county oficial.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

☐ (2) Request an appeal hearing.

I understand that I will be contacted by FmHA or its successor agency under Public Law 103–354's National Appeals Staff to set up the appeal hearing date and to give me more information.

☐ (3) Request that an independent appraisal of my property that secures the FmHA or its successor agency under Public Law 103–354 loan(s).

I understand that I must pay for this appraisal. I understand that the appeal hearing officer will give me the names of three appraisers, from which I must choose one.

☐ (4) Buy out my loan(s) at the recovery value.

I understand that I must pay FmHA or its successor agency under Public Law 103–354 $_____ in cash, certified check, or money order. I understand that I must pay this to FmHA or its successor agency under Public Law 103–354 within 45 days of the date I received this letter or, if I appeal. I must pay within 45 days from the end of the appeal. I understand that if I pay this amount FmHA or its successor agency under Public Law 103–354 will write off the rest of my debt.

_____

Borrower's signature

_____

Date

ATTACHMENT 6–A—RESPONSE TO NOTICE INFORMING ME OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S INTENT TO ACCELERATE OR CONTINUE WITH ACCELERATION AND NOTICE OF MY RIGHTS

Note to County Supervisor

This attachment will always be sent with attachment 5–A.

(To be used for application submitted on or after November 28, 1990).

To: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

From: _____

(Please print your name and address.)

I have read the notice informing me of FmHA or its successor agency under Public Law 103–354's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

☐ (1) Request a meeting with an FmHA or its successor agency under Public Law 103–354 county official.

I must return this ''Response Form'' within 15 days to request a meeting.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

☐ (2) Request an appeal hearing.

I must return this ''Response Form'' within 30 days to request a hearing.

I understand that I will be contacted by FmHA or its successor agency under Public Law 103–354's National Appeals Staff to set up the appeal hearing date and to give more information.

If possible, I should provide the County Supervisor and the hearing officer a copy of my independent appraisal prior to the appeal hearing if I am requesting an appeal of the appraisal.

☐ (3) Request an independent appraisal of my property including any nonessential assets.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FmHA or its

successor agency under Public Law 103–354 County Supervisor will give me names of three appraisers, from which I must choose one if I am also requesting an appeal.

☐ (4) Buy out my loan(s) at the recovery value.

I understand that I must pay FmHA or its successor agency under Public Law 103–354 $_____in cash, certified check, or money order. I understand that I must pay this to FmHA or its successor agency under Public Law 103–354 within 90 days of the date I received this letter, or if I appeal the FmHA or its successor agency under Public Law 103–354 decision, I must pay within 90 days from the end of the appeal of the FmHA or its successor agency under Public Law 103–354 decision.

☐ (5) Pay my FmHA or its successor agency under Public Law 103–354 account current.

I understand that I must pay FmHA or its successor agency under Public Law 103–354 $_____ to pay my account current. I will pay this amount to FmHA or its successor agency under Public Law 103–354 within 90 days of the date I received this letter, or if I appeal the FmHA or its successor agency under Public Law 103–354 decision, I will pay within 90 days from the end of the appeal of the FmHA or its successor agency under Public Law 103–354 decision. I understand that when I pay this amount FmHA or its successor agency under Public Law 103–354 will continue with my account.

_____

Borrower's signature

_____

Date

ATTACHMENT 7

Note to County Supervisor:

This attachment will be used to advise borrowers whose accounts have been accelerated but who DID NOT return attachment 2 of exhibit A, that FmHA or its successor agency under Public Law 103–354 intends to continue acceleration of their accounts.

See §1951.907 (a) and (b).

NOTIFICATION OF CONTINUED ACCELERATION OF LOANS AND NOTICE OF BORROWERS' RIGHTS

FmHA or its successor agency under Public Law 103–354 will continue to accelerate your loan.

You can:

(1) Ask to sign over to FmHA or its successor agency under Public Law 103–354 all the property you used to secure your loan. FmHA or its successor agency under Public Law 103–354 will release you from liability when the debt is settled.

(2) Ask for a leaseback or buyback of your farm real estate once FmHA or its successor agency under Public Law 103–354 has taken it by you signing it over or foreclosure.

(3) Ask to keep your home after FmHA or its successor agency under Public Law 103–354 has taken it.

(4) Ask to pay in full within 30 days.

Dear (Borrower's Name):

FmHA or its successor agency under Public Law 103–354 intends to continue to accelerate your loan.

Dear (Borrower's Name):

FmHA or its successor agency under Public Law 103–354 intends to continue to accelerate your loan.

FmHA or its successor agency under Public Law 103–354 will take legal action to: foreclose on real estate; this could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s).

How to Avoid Foreclosure

You can avoid foreclosure by:

Voluntarily signing over property you used to secure your loans to FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 will decide if it is to the government's financial advantage to let you do this. You must ask for a meeting with County Office staff in 15 days to discuss if your debt can be settled this way.

NOTE: Voluntarily signing over, or foreclosure means you lose the title to your land. But you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on _____. If you did not get these forms, contact your County Office within 15 days of this notice.]

What Happens If You Do Not Respond to This Notice

If you do not respond to this notice by asking for a meeting in 15 days, FmHA or its successor agency under Public Law 103–354 will take the legal action described above to foreclosure, or repossess your property.

Amount Owed:

You owe:

$ _____

unpaid principal

$ _____

unpaid interest

plus

$ _____

per day interest for each day after

_____

(Date)

plus

$ _____

advance made by the U.S. Government.

Time Limit:

You must pay all of your debt within 30 days of the date on this notice. This can be avoided if you sign over your property.

How to Pay

Cashiers' check, certified check, or postal money orders made payable to:

Farmers Home Administration or its successor agency under Public Law 103–354 at

_____

Street address or P.O. box

_____

City

_____

State

_____

Zip

Part payment will not be enough to stop FmHA or its successor agency under Public Law 103–354 taking legal action. FmHA or its successor agency under Public Law 103–354 still has full legal rights to continue the legal action just as if no payment had been made.

☐ The FmHA or its successor agency under Public Law 103–354 plans to go ahead with foreclosure on your property without court action. Public sale will be after

_____

(Date)

☐ The FmHA or its successor agency under Public Law 103–354 plans to go ahead with foreclosure on your property after court action.

Sincerely,

_____

County Supervisor
Farmers Home Administration or its successor agency under Public Law 103–354
United States Department of Agriculture

Your Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national original, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

ATTACHMENT 8

Note to County Supervisor:

This attachment will always be sent with Attachment 7.

See §1951.907 (a) and (b).

RESPONSE TO NOTICE INFORMING ME OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S INTENT TO CONTINUE TO ACCELERATE MY LOAN

Notice of My Rights

TO: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

From: _____

Please print your name and address.

I have read and considered the notice informing me of FmHA or its successor agency under Public Law 103–354's intent to continue to accelerate my loan.

I want to:

(check one or more of the following boxes)

☐ (1) Request a meeting with the FmHA or its successor agency under Public Law 103–354 County Official to discuss signing over my property used to secure my loan to FmHA or its successor agency under Public Law 103–354 to settle my debt.

My phone number is _____

I must return this form in 15 days.

☐ (2) Be considered for preservation loan programs.

Signature: _____

Date: _____

ATTACHMENT 9

Note to County Supervisor:

This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated. WHO DID NOT return attachment 2 of Exhibit A.

See §1951.907(h)(2).

NOTIFICATION OF INTENT TO ACCELERATE OR CONTINUE ACCELERATION OF LOANS AND NOTICE OF YOUR RIGHTS

FmHA or its successor agency under Public Law 103–354 will accelerate your loan because you have not asked for primary loan service programs or debt restructuring.

You can:

(1) Ask for a meeting with your County Official.

(2) Appeal FmHA or its successor agency under Public Law 103–354's decision.

(3) Ask to voluntarily sign over to FmHA or its successor agency under Public Law 103–354 the property used to secure your loan and ask to be released from your debt.

(4) Apply to a leaseback or buyback of your farm real estate once FmHA or its successor agency under Public Law 103–354 has taken it.

(5) Ask to keep your home after the FmHA or its successor agency under Public Law 103–354 has taken it.

Dear (Borrower's Name):

You are behind with your payments to FmHA or its successor agency under Public Law 103–354, and a review of your account shows:

☐ You are $_____ behind in your FmHA or its successor agency under Public Law 103–354 loan payments.

This is a violation of your loan agreement.

☐ You have sold or gotten rid of property used to secure your FmHA or its successor agency under Public Law 103–354 loan. Your did not get written approval for this.

The property is _____

_____

(Describe property.)

☐ You You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ You have _____

_____

(Insert reason for proposed action.)

FmHA or its successor agency under Public Law 103–354 Will Accelerate Your Loans.

This means FmHA or its successor agency under Public Law 103–354 will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. This could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s). They may also stop release of money from the sale of crops or other property. They may take, by administrative offset, any money you are owed by other Federal agencies.

Steps You Can Take Before FmHA or its successor agency under Public Law 103–354 Accelerates or Continues Aceleration of Your Loans.

(1) Right to a meeting. You have the right to meet with your FmHA or its successor agency under Public Law 103–354 County Official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the ''Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.'']

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your County Office. Do this as soon as possible.

(2) The Right to Appeal. You can ask for an administrative appeal before a hearing officer. Your can contest FmHA or its successor agency under Public Law 103–354's decision to accelerate or continue acceleration of your loan. You can ask for a independent appraisal of the value of your land. You will have to pay for this appraisal. FmHA or its successor agency under Public Law 103–354 will give you three names of approved appraisers to choose from. Check box 4 if you want an independent appraisal. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. You can ask for an appeal if you do not have a meeting.

How to Ask for an Appeal. Check the box on Attachment 10 and mail it to your County Office within 30 days of getting this notice.

What Happens If You Do Not Respond?

If you do not respond to this notice by filing out Attachment 10, FmHA or its successor agency under Public Law 103–354 will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan including foreclosure as described above.

NOTE: Foreclosure means you lose the title to your land. *But* you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on _____ . If you did not get these forms, contact your County Office *within 15 days* of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

County Supervisor,
Farmers Home Administration or its successor agency under Public Law 103–354,
U.S. Department of Agriculture
Dated: _____

ATTACHMENT 9–A—NOTIFICATION OF INTENT TO ACCELERATE OR CONTINUE ACCELERATION OF LOANS AND NOTICE OF YOUR RIGHTS

Note to County Supervisor

This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated, WHO DID NOT return attachment 2 of exhibit A sent on or after November 28, 1990, or attachment 2 of exhibit F.

(To be used for borrowers receiving notices on or after November 28, 1990)

FmHA or its successor agency under Public Law 103–354 will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FmHA or its successor agency under Public Law 103–354 County official.

(2) Appeal FmHA or its successor agency under Public Law 103–354's decision.

(3) Ask to voluntarily sign over to FmHA or its successor agency under Public Law 103–354 the property used to secure your loan and ask to be released from your debt.

(4) Apply for a leaseback or buyback of your farm real estate once FmHA or its successor agency under Public Law 103–354 has taken it.

(5) Ask to keep your home after FmHA or its successor agency under Public Law 103–354 has taken it.

Dear (Borrower's Name):

You are behind with your payments to FmHA or its successor agency under Public Law 103–354, and a review of your account shows:

☐ You are $_____ behind in your FmHA or its successor agency under Public Law 103–354 loan payments.

This is a violation of your loan agreement.

☐ You have sold or gotten rid of property used to secure your FmHA or its successor agency under Public Law 103–354 loan. You did not get written approval for this.

The property is _____

_____

(Describe property.)

☐ You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ You have _____

_____

(Insert reason for proposed action.)

FmHA or its successor agency under Public Law 103–354 Will Accelerate Your Loans

This means FmHA or its successor agency under Public Law 103–354 will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. This could include your dwelling even if your housing account is current, if it was used to secure your farm loan(s). They may also stop the release of money from the sale of crops or other property. They may take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FmHA or its successor agency under Public Law 103–354 Accelerates or Continues Acceleration of Your Loans

(1) *Right to a meeting.* You have the right to meet with an FmHA or its successor agency under Public Law 103–354 County official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10–A saying you want a meeting. [Attachment 10–A is the ''Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.'']

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on attachment 10–A. Return it to your County office. Do this as soon as possible.

(2) *The Right to Appeal.* You can ask for an administrative appeal before a hearing officer. You can contest FmHA or its successor agency under Public Law 103–354's decision to accelerate or continue acceleration of your loan. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you can only appeal an issue once. For example, if you previously appealed a favorable debt restructuring offer and were not successful on appeal, you cannot appeal this offer again.

You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Check the box on attachment 10–A and mail it to your County Office within 30 days of getting this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out attachment 10–A, FmHA or its successor agency under Public Law 103–354 will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

NOTE: Foreclosure means you lose the title to your land. But you can still apply for preservation loan service programs to keep possession of your house or farm if FmHA or its successor agency under Public Law 103–354 buys the property at the foreclosure sale. [See exhibit A, attachment 1 sent to you on _____. If you did not get these forms, contact your County Office within 15 days of this notice.]

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

County Supervisor
Farmers Home Administration or its successor agency under Public Law 103–354
U.S. Department of Agriculture

Date: _____

ATTACHMENT 10

Note to County Supervisor:

This attachment will always be sent with Attachment 9.

See §1951.907(h)(2).

Response to Notice Informing Me of FmHA or its successor agency under Public Law 103–354's Intent to Accelerate or Continue to Accelerate My Loan

Notice of My Rights

TO: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

FROM: _____

(Please print your name and address.)

I want to:

(check one or more of the following boxes)

☐ 1) Request a meeting with the FmHA or its successor agency under Public Law 103–354 County Official. My telephone number is _____ . I understand I do not lose my right to appeal if I ask for a meeting.

☐ 2) Voluntarily sign over to FmHA or its successor agency under Public Law 103–354 all the property used to secure my loan and settle my debt.

☐ 3) Request an administrative appeal. I understand that I will be contacted by an official of FmHA or its successor agency under Public Law 103–354's National Appeals Staff to set up an appeal hearing and give me more information.

☐ 4) Request an independent appraisal of property securing my loan(s). I understand I must pay for this appraisal. I understand that the hearing officer from the National Appeals Staff will give me names of three appraisers.

☐ 5) Preservation loan service programs.

Signed _____

Date _____

ATTACHMENT 10–A—RESPONSE TO NOTICE INFORMING ME OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S INTENT TO ACCELERATE OR CONTINUE TO ACCELERATE MY LOAN

Note to County Supervisor

This attachment will always be sent with attachment 9–A.

(To be used for borrowers receiving notices on or after November 28, 1990).

Notice of My Rights

To: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

From: _____

(Please print your name and address.)

I want to: *(Check one or more of the foIlowing boxes)*

☐ (1) Request a meeting with the FmHA or its successor agency under Public Law 103–354 County Official.

My telephone number is _____.

I must return this form within 15 days.

I understand I do not lose my right to appeal if I ask for a meeting.

☐ (2) Voluntarily sign over to FmHA or its successor agency under Public Law 103–354 all the property used to secure my loan and settle my debt.

☐ (3) Request an administrative appeal.

I understand that I will be contacted by an official of FmHA or its successor agency under Public Law 103–354's National Appeals Staff to set up an appeal hearing and give me more information. I understand I must request an appeal within 30 days of receiving this notice. I have not previously appealed this issue.

☐ (4) Preservation loan service programs.

Signed _____

Date _____

[53 FR 35718, Sept. 14, 1988; 53 FR 45755, Nov. 14, 1988, as amended at 56 FR 6952, Feb. 21, 1991; 57 FR 18650, Apr. 30, 1992; 58 FR 30105, May 26, 1993; 58 FR 69200, Dec. 30, 1993]

EXHIBIT B—NOTIFICATION OF OFFER TO RESTRUCTURE DEBT FOR FINANCIALLY DISTRESSED BORROWERS CURRENT ON THEIR LOAN PAYMENTS

(Borrower's Name and Address)

(Date)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FmHA or its successor agency under Public Law 103–354 loan if your loan is restructured through the use of primary loan servicing programs. Therefore, we are offering to restructure your FmHA or its successor agency under Public Law 103–354 debt in the following fashion:

_____

_____

(The County Supervisor will fill in the blank by describing exactly what would be done with the borrower's account. For example, if the borrower has a farm ownership loan, the County Supervisor will fill in the blank by saying that ($ Amount) of principal and interest on that loan would be reamortized for 40 years from the original date of the loan, or up until (date) at the limited resource interest rate, which is _____ percent.)

The attached computer printout indicates the primary loan servicing program that will help you overcome your financial difficulty

and provide the greatest net recovery to the Government.

(If production and/or financial management training is to be required, insert the following paragraphs and attach a list of the courses the borrower is required to complete and a list of approved vendors in the borrower's area for these courses:)

As a condition of this restructuring, you must agree to meet, at your own cost, FmHA or its successor agency under Public Law 103–354's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training course(s), the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed and/or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FmHA or its successor agency under Public Law 103–354 benefits including future Farmer Programs direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

(If production and/or financial management training is being waived, insert the following sentence:)

The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FmHA or its successor agency under Public Law 103–354 to use the primary servicing program identified on the computer printout, you must accept this offer in writing. Your acceptance must be received by FmHA or its successor agency under Public Law 103–354 not later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled ''Acceptance of Offer to Restructure my Debt.''

If you do not accept this offer within 45 days, and your account becomes delinquent, FmHA or its successor agency under Public Law 103–354 will renotify you of all servicing options available at that time.

Sincerely,

County Supervisor

ATTACHMENT 1—ACCEPTANCE OF OFFER TO RESTRUCTURE MY DEBT

(Date) _____

To: _____

From: (Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA or its successor agency under Public Law 103–354 debt. I would like to accept that offer.

Sincerely,

(Borrower's signature) _____

_____

(Date)

[57 FR 18658, Apr. 30, 1992, as amended at 58 FR 69200, Dec. 30, 1993]

EXHIBIT C—NET RECOVERY BUYOUT RECAPTURE AGREEMENT

In consideration of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) allowing me/us to purchase the real estate property securing my/our FmHA or its successor agency under Public Law 103–354 Farmer Program loan obligations at the net recovery value of $_____ in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1951–S, I/we agree to pay to difference between the net recovery value of the security of $_____ and the fair market value of the real estate property of $_____ as of the date of this agreement, if/we sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $_____. I further agree to give FmHA or its successor agency under Public Law 103–354 a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FmHA or its successor agency under Public Law 103–354 at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if I/we do not sell or convey the property during the two year period.

I/We understand that the difference between the net recovery value of the real estate securing the FmHA or its successor agency under Public Law 103–354 loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance

if I/we sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I/we realize a gain in this transaction.

Loan Balance $_____.
Amount of Buyout $_____.

_____

Date of Agreement

_____

Borrower

[53 FR 35718, Sept. 14, 1988]

EXHIBIT C–1—NET RECOVERY BUYOUT RECAPTURE AGREEMENT

(For applications filed for restructuring on or after November 28, 1990.)

Purpose

This agreement with FmHA or its successor agency under Public Law 103–354 will allow you to buy out your loan(s) at the net recovery value.

1. I/we _____ understand and agree to the following conditions.

2. I/We will give FmHA or its successor agency under Public Law 103–354 a lien (mortgage or deed of trust) on the FmHA or its successor agency under Public Law 103–354 real estate security property I/we own to secure this agreement.

The lien is to secure the maximum recapture amount listed in item 6.c. of this agreement. This lien is secondary to the following lien(s), including any lien used to obtain the net recovery buyout amount up to the net recovery value.

_____

(name, address, and unpaid balance of lien(s))

3. I/We agree that if I/we do not sell or convey any portion of the real estate used as security for 10 years, the agreement and any liability you have under it will be satisfied at the end of 10 years, and then FmHA or its successor agency under Public Law 103–354 will release its lien.

NOTE: Convey includes, but is not limited to, any form of transfer in all or any portion of the real estate property, including sale, gift, Contract Sale/Purchase Agreement, foreclosure, and below-fair-market sale, but does not include a mortgage or deed of trust. Transfer of title to property to a spouse or child who is actively engaged in farming the property upon the death or retirement of a borrower, will not be treated as a conveyance. In such a transaction, FmHA or its successor agency under Public Law 103–354 will not release its lien, and the transferee will assume liability under the agreement.

4. I/We agree that as of the date of this agreement, the net recovery value of the real estate is $_____.

5. I/We agree that as of the date of this agreement, the total amount of the FmHA or its successor agency under Public Law 103–354 debt secured by real estate including principal and interest before buyout is $_____.

6. If I/we do sell or convey any part or all of this real estate within 10 years of this agreement, I/we must pay FmHA or its successor agency under Public Law 103–354 the recapture amount for that part sold or conveyed which is the smaller of a., b., or c.

a. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FmHA or its successor agency under Public Law 103–354 appraisal, minus that portion of the recovery value of the real estate represented in item 4, or

b. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FmHA or its successor agency under Public Law 103–354 appraisal, minus the unpaid balance of prior liens at the time of the sale or conveyance, minus the net recovery value of the real estate in item 4 if this amount has not been accounted for as a prior lien, or

c. The total amount of the FmHA or its successor agency under Public Law 103–354 debt written off for loans secured by real estate. I/We agree that this amount is the outstanding balance of principal and interest owed on the FmHA or its successor agency under Public Law 103–354 Farmer Programs loan(s) as of the date of this agreement in item 5, minus the net recovery value of the real estate in item 4. This amount is $_____ and is the maximum amount that can be recaptured.

7. When I/we pay the recapture amount due, FmHA or its successor agency under Public Law 103–354 will release its lien on the property sold or conveyed. The agreement and any liability I/we have under it will be satisfied at the end of 10 years if I/we have made all the required payments under the recapture agreement. The agreement and any liability I/we have under it will be satisfied before this time only if I sell or convey all of the real estate securing this agreement and make all the required payments under the agreement.

8. This agreement is subject to FmHA or its successor agency under Public Law 103–354 regulations in 7 CFR part 1951, subpart S, and any future regulations which are consistent with this agreement.

9. The date of this agreement is the latest date of the dates below.

Signed _____
(borrower or obligor)
Date _____
Signed _____
(borrower or obligor)
Date _____

_____

(FmHA or its successor agency under Public Law 103–354)

Date _____

[57 FR 18658, Apr. 30, 1992, as amended at 57 FR 47257, Oct. 15, 1992]

EXHIBIT D—SHARED APPRECIATION AGREEMENT

This Agreement is entered into between (FmHA or its successor agency under Public Law 103–354) and (Borrower's name) (called ''Borrower'') on (Date) and expires on (Date) (maximum term of ten (10) years).

Borrower is indebted to FmHA or its successor agency under Public Law 103–354 for loan(s) as evidenced by the note(s) described below:

Date _____
Principal Amount _____
Interest Rate _____
Due Date _____

This Agreement is attached to the note(s) described above. As of the date of this Agreement, before write-down, the unpaid principal balance on this note was $_____ and the unpaid interest balance was $_____. These note(s) were modified by the following note(s) which are attached to note(s) described above.

Date _____
Principal Amount _____
Interest Rate _____
Due Date _____

The note(s) described above are secured by the following real estate security instruments:

Grantor _____
Date of Security Instrument _____
Records of County/State _____
Book or Reel _____
Page _____

As a condition to, and in consideration of, FmHA or its successor agency under Public Law 103–354 writing down the above amounts and restructuring the loan, Borrower agrees to pay FmHA or its successor agency under Public Law 103–354 an amount according to one of the following payment schedules:

1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date the Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by FmHA or its successor agency under Public Law 103–354 will be based on the difference between the value of the security at the time of disposal or cessation by Borrower of farming and the value of the security at the time this Agreement is entered into. If the borrower violates the term of this agreement, FmHA or its successor agency under Public Law 103–354 will liquidate after the borrower has been notified of the right to appeal.

Market value of the property securing loan(s) $. _____
Net recovery value of property securing loan(s) $. _____
Amount of write-down $. _____
Amount of Account Equity $. _____

_____

(Borrower's signature)

_____

(Farmers Home Administration or its successor agency under Public Law 103–354)

[53 FR 35718, Sept. 14, 1988]

EXHIBIT E—NOTIFICATION OF REQUEST FOR MEDIATION OR MEETING OF CREDITORS AND/OR OTHER OPTIONS

(To be used by FmHA or its successor agency under Public Law 103–354 to inform borrowers that FmHA or its successor agency under Public Law 103–354 is requesting mediation or a voluntary meeting of the borrower's creditors and/or to offer borrowers who submitted applications on or after November 28, 1990, the opportunity to negotiate the FmHA or its successor agency under Public Law 103–354 appraisal and/or pay FmHA or its successor agency under Public Law 103–354 the net recovery value of any nonessential assets)

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FmHA or its successor agency under Public Law 103–354, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FmHA or its successor agency under Public Law 103–354 debts to make an annual payment to FmHA or its successor agency under Public Law 103–354 of at least $_____. Your Farm and Home Plan shows that you have only $_____ to make

this annual payment. Attached are the calculations on which our decision is based.

If you did not previously request a Conservation Set-Aside Easement, you may request this servicing action by submitting an ASCS photo indicating that portion of the farm and the appropriate acres to be considered. You must submit this ASCS photo to FmHA or its successor agency under Public Law 103–354 within 30 days of receiving this notice.

(Use the appropriate following paragraph, if applicable.)

Paragraph I

(To be used when Certified State Mediation is available)

Certified State Mediation

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA or its successor agency under Public Law 103–354 of at least $_____, FmHA or its successor agency under Public Law 103–354 will reconsider your application for primary loan servicing.

Paragraph II

(To be used when Certified State Mediation is not available and undersecured creditors have a substantial part of the total borrower's debt)

Meeting of Creditors

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FmHA or its successor agency under Public Law 103–354 State Director will contract for a mediator or appoint an FmHA or its successor agency under Public Law 103–354 representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Please sign the attached acknowledgment within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FmHA or its successor agency under Public Law 103–354 releasing information concerning your account to other creditors who participate in the meeting.

Paragraph III

(To be used when Certified State Mediation is not available and undersecured creditors do not hold a substantial part of the total borrower's debt)

We will not be scheduling a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts. We have determined that your other creditors do not hold a sufficient amount of your total debt to permit you to develop a feasible plan of operation even if their debts are entirely written off. You may object to our determination not to give you a voluntary meeting of creditors in any appeal you may have. You will be notified of your appeal rights in a later notice.

(The following paragraphs will be removed if the application was submitted Before November 28, 1990, or the borrower does not have any nonessential assets.)

Nonessential Assets

FmHA or its successor agency under Public Law 103–354 has determined that you have nonessential assets that do not contribute income to pay essential family living and farm operating expenses. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FmHA or its successor agency under Public Law 103–354 collateral for the calculation on the attached printout. The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____

_____

_____

NRVs

_____

_____

_____

FmHA or its successor agency under Public Law 103–354 encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets on your FmHA or its successor agency under Public Law 103–354 debt, that amount will be subtracted from your debt and FmHA or its successor agency under Public Law 103–354 will reevaluate your servicing request. If you are going to pay FmHA or its successor agency under Public Law 103–354 the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FmHA or its successor agency under Public Law 103–354 within 45 days with $_____ for payment of the NRV of the nonessential assets. If you want to reduce the NRV, you must pay FmHA or its successor agency under Public Law 103–354 before any mediation or meeting of creditors.

If you wish to dispute FmHA or its successor agency under Public Law 103–354's decision that you own nonessential assets, you

will be given the opportunity to appeal if mediation or the meeting of creditors is unsuccessful. If mediation or a meeting of creditors is not held, you will be notified of your appeal rights in a later notice.

Negotiation of the Appraisal

If you object to the FmHA or its successor agency under Public Law 103–354 appraisal of your property, you may ask the FmHA or its successor agency under Public Law 103–354 by returning the ''Response Form'' to negotiate the appraisal with you. You must ask to negotiate the FmHA or its successor agency under Public Law 103–354 appraisal within 30 days from the date you receive this notice. To do this you must provide FmHA or its successor agency under Public Law 103–354 with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FmHA or its successor agency under Public Law 103–354 regulations.

If you do not have a current independent appraisal and wish FmHA or its successor agency under Public Law 103–354 to assist you, check option 2 of the ''Response Form'' and FmHA or its successor agency under Public Law 103–354 will provide you with a list of such appraisers.

You must provide FmHA or its successor agency under Public Law 103–354 a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FmHA or its successor agency under Public Law 103–354 appraisal, you must select which appraisal of the two you want FmHA or its successor agency under Public Law 103–354 to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FmHA or its successor agency under Public Law 103–354 will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FmHA or its successor agency under Public Law 103–354 will pay for the other half of the third appraisal. You, the appraiser and the County Supervisor must complete and sign an appraisal agreement. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FmHA or its successor agency under Public Law 103–354, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option of the ''Response Form'' if you and FmHA or its successor agency under Public Law 103–354 have already negotiated your appraisal.

If you choose not to negotiate and wish to dispute FmHA or its successor agency under Public Law 103–354's appraisal, you will be given the opportunity to appeal in a later notice. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the County Supervisor. If you and the County Supervisor agree, the corrections will be made and initialed by both you and the County Supervisor.

If you want information on the requirements of an FmHA or its successor agency under Public Law 103–354 appraisal, you may request a copy of the FmHA or its successor agency under Public Law 103–354 appraisal regulations from the County Supervisor.

Sincerely,

County Supervisor

Attachment

ATTACHMENT 1—BORROWER'S REQUEST FOR MEETING OF CREDITORS AND ACKNOWLEDGMENT

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs. FmHA or its successor agency under Public Law 103–354 has told me that due to my/our debt with other lenders it does not believe that I/we can develop a feasible plan. I/we request that you schedule a meeting with my undersecured creditors to assist me/us in developing a feasible plan of operation. I/we consent to FmHA or its successor agency under Public Law 103–354 releasing information concerning my/our FmHA or its successor agency under Public Law 103–354 account(s) to these creditors to assist me in developing a feasible plan.

_____

(Date)

_____

(Borrower's signature)

NOTE TO COUNTY SUPERVISOR: Send attachment 1 to exhibit E to borrowers who submitted applications before November 28, 1990.

ATTACHMENT 2—BORROWER'S REQUEST FOR MEETING OF CREDITORS AND/OR REQUEST TO NEGOTIATE THE FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 APPRAISAL AND ACKNOWLEDGMENT

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs.

I/we want to:

[Check the appropriate box or boxes.]

☐ (1) Request an independent appraisal of my property including any nonessential assets.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FmHA or its

successor agency under Public Law 103–354 County Supervisor will give me a list of appraisers.

If the independent appraisal is within five percent of the FmHA or its successor agency under Public Law 103–354 appraisal, I must select which of the two appraisals I want to be used for processing my request.

☐ (2) Request Negotiation of the Appraisal.

I must return this ''Response Form'' within 30 days to request a negotiation of my appraisal.

I understand that I must provide FmHA or its successor agency under Public Law 103–354 with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal. I understand that FmHA or its successor agency under Public Law 103–354 will not negotiate the appraisal more than once.

☐ (3) I/We request a copy of the FmHA or its successor agency under Public Law 103–354 recent appraisal of my property.

☐ (4) I/We am paying FmHA or its successor agency under Public Law 103–354 the net recovery value of any nonessential assets that FmHA or its successor agency under Public Law 103–354 has said I/we own. I will pay this amount within 45 days.

Please recalculate the restructuring of the FmHA or its successor agency under Public Law 103–354 debt.

NOTE TO COUNTY SUPERVISOR: Do not include paragraph #5 if certified state mediation is available or the undersecured creditors' debts are not a substantial part of the borrower's total debt.

☐ (5) Request that you schedule a meeting with my undersecured creditors to assist me/us in trying to develop a feasible plan of operation. I/we consent to FmHA or its successor agency under Public Law 103–354 releasing information concerning my/our FmHA or its successor agency under Public Law 103–354 account(s) to these creditors to assist me in developing a feasible plan. I must return this ''Response Form'' within 30 days if I want a meeting.

_____

(Date)

_____

(Borrower's signature)

NOTE TO COUNTY SUPERVISOR: To be sent to borrowers who submitted applications on or after November 28, 1990.

[57 FR 18659, Apr. 30, 1992]

EXHIBIT F—NOTIFICATION OF OFFER TO RESTRUCTURE DEBT

(To be used by FmHA or its successor agency under Public Law 103–354 to offer to restructure the borrower's debt, and *in the case of applications submitted on or after November 28, 1990,* to inform the borrower about any nonessential assets and the opportunity to negotiate the appraisal)

(Borrower's Name and Address)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) can approve your request for primary loan servicing programs.

Offer

Our calculations indicate that you will be able to make the necessary annual payment on your FmHA or its successor agency under Public Law 103–354 loan if your loan is restructured through the use of primary loan servicing programs. Therefore, we are offering to restructure your FmHA or its successor agency under Public Law 103–354 debt in the following fashion:

_____

_____

_____

(The County Supervisor will fill in the blank by describing exactly what would be done with the borrower's account.) For example, if the borrower has a farm ownership loan, the County Supervisor will fill in the blank by saying that ($Amount) of principal and interest on that loan would be written off, and the remainder of the loan would be reamortized for 40 years from the original date of the loan, or up until (date) at the limited resource interest rate, which is _____ percent, in exchange for the borrower signing a shared appreciation agreement, which is attached to the notice.)

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

(If production and/or financial management training is to be required, insert the following paragraphs and attach a list of the courses the borrower is required to complete and a list of approved vendors in the borrower's area for these courses:)

As a condition of this restructuring, you must agree to meet, at your own cost, FmHA or its successor agency under Public Law 103–354's training requirements which provide instruction in production and financial

management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training course(s), the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed and/or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FmHA or its successor agency under Public Law 103–354 benefits including future Farmer Programs direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

(If production and/or financial management training is being waived, insert the following sentence:)

The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FmHA or its successor agency under Public Law 103–354 to use the primary servicing program identified on the computer printout to restructure your debt, you must accept this offer in writing. Your acceptance must be received by FmHA or its successor agency under Public Law 103–354 no later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled ''Acceptance of Offer to Restructure my Debt.''

(The following paragraphs (the nonessential assets option) will be removed if the application was submitted before November 28, 1990, or if the application was submitted on or after that date *and* the borrower does not have any nonessential assets.)

Nonessential Assets

FmHA or its successor agency under Public Law 103–354 has determined that you have nonessential assets that do not contribute a net income to pay essential family living expenses or maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FmHA or its successor agency under Public Law 103–354 collateral for the calculation on the attached printout. The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____

_____

_____

NRVs

_____

_____

_____

FmHA or its successor agency under Public Law 103–354 encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets, that amount will be subtracted from your debt and FmHA or its successor agency under Public Law 103–354 will recalculate the amount of your FmHA or its successor agency under Public Law 103–354 debt. If you are going to pay FmHA or its successor agency under Public Law 103–354 the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FmHA or its successor agency under Public Law 103–354 within 45 days with your payment for the NRV of the nonessential assets of $_____.

If you wish to dispute FmHA or its successor agency under Public Law 103–354's decision that you own nonessential assets or disagree with the offer presented, you may request a meeting and/or an appeal.

(The following paragraphs (the negotiation option only) will be removed if the borrower has already negotiated the appraisal or the application was submitted before November 28, 1990.)

Negotiation of the Appraisal

If you object to the FmHA or its successor agency under Public Law 103–354 appraisal of your property, you may ask the FmHA or its successor agency under Public Law 103–354 to negotiate the appraisal with you by returning the ''Response Form.'' You must ask to negotiate the FmHA or its successor agency under Public Law 103–354 appraisal within 30 days from the date you receive this notice. To do this you must provide FmHA or its successor agency under Public Law 103–354 with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FmHA or its successor agency under Public Law 103–354's regulations.

If you do not have a current appraisal and wish FmHA or its successor agency under Public Law 103–354 to assist you, check option 2 of the ''Response Form'' and FmHA or its successor agency under Public Law 103–354 will provide you with a list of such appraisers.

You must provide FmHA or its successor agency under Public Law 103–354 with a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FmHA or its successor agency under Public Law 103–354 appraisal, you must select which appraisal of the two you want FmHA or its successor agency under Public Law 103–354 to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal you and FmHA or its successor agency under Public Law 103–354 will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. You, the appraiser and the County Supervisor must complete and sign an appraisal agreement for this appraisal. FmHA or its successor agency under Public Law 103–354 will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FmHA or its successor agency under Public Law 103–354, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option on the ''Response Form'' if you and FmHA or its successor agency under Public Law 103–354 have already negotiated your appraisal.

If you wish to dispute FmHA or its successor agency under Public Law 103–354's appraisals but do want to reach agreement with FmHA or its successor agency under Public Law 103–354 by negotiating the appraisal, you may also request a meeting and/or appeal of other items of the decision that you do not agree with by checking the appropriate box/boxes on the attached response form. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the County Supervisor. If you and the County Supervisor agree, the corrections will be made and initialed by both you and the County Supervisor.

If you want information on the requirements of an FmHA or its successor agency under Public Law 103–354 appraisal, you may request a copy of the FmHA or its successor agency under Public Law 103–354 appraisal regulations from the County Supervisor.

What Happens If You Do Not Accept the Offer

If you do not accept the restructuring offer on page 1, FmHA or its successor agency under Public Law 103–354 will deny your request for primary loan servicing. You can appeal the offer now by checking the appropriate block on attachment 2, or you can wait until you receive an additional notice stating that FmHA or its successor agency under Public Law 103–354 intends to liquidate your account. The notice will explain the reasons for this action and give you the opportunity to appeal.

You may have a Federal income tax liability if FmHA or its successor agency under Public Law 103–354 restructures your FmHA or its successor agency under Public Law 103–354 indebtedness with a writedown. You should contact the Internal Revenue Service (IRS) for information on this matter.

Sincerely,

County Supervisor

ATTACHMENT 1—ACCEPTANCE OF OFFER TO RESTRUCTURE MY DEBT

TO: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

FROM: (Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA or its successor agency under Public Law 103–354 debt.

I would like to accept that offer.

Sincerely,

(Borrower's signature)

_____

(Date)

ATTACHMENT 2—ACCEPTANCE OF RESTRUCTURING OFFER, REQUEST TO NEGOTIATE APPRAISAL OR PAY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 THE NRV OF NONESSENTIAL ASSETS

(This attachment will be used instead of attachment 1 for borrowers who submitted applications on or after November 28, 1990.)

To: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354

From: (Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA or its successor agency under Public Law 103–354 debt.

(Check the appropriate blocks.)

☐ (1) I/We accept FmHA or its successor agency under Public Law 103–354's offer to restructure my debt. I/We must accept FmHA or its successor agency under Public Law 103–354's offer within 45 days of receiving exhibit F.

☐ (2) I/We request an independent appraisal of my property including any nonessential assets. If the difference between my independent appraisal and the FmHA or its successor agency under Public Law 103–354 appraisal is not more than five percent, I understand that I must select which of the two appraisals I want to be used for reconsidering my request. In such a case, there will not be an appeal of the appraisal or any further negotiation of the appraisal.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FmHA or its successor agency under Public Law 103–354 County Supervisor will give me a list of appraisers.

☐ (3) I/We request a copy of the FmHA or its successor agency under Public Law 103–354 recent appraisal of my property.

☐ (4) Request Negotiation of the Appraisal.

I must return this ''Response Form'' within 30 days to request a negotiation of my appraisal.

I understand that I must provide FmHA or its successor agency under Public Law 103–354 with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal plus one-half of a third appraisal. I understand that FmHA or its successor agency under Public Law 103–354 will not negotiate the appraisal more than once.

☐ (5) Request an appeal hearing.

I/We must return this ''Response Form'' within 30 days to request a hearing.

I/We understand that I/we will be contacted by FmHA or its successor agency under Public Law 103–354's National Appeals Staff to set up the appeal hearing date and to give more information.

If possible, I/we should submit a copy of my/our independent appraisal to the County Supervisor and the hearing officer prior to the appeal hearing of the appraisal.

☐ (6) I/We intend to pay FmHA or its successor agency under Public Law 103–354 the net recovery value of any nonessential assets that FmHA or its successor agency under Public Law 103–354 has said I/we own.

I/We must pay the net recovery value of the nonessential assets within 45 days of receiving exhibit F.

Please recalculate my restructuring of the FmHA or its successor agency under Public Law 103–354 debt.

Sincerely,

(Borrower's signature)

_____

(Date)

ATTACHMENT 3—APPRAISAL AGREEMENT

I. This agreement is with (insert name of appraiser), referred herewithin as the appraiser, FmHA or its successor agency under Public Law 103–354, and (insert name of FmHA or its successor agency under Public Law 103–354 borrower requesting a negotiated appraisal) herewithin referred to as the borrower.

II. The purpose of this agreement is to set forth the terms and conditions of the appraisal which will be used in determining an negotiated appraisal of the borrower's farm property.

III. The appraiser agrees to perform an appraisal of the borrower's farm property as described below: _____

_____

_____.

IV. The appraiser certifies that he has not conducted either the FmHA or its successor agency under Public Law 103–354 appraisal or the borrower's independent appraisal of this farm property.

V. The appraiser certifies that he/she is a qualified independent appraiser as approved by the FmHA or its successor agency under Public Law 103–354 County Supervisor. The appraiser also agrees that the completed appraisal will conform to subpart E of part 1922 of this chapter for real estate and Form FmHA or its successor agency under Public Law 103–354 440–21 for chattels.

VI. The cost of the appraisal will be (insert dollar cost). The cost of the appraisals will be shared equally by FmHA or its successor agency under Public Law 103–354 and the borrower, each paying one-half of the cost upon delivery of the completed appraisal to FmHA or its successor agency under Public Law 103–354 and the borrower. The completed appraisal must be delivered to FmHA or its successor agency under Public Law 103–354 and the borrower within 30 days of the date of this agreement.

_____

_____

(Borrower)

_____

(County Supervisor)
(Appraiser)

Date: _____

[53 FR 35718, Sept. 14, 1988, as amended at 57 FR 18660, Apr. 30, 1992; 58 FR 44753, Aug. 25, 1993; 58 FR 69200, Dec. 30, 1993]

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—PRIMARY LOAN SERVICE AND CONSERVATION EASEMENT PROGRAMS

I. GENERAL.

A Conservation Easement (CE) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of his/her FmHA or its successor agency under Public Law 103–354 indebtedness. The CE may be considered alone, or with the Primary Loan Servicing Programs as set forth in §1951.909 of this subpart and the requirements of this exhibit. These easements 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 and, except in the case of wetland and wildlife habitat as defined in paragraphs (a) and (d) of this section, must have been row cropped each year of a three-year period ending on December 23, 1985. All Farmer Programs loans which are secured by real estate may be considered for a CE. Non-program loan debtors are not eligible to receive any benefits under this section. Conservation easements do not have to result in net recovery to the government at least equal to the recovery from liquidation. If a borrower who has applied for Primary Loan Servicing initially declines an easement, but the debt writedown program fails to establish a feasible plan, the borrower will be considered for a CE combined with debt writedown to determine whether these options establish a feasible plan.

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 Soil Conservation Service (SCS) 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 SCS 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 and/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 easement 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 SCS determines contains soil(s) that is generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the SCS'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, vegatation, and soil characteristics.

(2) *Enforcement authority*. Any agency of the United States, a State, or a unit of local Government of a State or a person that is designated by FmHA or its successor agency under Public Law 103–354 and specified within an easement area to enforce the terms and conditions of that easement.

(3) *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 an enforcement authority to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of an easement and/or its management plan. The borrower whose land is subject to the easement may be eligible to be designated as a management authority.

(4) *Person*. Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(5) *Recreational purposes*. These activities include providing public use for both consumption (e.g., hunting, fishing) and noncomsumption (e.g., camping, hiking) recreational activities, 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(s).

(6) *Row Cropped*. The term refers to growing agricultural products, including small grains, by the annual tilling of the land (including one trip planters and sugar cane). This farming approach refers to land that was in grasses and/or legumes as part of a commonly practiced row crop rotational system in the local area as well as land that was set aside, diverted or otherwise not cultivated under a program administered by USDA to reduce production of an agricultural product or to conserve soil and water.

(7) *Wildlife*. The term includes fish and/or wildlife and means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrae, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(8) *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 easement. If the borrower is found to be ineligible, the FmHA or its successor agency under Public Law 103–354 County Supervisor will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the easement after a final decision is made on whether the borrower qualifies for any other servicing options. The County Supervisor must find that:

(1) All Farmer Program loans which are secured by real estate may be considered for a CE. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farmer Programs loan qualifies as real estate security.

(2) The proposed easement helps a qualified borrower to repay the loan in a timely manner.

(3) The proposed easement land except in the cases of wetland and wildlife habitat was row cropped each year of the three-year period ending on December 23, 1985; and

(4) If the land being proposed for the easement is within the Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program, both the requirements of that program and this section can be met.

III. ESTABLISHING EASEMENT REVIEW TEAM.

The County Supervisor will establish an easement review team by notifying the appropriate field offices of the Soil Conservation Service (SCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation District, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resources Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be an enforcement authority for an easement. The notified parties may in turn notify other eligible entities. SCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the County Supervisor will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on an easement review team.

IV. RESPONSIBILITIES OF THE EASEMENT REVIEW TEAM.

SCS will lead the easement review team which in every case will be composed of an SCS and FmHA or its successor agency under Public Law 103–354 representative (and in the case of wetlands, the U.S. FWS), 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(s) and the borrower will be informed of the site visit time/date and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the County Supervisor. The report will cover the items listed in paragraphs (A) through (F) of this paragraph. The report will be prepared by an organization, selected by FmHA or its successor agency under Public Law 103–354, that has indicated its willingness to be the enforcement authority except in the instance discussed in paragraph (C) below. Whenever review team members have differing positions on any items to be addressed in the report, each team member will prepare a separate report and submit these reports to the organizations responsible for the report. These differing views will be noted in the report. When no differences exist within the review team, written summaries of team members' positions need not be submitted to the preparer of the report unless either the preparer requested them or an individual team member desires to submit a report. 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, easement boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable easement boundaries or are required for the efficient management of the easement's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation and/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 easement 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 easements already established or under review within the local area and the intent of these easements has been established, the review team will consider these actions as purpose rankings are developed.

(C) The name of the qualified enforcement authority which is willing to be assigned enforcement authority for the easement as well as the name(s) of any entity(s), if known, that the enforcement authority may use to manage the easement. Whenever more than one qualified entity desires to be the enforcement authority, the report will be prepared by SCS and will indicate this fact.

(D) If appropriate, any special terms or conditions that would need to be placed on the easement plus unique or important features of the property which would not be adequately addressed by the standard easement terms and conditions.

(E) A proposed management plan consistent with the purpose or purposes for which the easement would be established. The management plan will outline the various management alternatives for the proposed easement. The enforcement authority's eventual selection of the alternative(s) 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 easement. This management plan will specifically recommend whether or not public recreational use and/or public hunting should be allowed on the easement and provide supporting reasons for the recommendation(s) made. Whenever changes

are required in the management plan, the enforcement authority, with the concurrence of FmHA or its successor agency under Public Law 103–354, may update the management plan to reflect the changes.

(F) The recommended term length of the easement. See paragraph VI of this exhibit.

V. FmHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S REVIEW OF EASEMENT TEAM'S REPORT.

Upon receipt, the County Supervisor will review the easement team's report. If the report indicates that an easement is not feasible given the nature of the land, or the failure of a qualified entity to volunteer to become an enforcement authority, the County Supervisor will inform the borrower of the reason(s) that the easement has been denied and that the borrower may appeal the denial of the easement. If the report is favorable to an easement and more than one qualified entity has indicated its desire to be an enforcement authority, the County Supervisor will select a Federal entity over a non-Federal entity since the easement involves reduction of a Federal debt. If two Federal agencies each want to be the enforcement authority, the County Supervisor will select the Federal agency that owns or controls property adjacent to the easement or the Federal agency whose mission or expertise best matches the priority use purpose(s) for which the easement would be established. In selecting between non-Federal entities, the County Supervisor will select the entity that has the greatest capability to enforce the terms and conditions of the easement during the proposed term of the easement.

VI. TERMS OF EASEMENTS.

A conservation easement may be obtained for a period of not less than 50 years and a borrower cannot crop the easement land during the term of the easement. A longer period of time or a perpetual easement shall be established if the easement review team determines that there is justification for extending the conservation easement past the 50-year minimum. Justification will exist if the easement would:

(A) Contribute directly to achievement of benefits to species protected by international treaty (e.g. migratory birds);

(B) Contribute directly to protection of habitat or restoration of habitat or benefit to threatened, endangered and/or candidate species;

(C) Serve as the site for wildlife habitat improvements which may be required to offset the unfavorable impact of a permit, license or project when improvements need to be longer than 50 years;

(D) Serve as the site for substantial investment of public or private funds in order to achieve stated resource conservation and/or management purposes;

(E) Be desirable that property be removed from production for a long period due to the type of land; or

(F) Serve as a significant historical site, ground water recharge area or other significant eligible easement objective.

VII. DETERMINING THE AMOUNT OF FARMER PROGRAM DEBT THAT CAN BE CANCELLED.

(A) *Calculate the amount of debt to be cancelled as follows:*

(1) *Step 1.* Determine what percent the number of easement acres is of the total acres of land that secures the borrower's farmer program loans by dividing the easement acres that secure the borrower's farmer program loans by the total acres that secure the borrower's farmer program loans.

(2) *Step 2.* Determine the amount of farmer program debt that is secured by the easement acreage by multiplying the borrower's total unpaid farmer program loan balance (principal, interest and recoverable costs already paid by FmHA or its successor agency under Public Law 103–354) by the percentage calculated in Step 1.

(3) *Step 3.* Determine the current value of the land in the easement by multiplying the present market value of the farm that secures the borrower's farmer program loans by the percent calculated in Step 1.

(4) *Step 4.* Select the lesser of the values calculated in Steps 2 and 3.

(5) *Step 5.* Subtract the current value of the easement acres in Step 3 from the farmer program debt that is secured by the easement acres in Step 2.

(6) *Step 6.* Select either the value arrived at in Step 4 or 5, whichever is the greater.

An Example For Determining The Amount That Can Be Cancelled:

Situation

Total Acres, 300
Easement Acres, 60
Amount of unpaid farmer program debt secured by farm, $450,000
Current value of farm, $300,000
Step 1. 60 easement acres; 300 total acres=20 percent
Step 2. $450,000 debt x 20 percent, Step 1=$90,000
Step 3. $300,000 value x 20 percent, Step 1=$60,000
Step 4. Select the lower amount of Step 2 or Step 3 Calculations=$60,000
Step 5. $90,000 in Step 2—$60,000 in Step 3=$30,000, Amount FmHA or its successor agency under Public Law 103–354 is undersecured on Easement Land
Step 6. Select the greater of Step 4 or 5=$60,000
$60,000 of the debt would be the maximum amount available for the debt cancellation.

In the case of a nondelinquent borrower, the amount cancelled shall not exceed 33 percent of the indebtedness secured by the real estate.

(B) *Feasibility of debt cancellation.* The County Supervisor 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 value as calculated in paragraph (VII) Step 6 of this section. If the borrower would not be able to develop a feasible plan, the County Supervisor will notify the borrower of the reason that the easement has been denied and that the borrower may appeal this adverse decision after the County Supervisor has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(C) *Updating the title opinion.* Title examination will be the same procedure as provided for in subpart B of part 1927 of this chapter. A preliminary title opinion will not be required. The final title opinion will cover the period following the recordation of the initial loan mortgage. Title opinion costs will be considered nonrecoverable costs and will be paid in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (Instructions and forms are available in any FmHA or its successor agency under Public Law 103–354 Office).

(D) *Consent of other lienholders.* If there are any prior or junior lienholders, their consent to the terms of the easement must be obtained in writing by the borrower. The consent will be filed in the borrower's case file and need not be recorded unless required by State law. No change in the terms can be proposed by the prior or junior lienholders. If it is not possible to obtain the lienholders' consent, the easement will be denied and the borrower so informed. The borrower will have no appeal rights for an FmHA or its successor agency under Public Law 103–354 denial on this basis.

(E) *Identifying the boundaries of the easement.* A professional survey of the easement's boundaries will be required. FmHA or its successor agency under Public Law 103–354 will provide this service by contracting for the survey in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A, Exhibit J (available in any FmHA or its successor agency under Public Law 103–354 office).

(F) *Reaching an agreement with the borrower.* The borrower will be informed of the easement's value, the impact on the remaining financial obligation, and the terms and conditions of the easement. The borrower also will be provided a copy of the easement review team's report. If the borrower decides to give the easement, approval will be made by the County Supervisor, the enforcement authority, and the borrower by signing Form FmHA or its successor agency under Public Law 103–354 1951–39, ''Grant of Easement,'' if the enforcement authority is the U.S. Fish and Wildlife Service, or Form FmHA or its successor agency under Public Law 103–354 1951–39A, ''Grant of Easement,'' if the enforcement authority is other than the U.S. Fish and Wildlife Service, or a similar form approved by the Office of General Counsel (OGC). (These FmHA or its successor agency under Public Law 103–354 forms are available in any FmHA or its successor agency under Public Law 103–354 office.) A similar form may not contain provisions whose purposes conflict with the purposes of this regulation or with the terms of Forms FmHA or its successor agency under Public Law 103–354 1951–39 or 1951–39A. If the borrower requests a modification of the proposed easement, such modification cannot conflict with the purpose or purposes for which the easement would be established. The County Supervisor cannot approve a modification of the proposed easement's terms and conditions without first obtaining the concurrence of the enforcement authority. If the modification is substantial, in terms of the easement review team's recommendations, the members of the easement review team must be consulted. If an agreement cannot be reached with the borrower on the easement's terms and conditions, the County Supervisor will notify the borrower in writing that the easement is denied and that the borrower may appeal this denial after the County Supervisor determines the borrower's eligibility for the other servicing options in this subpart.

(G) *Recording of noncash credit.* Upon approval of the easement, the County Supervisor will complete Form FmHA or its successor agency under Public Law 103–354 1951–47, ''Farmer Program Noncash Credit for Purchase of Easement Rights,'' for entry into the FmHA or its successor agency under Public Law 103–354 field office terminal system. For applications received from delinquent borrowers, all of the borrower's Farmer Programs loans are eligible to be credited. The total credit to the borrower's account will not exceed the greater of the value of the land on which the easement is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate. 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 easement is obtained. In all cases, the amount credited will be applied on the FmHA or its successor agency under Public Law 103–354 loan(s) as an extra payment in order of lien priority on the security. The loan may be reamortized if needed.

(H) *Recording of the easement.* The County Supervisor will record Form FmHA or its successor agency under Public Law 103–354 1951–39 or Form FmHA or its successor agency under Public Law 103–354 1951–39A (or other acceptable form that has been approved by OGC) to comply with State laws. The County Supervisor then will retain a copy of the easement in the borrower's file and will provide a copy of the easement to the enforcement authority and to the borrower. Cost of recording the easement will be considered a nonrecoverable cost and will be paid by 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 (Instructions and forms are available in any FmHA or its successor agency under Public Law 103–354 Office).

VIII. VIOLATION OF TERMS AND CONDITIONS.

If the borrower violates any of the terms or conditions of the easement, the account will be liquidated in accordance with § 1965.26(b) of subpart A of part 1965 of this chapter. The borrower will also be responsible for all costs incurred by FmHA or its successor agency under Public Law 103–354 and the enforcement agency in the course of enforcing such terms and conditions. Enforcement expenses may include attorney's fees, costs of any litigation, and the cost of repair or restoration of the easement land to a condition compatible with conservation, recreational and wildlife purpose(s) for which the easement was established. Should the borrower wish to convey or sell the property subject to the easement during the term of the easement, the borrower must first notify the enforcement authority and the purchaser(s) will also be responsible for the same type of costs should the successor(s) violate the terms and conditions.

IX. RESPONSIBILITIES OF THE ENFORCEMENT AUTHORITY.

The enforcement authority will be named in any approved easement and once named agrees to accept the following responsibilities and duties:

(A) Upon receipt of an FmHA or its successor agency under Public Law 103–354 approved easement, provide FmHA or its successor agency under Public Law 103–354 with a legally binding document acknowledging its acceptance of the role as enforcement authority for that easement.

(B) Monitor compliance with the easement's terms and conditions.

(C) Ensure that the easement property is safely maintained to the extent required by relevant State law and accept all liabilities associated with implementing and carrying out its management responsibilities under the easement's terms and conditions and management plan.

(D) At its discretion, delegate or contract management functions to one or more management authorities, with all associated cost being the responsibility of the enforcement authority or the management authority, as agreed in that contract. Monitoring Compliance with the terms and conditions of the easement cannot be so delegated or contracted.

(E) For the first five years of the easement's life, report annually to FmHA or its successor agency under Public Law 103–354 on the status of compliance with the easement's terms and conditions. Thereafter, this report must be provided every five years. If circumstances develop which would result in substantial compliance problems or claims, or litigation involving the easement property, then the enforcement authority immediately must notify FmHA or its successor agency under Public Law 103–354 by certified letter.

X. MONITORING COMPLIANCE.

The enforcement authority is responsible for monitoring compliance with the easement's terms and conditions and management plan. However, when under the circumstances stated in the easement's terms and conditions (Form FmHA or its successor agency under Public Law 103–354 1951–39 and Form FmHA or its successor agency under Public Law 103–354 1951–39A), 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 County Supervisor. In order to provide the requested written authorization, the County Supervisor must determine that the request does not violate the easement's terms and conditions and must receive the written concurrence of the enforcement authority. In reaching this determination, the County Supervisor should consult with the State Director and OGC, as necessary.

[53 FR 35718, Sept. 14, 1988, as amended at 57 FR 18662, Apr. 30, 1992; 57 FR 36591, Aug. 14, 1992]

EXHIBIT I—GUIDELINES FOR DETERMINING ADJUSTMENTS FOR NET RECOVERY VALUE OF COLLATERAL

This exhibit provides guidance to State Directors and County Supervisors for determination of the factors to be used in adjusting current market value.

I. STATE DIRECTOR RESPONSIBILITIES

The State Director's analysis to County Supervisors will specify costs which are determined to be consistent statewide, and provide specific guidance on the determination

of costs which are somewhat consistent within the State, but may vary on a county to county or property to property basis. All studies or surveys should be conducted so that all necessary information can be distributed at the same time.

A. Real Estate Costs

The analysis for liquidation and disposition costs should, as a minimum, address the following items and considerations:

(1) *Months Held in Inventory.* The average holding period will be the average number of months that suitable properties, which are not leased, are held in inventory. The average holding period is derived from report code 597, ''Farmer Program Inventory,'' for the period ending June 30. However, in situations where States have no suitable inventory, or have a very limited number (generally less than 5) of suitable properties for which the holding period for those properties is not representative (*i.e.*, one property in inventory held 75 months due to local litigation), the average of the holding periods of surrounding States should be used. National Office guidance may be requested in such cases.

(2) *Sales Commission Rate.* A study will be conducted, at least annually, to determine the typical method for disposition of FmHA or its successor agency under Public Law 103–354 inventory farms in the State. The findings will be used to determine whether commissions should be included as resale expenses, or whether FmHA or its successor agency under Public Law 103–354 normally disposes of inventory farms without the assistance of brokers or auctioneers. However, if a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will always be included as resale expenses in that office. The percentage of commission will be the rate specified on the listing agreement(s) or contract(s) in effect for the County Office.

(3) *Cost Per Advertisement.* The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with subpart C of part 1955 of this chapter.

(4) *Rate of Change in Value.* Yearly percentage decrease or increase in value is the rate of change in value. To provide a fair assessment of projected trends in farm land values, each State Director will establish a farm land market advisory committee (FLMAC). The committee will consist of the FmHA or its successor agency under Public Law 103–354 State Director, the State Executive Director of the Agricultural Stabilization and Conservation Service (ASCS), the State Conservationist for the Soil Conservation Service (SCS), and an Extension Specialist from a Land Grant University (if available) or other Agriculture Extension Service employee with knowledge of the farm real estate market.

The FLMAC will meet at least each July, and will consider the following information:

(a) The actual change in farm land values in the State during the previous year, as indicated in the most recent ''Agricultural Land Values and Market Situation Outlook Report'' issued by the USDA Economic Research Service.

(b) Current conditions in the State and national agricultural economics.

(c) Availability and cost of credit to purchase farm land.

(d) The amount of repossessed farm land held by FmHA or its successor agency under Public Law 103–354, the Farm Credit System, and other private sector lenders.

(e) Any special conditions which would effect farm land values in the State.

(f) Any studies or research conducted by the State Agricultural University or similar scholarly source.

The FLMAC should, if possible, determine anticipated value changes on a regional basis with the State, if the State has agricultural regions with discernable differences.

The committee's meetings and decisions, including the basis for those decisions, will be documented, retained in the State Office as part of the State supplement file and provided to interested parties upon request.

Prior to providing the FLMAC determinations to FmHA or its successor agency under Public Law 103–354 field offices, the State Director will contact the FmHA or its successor agency under Public Law 103–354 State Directors in surrounding States to determine if the committee's findings are fairly consistent with those of surrounding States. If there are significant differences, the State Director may reconvene the committee to reconsider its findings.

(5) *Management charges.* In situations where State or district wide contracts for management of inventory farms are in effect, the State Director will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no area wide contract rates for some or all counties, guidance should be given on how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

B. Chattel Costs

(1) *Months held in inventory.* FmHA or its successor agency under Public Law 103–354 rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless significant acquisitions occur

and the Administrator determines that chattels do have a holding period.

(2) *Sales commission rate.* A study will be conducted, at least annually, to determine typical and reasonable commission rates for sales of chattel property in the State. The results of the study will be provided as guidance to field personnel. [The County Supervisor will conduct a survey of auctioneers to determine the average commission rate for chattel sales in the area.]

(3) *Other sales cost.* These are miscellaneous cost typically incurred when selling acquired chattels. County Offices should be advised to obtain specific guidance in unusual cases.

(4) *Rate of change in value.* This is a yearly percentage decrease or increase in the value. Because FmHA or its successor agency under Public Law 103–354 rarely acquires chattel property, the average holding period for chattel property will normally be zero, unless significant acquisitions occur and the Administrator determines that chattel do have a holding period. Therefore, there will normally not be a rate of change in value of chattels.

C. Legal and Administrative Costs

(1) *Administrative liquidation cost for each loan type.* This is the FmHA or its successor agency under Public Law 103–354 administrative cost of liquidation. The FmHA or its successor agency under Public Law 103–354 Resource Management System (RMS) work standards (FmHA or its successor agency under Public Law 103–354 Instruction 2006–J, exhibit A, available in any FmHA or its successor agency under Public Law 103–354 Office) for liquidation should be used to determine the administrative costs associated with liquidation for each loan type. The following equation will be used for each loan type:

(RMS standard for loan type in minutes divided by 60) x hourly pay rate for GS–11/1–Administrative cost of liquidation for the loan type.

(2) *Real estate costs and chattel only costs.* This is the administrative liquidation cost for Government attorney time. The State Director will consult with the appropriate Regional OGC to determine the average amount of government attorney time involved in an individual involuntary liquidation of both real estate and chattels. The legal costs associated with liquidation for real estate and chattels will be arrived at separately by multiplying the attorney time, in hours, by $75.

(3) *Property management cost.* This is the administrative cost of managing an inventory property, while it is in inventory. This cost will be deducted in those cases involving real property. The costs should also be derived from the RMS standards. It will be necessary to determine the average number of property actions per month. This figure is obtained from the RMS–7 Report, which is issued to the State Offices quarterly. The following equation is used to compute the total property management cost:

(average actions per property per month x average holding period) x (RMS standard for property management for FO loans divided by 60) x (GS–11/1 hourly pay rate) + (RMS standard for FO property sale actions divided by 60) x GS–11/1 hourly pay rate–Administrative costs for inventory period.

II. COUNTY SUPERVISOR RESPONSIBILITIES

The County Supervisor will use the statewide costs and give careful consideration to the cost and other guidance provided by the State Director. The County Supervisor will determine certain localized liquidation costs based upon guidance in the State supplement at least annually. These figures will be documented and provided to borrowers upon request.

A. *Management Expenses.* If the County Office is not covered by State or district wide property management contracts, the management expense rates will be based upon local level contract rates.

B. *Repairs.* Approximate costs for typical essential repairs may be developed, considering the guidance in the State supplement. Repair items must be related to physical condition (*i.e.*, roof, windows, doors, etc.) and not to functional or economic obsolescence.

C. *Advertisements.* The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with subpart C of part 1955 of this chapter.

D. *Commissions.* A survey of auctioneers will be made to determine the average commission rate for chattel sales in the area. Real estate commissions, if any, will follow the State supplement.

E. *Legal Expense.* A survey of local closing agents will be performed to determine the cost FmHA or its successor agency under Public Law 103–354 will incur for closing transactions (title opinions, recorder's fees and the like).

F. *Miscellaneous.* Miscellaneous expenses such as land surveys, which are routinely incurred should be determined by a local survey and documented.

III. INCOME

Income will be added to net recovery value only when it is relatively certain that the income will be realized. Lease income will not be planned unless a lease is already in effect at the time the calculations are being made, and it appears that the lease will continue after FmHA or its successor agency under Public Law 103–354 acquires title. The amount of mineral or other lease or royalty income will be based upon the historical

record of such income generated by the property. Chattels will not generate income unless they have a holding period.

IV. DEPRECIATION

The amount of depreciation anticipated for buildings and other improvements will be based upon the summation value and estimated remaining life of the improvement as reflected in the real estate appraisal. For example, a dwelling with a summation value of $40,000 and a remaining life of 20 years will depreciate at a rate of $2,000 per year. The depreciation calculations will be documented in the borrower's case file and provided to the borrower upon request. Chattels will not be depreciated unless they have a holding period.

[57 FR 18662, Apr. 30, 1992]

EXHIBIT J—THE DEBT AND LOAN RESTRUCTURING SYSTEM (DALR$)

Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) primary loan service programs provide a large number of alternatives for restructuring an FmHA or its successor agency under Public Law 103–354 loan. The number of loans a borrower has increases the number of combinations of possible alternatives. It is difficult and extremely time consuming to manually calculate all the potential combinations of servicing actions. To assure that the various combinations of programs are considered, FmHA or its successor agency under Public Law 103–354 has developed the Debt and Loan Restructuring System (DALR$) for operation of the County Office computer system. FmHA or its successor agency under Public Law 103–354 personnel will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ goes through.

What is DALR$?

DALR$ is a computerized decision support tool. This means that the computer assists the FmHA or its successor agency under Public Law 103–354 loan officer in making a decision. For example, FmHA or its successor agency under Public Law 103–354 regulations specify criteria for determining the interest rate when loans are restructured. DALR$ will select an interest rate using the criteria in the regulations. Judgement decisions are made by the FmHA or its successor agency under Public Law 103–354 loan officer in evaluating the Farm and Home Plan and other information entered into the DALR$ system.

DALR$ Operating System

DALR$ operates on the AT&T 3B2 computer system in FmHA or its successor agency under Public Law 103–354 field offices. It runs under the UNIX (registered tm, AT&T) computer operating system. DALR$ also utilizes Prelude (registered tm, Venturcom) for data entry and storage functions. To operate DALR$, UNIX System V, version 2.0.5 and Prelude version 2.1 are required.

FmHA or its successor agency under Public Law 103–354 developed DALR$ to run under UNIX and Prelude because those systems have the capabilities necessary to allow for relatively rapid development, and are available in all FmHA or its successor agency under Public Law 103–354 offices. DALR$ will not run under DOS on personal computers. Due to lack of resources, FmHA or its successor agency under Public Law 103–354 does not plan to develop duplicate computing capabilities on personal computers. FmHA or its successor agency under Public Law 103–354 will provide copies of program diskettes and/or source code to interested parties upon request.

Advantages of DALR$

The DALR$ system provides several benefits to FmHA or its successor agency under Public Law 103–354 borrowers:

1. Speed of calculation. Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.
2. Consistency. The use of DALR$ assures that all calculations will be performed in the same way, and that the feasibility of all requests will be evaluated on the same calculation methods.
3. Full consideration. DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.
4. Reduction of errors. Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. It is important to note, however, that DALR$ results are only as reliable as the input data.

What DALR$ Does

DALR$ performs a series of mathematical calculations based upon predetermined critera. These same calculations and procedures would be followed when calculations

are performed manually. DALR$ also generates a printed summary of its computations for FmHA or its successor agency under Public Law 103–354 and the borrower.

Overview

In arriving at a debt restructuring plan, DALR$ will take advantage of all primary loan service programs to maximize the borrower's ability to repay debt and remain on the farm and avoid loss to the government.

Several combinations of primary loan service programs may be necessary to keep the borrower on the farm and avoid losses to FmHA or its successor agency under Public Law 103–354. DALR$ will examine each combination until a feasible plan is reached or it is determined a feasible plan is not possible with full utilization of primary service programs.

DALR$ considers each primary serving option in the order described below until an appropriate solution is found. Each step increases FmHA or its successor agency under Public Law 103–354's level of assistance to the Borrower and, when applicable, includes the primary loan service programs provided by previous steps.

1. Apply payments, including proceeds from the sale of non-essential assets, which the borrower plans to apply to outstanding FmHA or its successor agency under Public Law 103–354 debt.

2. Reschedule/reamortize loans at maximum terms with interest rates at the minimum or original note interest rate or regular loan program rate. Loans may be considered for consolidation in accordance with §1951.909 of this subpart prior to being entered into the DALR$ system.

3. Reschedule/reamortize loans at maximum terms with interest rates at the minimum of original note interest rate or applicable limited resource loan program rate.

4. Defer loans at the maximum term and minimum interest rate permitted by program regulation until a feasible plan is obtained in the first year. Loans are selected for deferral so as to minimize debt repayments in the years after the deferral period. If deferral of a loan will result in an excess cash flow margin in the first year then a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

5. Provide Softwood Timber loan deferral, when requested by borrower, to the maximum limits permitted by program regulations. Loan deferrals will be recalculated selecting Softwood Timber loans first so as to:

a. Minimize any decrease in present value caused by conversion to Softwood Timber loans, and

b. If regular deferrals are still needed to facilitate a feasible plan in the first year, minimize the increase in payments in the year after the expiration of deferral period.

A Softwood Timber loan deferral has the same effect on existing FmHA or its successor agency under Public Law 103–354 debt repayment as a full write down of the same amount of debt. A Softwood Timber loan deferral, however, will always have a greater present value. Therefore, after a loan is selected for Softwood Timber deferral it will not be considered for write down since this will always reduce present value.

6. Write Down—

Write down loans in the order, at the interest rates, and in combination with other primary loan service programs to maximize the ability of the borrower to remain on the farm and avoid FmHA or its successor agency under Public Law 103–354 loan losses.

a. Conservation Easements

Conservation Easement write-down (when requested by the borrower) will be considered over debt write-down whenever such FmHA or its successor agency under Public Law 103–354 Instruction 1951–S consideration will not prevent development of a debt restructuring plan which will keep the borrower on the farm.

b. Security Considerations

The FmHA or its successor agency under Public Law 103–354 County Supervisor will evaluate each loan and determine its write-down priority considering the degree of collateralization. Loans which are secured but have no collateral value will generally be selected for write down before loans which are at least somewhat collateralized. There are three write-down security/collateral categories.

(1) Low: These loans may be secured or unsecured and have no collateral value.

(2) Medium: These loans are secured but do not have sufficient collateral value to fully protect the Government's interest.

(3) High: These loans are secured and fully collateralized; the Government's interest is fully protected.

c. Methodology

(1) Method 1 (See Section VI B of this exhibit) will be used first to develop an acceptable restructuring plan which will keep the borrower on the farm. If a restructuring plan is not found which will keep the borrower on the farm then Method 2 (See Section VI C of this exhibit for a full description) will be used to develop a restructuring plan.

(2) For both Method 1 and Method 2 loan terms will be the maximum permitted by program regulations. Also, write down amounts will be calculated so that the ''Balance Available'' to repay debt is equal to or as close as possible to the ''Debt Repayment''.

(3) Loans selected for regular deferral will remain deferred, but will be fully or partial written down if needed to obtain positive cash flow margins. Loans converted to Softwood Timber loans (if requested) will remain Softwood Timber loans and will not be written down because writing down Softwood Timber loans decreases present value.

7. If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA or its successor agency under Public Law 103–354 County Supervisor, and other Lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell non-essential assets, improve security on FmHA or its successor agency under Public Law 103–354 debt, and consider Softwood Timber loans and Conservation Easements (if not originally requested by the Borrower and is permitted by program regulation).

Each of these measures will increase the computed present value. DALR$ will use the new/revised information provided by the borrower and the FmHA or its successor agency under Public Law 103–354 County Supervisor to assure that the restructuring of existing FmHA or its successor agency under Public Law 103–354 debt will maximize the potential for the borrower to repay debt and remain on the farm and avoid FmHA or its successor agency under Public Law 103–354 loan losses.

Iterative Calculation Process

I. EXISTING LOAN INTEREST RATES

A. Obtain status information on each loan.

The status information date (accrual date) must be a date after the last payment or other transaction on the loan.

1. Principal balance.

2. Accrued interest balance.

3. Non-capitalizable interest balance.

B. For each loan compute the interest accrual to the proposed effective date for servicing actions.

Interest Accrual=P × Iex × N-DAYS.

Where:

1. ''P'' is the outstanding principal balance on the date on which loan status information was obtained.

2. ''Iex'' is the daily interest accrual (decimal equivalent) based on the existing interest rate for the loan. Daily interest accrual is equal to the existing annual interest rate divided by 365.

3. ''NDAYS'' is the number of days between the effective date and the status information date. If February 29 occurs between these two days it is not added to the number of days.

C. Determine the amount of Non-capitalizable accrued interest.

1. Deferred loans.

All accrued interest is non-capitalizable interest.

2. Other loans:

Interest less than 90 days past due is non-capitalizable interest.

II. REGULAR PROGRAM INTEREST RATES

A. Determine balance of funds available for debt repayment in the next planning year. This is the ''Balance Available in Year 1''. If loan deferrals are anticipated or are needed, also determine the Balance Available for debt repayment in the year after the end of the specified deferral period.

B. Determine total debt repayment in the next planning year. This is the ''Debt Repayment in year 1.'' If loan deferrals are anticipated or are needed, also determine the debt repayment in the year after the end of the specified deferral period. Included in this amount are:

1. New loans:

New loans planned may affect repayment in the first planning year and/or the year after the end of the specified deferral period, depending on when the loan will be made and the repayment term. The equal annual payments on these new loans are included in the debt repayment calculations. Regular program interest rates (not limited resource rates) are used for all new loans.

Note: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that it is not possible to develop a feasible plan at regular program rates.

2. FmHA or its successor agency under Public Law 103–354 Loan for annual operating expenses.

Repayment of FmHA or its successor agency under Public Law 103–354 loans for annual operating expenses are based on regular loan program interest rates.

Included in this amount is the annual operating expense loan principal which is due in the applicable planning year.

Interest accrual on this loan may be estimated by multiplying the principal to be paid in the applicable planning year by the regular loan program interest rate (monthly decimal equivalent) and then by the average number of months the principal will be outstanding. See Attachment 1, Formulas, for details.

If some of the principal will be carried over to future years then that portion is either:

a. Included with the new loan payments computed using the amortization factor over the applicable loan term at regular loan program interest rates, or

b. If the amount to be carried over is already included in an existing loan, it is rescheduled with the existing loan over the maximum term permitted by program regulation.

Note: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that a feasible plan is not possible with regular program rates.

3. Existing FmHA or its successor agency under Public Law 103–354 loans:

Also included are all repayments on existing FmHA or its successor agency under Public Law 103–354 debt as it stands now without servicing actions. As DALR$ steps through the debt restructuring process this repayment amount will change.

Some existing loans may include in whole or in part an FmHA or its successor agency under Public Law 103–354 loan for annual operating expenses which is expected to be repaid in the current year. Since the debt repayment on FmHA or its successor agency under Public Law 103–354 annual operating expense loans is estimated in the previous step, the repayment of this debt should not be included with the repayment of existing loans. Only the repayment of long term debt should be included.

C. Apply loan payments which are planned to be made on the effective date of the servicing actions.

1. Payments are first applied to reduce/eliminate delinquent interest, then non-delinquent interest and then remaining principal balance.

2. If any loan is paid off in full because of these payments, recompute the debt repayment in year 1.

3. If the balance available is greater than or equal to the debt repayment in year 1 and there are no delinquent loans then no further servicing actions in DALR$ are required.

D. Reschedule/reamortize loans as needed to eliminate any delinquency.

1. Criteria:

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) The original note the interest rate.

(2) The regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

e. The transaction records from the last payment date and last due date may be used to assist in determining the dollar amount of interest less than 90 days past due.

2. The Process.

a. Identify delinquent loans. All of these loans will be rescheduled/reamortized.

b. Recompute debt repayment in year 1.

c. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

E. Reschedule/reamortize the remaining non-delinquent loans.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) The original note interest rate.

(2) The regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

NOTE: Interest is not due until the loan installment is due. The date the servicing action takes place relative to the due date will effect how much interest can be capitalized. For example:

(i) A borrower is current January 1, 1988. An analysis in December 1988 indicates the borrower cannot pay installments due January 1, 1989. Based on the 1989 farm plan, the debts can be restructured. The loans will be restructured on January 10, 1989. None of the accrued interest is 90 days past due and no interest will be capitalized.

(ii) Same situations (i) , except the restructuring occurs on April 2, 1989. The interest which accrued prior to January 1, 1989, will be capitalized. Interest which accrued after January 1, 1989, will not be capitalized.

2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized unless the County Supervisor indicates that rescheduling should be carried out to eliminate unequal payment schedules or balloon payments.

3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

III. LIMITED RESOURCE INTEREST RATES

A. Recompute debt repayment in year 1.

1. Criteria.

a. New loans will have the maximum term permitted by program regulation, using the limited resource interest rates (when applicable) which will be effective on the date of the servicing actions.

b. Interest accrual on the FmHA or its successor agency under Public Law 103–354 loan(s) for annual operating expenses will be at the limited resource rate (when applicable).

2. The Process.

a. Recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1, no further servicing actions are required.

B. Reschedule/Reamortize existing loans eligible for limited resource rates to obtain a positive cash flow margin in the 1st planning year.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) The original note interest rate.

(2) The loan program limited resource interest rate in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first unless it is deliquent.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized.

3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to Debt Repayment then no further servicing actions are required.

IV. DEFERRALS

A. Deferrals Period.

1. Deferral will only be beneficial if the cash flow margin will improve after the deferral period. This improvement must begin no later than six years after the current planning year, since the maximum deferral period is 5 years.

2. To determine the appropriate deferral period the County Supervisor and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

3. It is not necessary that deferrals provide a positive cash flow margin after the deferral period because it is still possible to obtain a positive cash flow margin with a combination of deferrals, debt write down and the other primary loan service programs. However, to maximize the potential for the borrower to remain on the farm and avoid losses on FmHA or its successor agency under Public Law 103–354 loans, a new farm plan must be prepared by the FmHA or its successor agency under Public Law 103–354 County Supervisor and borrower for the year after the end of the selected deferral period.

4. If there is no anticipated improvement in cash flow margin, then a deferral year plan need not be prepared since other combinations of primary service programs will maximize the potential for the borrower to remain on the farm and avoid losses on FmHA or its successor agency under Public Law 103–354 loans.

B. Deferrals.

1. Criteria.

a. Loans which have been rescheduled/reamortized previously in DALR$ will be rescheduled/reamortized at the same interest and term.

b. Other loans which have not been previously rescheduled/reamortized in DALR$ will be rescheduled/reamortized as follows:

(1) Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

(2) The interest rate will be the minimum of:

(a) The original note interest rate.

(b) The loan program interest rate (limited resource, if applicable) in effect on the date of the servicing action calculations.

(3) Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

(4) Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

2. Loan Selection.

This selection process will assure that after a positive cash flow margin is achieved in the 1st year, the cash flow margin in the year after the deferral period will be the greatest.

a. Calculate the payment after the deferral period for each loan eligible for deferral. This is only a side calculation to determine

the best order of selection. A deferral will decrease the payments in the 1st planning year and increase the payments in the year after the deferral expires.

b. For each loan compute the ratio of the increase in ''after deferral period'' payment to the decrease in 1st year payment.

c. The loan with the smallest ratio is deferred first and so on until the balance available is greater than or equal to debt repayment in year 1.

3. The Process.

a. Taking one loan at a time, defer the selected loan, recompute the debt repayment in year 1. Also compute the debt repayment in the year after the end of the deferral period.

b. If the balance available is equal to debt repayment in year 1 and the balance available is greater than or equal to debt repayment in the year after the end of the deferral period then no further servicing actions are required.

c. If the balance available is greater than the debt repayment in year 1, then this implies that the last loan deferred did not require a full deferral.

(1) Compute amount of deferral of the last loan necessary to achieve equality between balance available and debt repayment in year 1.

(2) Recompute payments for this loan during the deferral period and the years after the expiration of the deferral period.

(3) If the balance available in the year after the deferral period is greater than or equal to the debt repayment then no further servicing actions are required.

4. Partial Deferrals.

a. Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payments on that loan. See Attachment 1 to this exhibit for applicable formulas for partial deferrals.

b. Examples:

Case 1: Partial Deferral without Write Down.

Situation: A full deferral is more than is needed to achieve a positive cash flow margin in year 1. A full payment on the loan will produce a negative cash flow margin in year 1.

The Process.

1. Determine amount of deferral of necessary to achieve a feasible plan in the first year.

''d'' is the fraction of the loan which must be deferred. This fraction is applied to both the principal (P) and the non-capitalizable interest (N).

''r'' is the amount of cash flow margin in the first year with a full deferral. ''R'' is the debt repayment on the loan in the first year without deferral.

d—1—(r/R).

2. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion.

$P_1=(1–d) \times P=(r/R) \times P$.

$N_1=(1\text{-}d) \times N=(r/R) \times N$.

Deferred Portion

$P_2=P–P_1$.

$N_2=N–N_1$.

Case 2: Partial Deferral with Write Down.

Write down is required for a feasible plan. In this situation the write down and partial deferral must yield a payment which exactly meets the borrower's ability to repay debt. This will maximize the ''Present Value'' and the borrower's ability to remain on the farm.

Situation: The loan is partially deferred to achieve a feasible plan in the 1st year. The payments in the year after the end of the deferral period exceed the borrower's ability to pay even with a partial deferral. Write down is necessary to achieve a feasible plan. The loan which is partially deferred has been selected as the next loan to write down based upon write down selection criteria.

Write down sequence:

1. The non-capitalizable interest (of the deferred portion of the loan) will be written down first until a feasible plan is achieved or the non-capitalized interest (of the deferred portion of the loan) is fully written down.

2. The remaining principal (on the deferred portion of the loan) is then written down until a feasible plan is achieved or the principal is fully written down.

3. At the point the deferred portion of the loan has been fully written down, but a feasible plan has not yet been found. The subject loan is now a non-deferred loan with reduced principal and reduced non-capitalizable interest. This new loan must now compete for selection for write down with all remaining loans based on the write down selection criteria.

V. SOFTWOOD TIMBER

A. Criteria.

1. Loan terms will be the maximum permitted by program regulation.

2. The interest rate will be the minimum of:

a. The original note interest rate, or

b. The Softwood Timber program interest rate which will be in effect on the date of the servicing action calculations.

3. 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.

4. Interest less than 90 days past due will not be capitalized and accrue interest, and will be payable at the end of the Softwood Timber deferral period.

5. The rescheduled/reamortized principal amount plus any non-capitalized interest of Softwood Timber loans will not exceed the

maximum amount permitted by program regulation or the amount needed to develop a feasible plan, whichever is less.

B. Loan Selection.

Loans will be selected for the Softwood Timber loan program to maximize the present value after conversion to Softwood Timber, thus avoiding loan losses.

1. Cancel all previously calculated deferrals.

2. For each loan compute the present value before and after conversion to a Softwood Timber loan. Then compute the decrease in present value (note: for loans in which the present value increases this will be negative number).

3. For each loan compute the ratio of the decrease in present value to the decrease in first year repayment after conversion to a Softwood Timber loan.

4. Select the loan with the smallest (or most negative) ratio first.

5. If loans have equal ratios select the loan having the least security among these loans first, Softwood Timber loans will have new security instruments. This will improve the FmHA or its successor agency under Public Law 103–354 security and could increase present value if write down is required for other loans.

C. The Process.

1. Starting with the first loan in the list of loans ordered to minimize decrease in present value convert the loan to Softwood Timber.

2. Continue this process until the maximum limit for Softwood Timber conversion is reached or a feasible plan is possible in the first year.

3. If a loan is only partially converted then create a new loan identity for the partially converted loan. The portion not converted retains the same interest rate and term prior to the conversion to Softwood Timber.

4. If fully utilizing Softwood Timber loan conversion authorities do not result in a feasible plan in the first year rework the loan deferral calculation described in Section IV of this exhibit (if applicable). Do not include the loans selected for Softwood Timber loans in the reworking of the deferral calculations.

5. If conversion to a Softwood Timber loan will permit a feasible plan to be developed (with or without deferrals) no further servicing actions are required.

VI. WRITE-DOWN

Write-down of loans will proceed with Method 1 (contained in VI B) first. If a debt restructuring plan which will keep the borrower on the farm cannot be found using Method 1, then write-down will be recalculated using Method 2.

A. Status.

Debt repayments are at their absolute minimum, a feasible plan is still not possible in the first year and/or the year after the end of the deferral period (if applicable).

1. At this point consideration of primary loan service programs has had the following result:

a. All delinquent loans have been rescheduled/reamortized.

b. If the borrower plans to make payments prior to the servicing actions, these payments have been applied to loans to reduce indebtedness.

c. All existing FmHA or its successor agency under Public Law 103–354 loans have been considered for rescheduling/reamortization.

d. Deferrals have been computed for borrowers when the cash flow margin in the year after the deferral period was higher than the cash flow margin in the first year.

e. Loans have been converted to Softwood Timber loans (when requested by the Borrower) to the maximum extent permitted by program regulations.

2. FmHA or its successor agency under Public Law 103–354 loans for annual operating expenses and all proposed new loans have been computed at limited resource rates (when applicable).

3. All loans are at the lowest interest rate and maximum term permitted by program regulations.

B. Method 1.

Provide Conservation Easement write down on eligible loans, when requested by the borrower, to the maximum limits permitted by program regulations. Conservation Easements will be the first write down considered in this method. If a feasible plan is not obtained using conservation easements then the remaining loans will be written down using debt write-down authority.

1. Criteria.

a. Only loans secured by real estate are eligible for conservation easement write-down.

b. Interest rates, loan terms, loans selected for deferral (if applicable) do not change from the status described in Section VI A of this exhibit. That is, debt repayment is at the absolute minimum.

c. Loans converted to Softwood Timber loans will not be written down.

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as necessary:

a. Place all loans eligible for conservation easements in a single group. Of these loans order them for selection as follows:

(1) Least collateralized loans first.

(2) For loans with equivalent collateralization, loans with the largest ''Amortization Factor'' first. (See Amortization Factors in Attachment 1 to this exhibit.)

b. If a feasible plan is not obtained using conservation easements or conservation easement write-down had not been requested order the remaining loans as follows:

(1) Unsecured and/or least collateralized loans first.

(2) For loans with equivalent security, loans with the largest ''Amortization Factor'' first. (See Amortization Factors in attachment to this exhibit.)

3. The Process.

Each time a new loan is selected for write-down, deferrals (if applicable) must be recalculated as described in Section IV of this exhibit.

a. Conservation Easement write-down.

(1) Starting with the first loan selected for conservation easement write-down, determine whether a full write-down will permit a feasible plan in the applicable year. The applicable year is the first planning year if deferrals have not been considered. If deferrals have been considered it is the year after the end of the deferral period.

(2) If a full conservation easement write-down will achieve positive cash flow compute the amount of conservation easement write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount. No further servicing actions are required.

(3) If a full conservation easement write-down does not achieve a positive cash flow margin in the applicable year, recompute the debt repayment in the first planning year and the debt repayment in the year after the end of the deferral period (if applicable). Deferrals will have to be recalculated using the methods described in Section IV of this part.

(4) Continue selecting loans for conservation easement write-down and repeat this process until an acceptable cash flow margin is obtained in the applicable year or the maximum conservation easement write-down permitted by program regulation is obtained.

b. Debt Write-Down.

(1) Conservation easement write-down (if applicable) did not attain a positive cash flow margin in the applicable planning year. With the remaining loans, reprioritize their selection without regard to eligibility for conservation easements using the criteria described in section VI B 3 of this exhibit.

(2) Using debt write-down authority write down each of these loans until a positive cash flow margin is obtained in the applicable year. Compute the amount of write-down for that loan so that the balance available is equal to the debt repayment.

(3) If the present value of the future payment stream on remaining debt equals or exceeds the net recovery value of the collateral for FmHA or its successor agency under Public Law 103–354 loans then no further servicing actions are required.

C. Method 2.

Use this method only if Method 1 does not find a debt restructuring plan which will allow FmHA or its successor agency under Public Law 103–354 to continue with the borrower.

1. Criteria.

a. Loan terms are the maximum permitted by program regulation.

b. All other loans (except Softwood Timber loans), including the loan selected for write down will be at the minimum of the original note interest rate or the limited resource interest rate (if applicable).

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as required.

a. Unsecured and/or least collateralized loans first.

b. For loans with equivalent security, loans with the smallest present value factor first. (See Present Value Factor in Attachment 1 of this exhibit.) Note the Present Value Factor is independent of loan interest rate.

c. For loans with equal present value factor, loans with highest interest rate first.

3. The Process

Each time a new loan is selected for write-down all loans whose interest rates change according to the criteria in Section VI C1b of this exhibit will be rescheduled/reamortized using the new interest rate. Deferrals (if applicable) must also be recalculated as described in Section IV of this part.

a. Starting with the first loan selected for debt write-down, determine whether a full write-down will result in a positive cash flow margin in the applicable year. The applicable year is the first planning year if deferrals have not been used. If deferrals have been used, it is the year after the deferral period.

b. If a full debt write-down results in a positive cash flow compute the amount of write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount and test present value with net recovery value.

D. Net Recovery Value Test

1. Conservation Easements have been requested. The Net Recovery Value test is not applicable and no further servicing actions are required if all of the following are applicable:

a. The loan is eligible for conservation easement.

b. The write-down amount does not exceed the conservation easement write-down limit specified by program regulations.

c. All other loans written down were based on conservation easement authority.

2. If the present value of the repayment on remaining FmHA or its successor agency under Public Law 103–354 debt equals or exceeds the net recovery value of collateral a debt restructuring plan has been found which will keep the borrower on the farm and no further serving actions are required.

3. If a full write-down of a loan does not achieve a positive cash flow margin in the applicable year continue selecting loans for write-down and repeat this process until a positive cash flow margin is obtained in the applicable year or there are no other loans left to write-down.

VII. NET RECOVERY VALUE

DALR$ computes the net recovery value of collateral to obtain a value to use for the net recovery value test outlined in section VI C3b of this exhibit, as required in §1951.909(f) of this subpart. See exhibit I, ''Guidelines for Determining Adjustments for Net Recovery Value of Collateral,'' for guidance in determining the value of specific items in the net recovery alue calculations outlined have.

Net recovery value is computed for all FmHA or its successor agency under Public Law 103–354 Farmer Program loan security. If FmHA or its successor agency under Public Law 103–354's lien position or the amount of prior liens vary from item to item, separate net recovery values will be computed for each item which has a different lien structure. Example: FmHA or its successor agency under Public Law 103–354 has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-FmHA or its successor agency under Public Law 103–354 credit, and FmHA or its successor agency under Public Law 103–354 has a junior lien subject to the purchase money financing. In the case of the second tractor, FmHA or its successor agency under Public Law 103–354 subordinated its lien to another lender to finance repairs, thus, FmHA or its successor agency under Public Law 103–354 has a junior lien subject to the amount subordinated. In this example there would be three net recovery calculations, one for each tractor and one for the remaining equipment. The sum of the three calculations would be the net recovery value. The same logic applies to real estate security. Thus, the sum of all individual calculations will be the total net recovery value.

The general formula for net recovery value is as follows:

market value of security
minus prior liens
minus property taxes while in inventory
minus depreciation on property
minus management charges
minus repairs necessary for resale
minus legal and administrative fees
minus sales costs
minus advertising cost
Plus/minus increase/decrease in value while in inventory
minus interest cost while in inventory
minus miscellaneous expenses, if any
plus anticipated income while in inventory
equals net recovery value for security property
total of net recovery value for individual property items-net recovery value of collateral.

The individual items in the net recovery value formula are computed as follows:

1. Market value of security—the market value of the security based upon a current appraisal.

2. Prior liens—the total of all liens proceeding FmHA or its successor agency under Public Law 103–354's security interest, including past due taxes and assessments and subordinates.

3. Property taxes and assessments while in inventory—(annual tax and assessments due divided by 12)× average holding period in months.

4. Depreciation on property—Annual amount of depreciation determined by the County Supervisor, divided by 12)× average holding period in months.

5. Management charges—based upon methods of management used (acres under management × annual rate per acre) divided by 12× average holding period in months, or (net income on a monthly basis × percentage fee charged) × average holding period in months, or the anticipated monthly management and maintenance expense × average holding period in months, or the total of the appropriate combination of these.

6. Repairs—as determined necessary by County Supervisor.

7. Legal fees—determined with guidance from the State Director.

8. Sales costs—commission rate × market value of security.

9. Advertising—cost of three-week advertisement 1 time × (average holding period in months divided by 6, rounded to the nearest whole number).

10. Value increase/decrease—annual percentage divided by 12 × average holding period in months × market value.

11. Interest cost during inventory period—(interest rate on 90-day T-Bills × current market value) divided by 12 × average holding period, in months.

12. Average holding period for inventory, in months—determined by the State Director in accordance with FmHA or its successor agency under Public Law 103–354 Instructions.

13. Miscellaneous—any unusual or other expenses associated with acquiring, holding, or selling the property which are not covered by itemized expense items, such as hazardous waste cleanup and surveys.

14. Income—income received every month × average holding period in months + (total of non-monthly income received for the year divided by 12) × average holding period in months.

VIII. SUMMARY

At this point, DALR$ has finished its calculations. DALR$ will consider service programs to the point where a feasible plan has been achieved, or all farmer program loans have been written down completely. DALR$ will provide a report of the results of the calculations performed, including the present value test.

If DALR$ does not find a solution that will provide a feasible plan, FmHA or its successor agency under Public Law 103–354 will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for net recovery value, and consideration for Preservation Service Programs.

ATTACHMENT 1—FORMULAS USED IN DALR$ CALCULATIONS

I. AMORTIZATION FACTORS (AF)

There are two amortization factors used to compute equal annual installment debt repayments: (1) The amortization factor for interest bearing debt and, (2) The AF for non-interest bearing debt. The first AF is a function of both loan term and interest. The second AF is a function of loan term only.

A. Amortization factor for interest bearing debt

1. Notation: [AF](i,t) (AF=amortization factor)

2. $[AF](i,t)=[i\times(1+i)^5]/[(1+i)^t-1]$

where

a. ''t'' is the loan term (years)

b. ''i'' is the annual interest rate (decimal equivalent)

3. Calculation of the amortization factor for interest bearing debt

example: loan terms are 5% interest, 15 years (i=.05, t=15)

$AF=(.05\times(1+.05)^{15})/((1+.05)^{15}-1)$

AF=.09635

B. AF for non-interest bearing debt

1. Notation: [AF](0,t)

The notation is similar to the notation used for the AF of interest bearing debt except the interest rate is set equal to zero (0).

2. Formula

[AF](0,t)=1/t

Where

''t'' is the term of the loan (Years)

This factor is used to determine annual repayment of Non-capitalized debt. Accrued interest less than 90 days past due is one type of non-capitalized debt. Note: The AF formula for interest bearing debt reduces to this formula when interest is zero.

3. Calculation of the amortization factor non-interest bearing

example: loan term is 15 years

AF =1/15

AF = .06667

II. PRESENT VALUE FACTOR (PVF)

Present value is calculated when debt writedown is used. The present value of restructured loans is the sum of the present values of individual loans computed using these formulas.

There are two present value factors used to compute the present value of future payments. (1) The present value factor for single payments and (2) the present value factor for uniform series payments.

A. PVF for single repayments

1. Notation: [PV1] (id,t) (PV1=Present value 1 payment)

2. Formula

$[PV1]\ (id,t) =1/(1+id)^t$

where

a. ''t'' is the number of payments (years) from the ''present'' date. In all calculations, the ''present'' date is the effective date of proposed servicing actions.

b. ''id'' is the ''discount rate'' (annual decimal equivalent)

example: a payment will be received 45 years from the present date.

The discount rate is 7%

id = .07 t=45

$PV1=1/(1+.07)^{45} = .047613$

if the payment to be received is $50,000

$PV= PV1\times 50{,}000 = 2381$

B. PVF for uniform series of payments (equally amortized installments)

1. Notation: [PVS] (id,t) (PVS=Present value of series of equal payments)

2. Formula

$[PVS]\ (id,t) = [(1+id)^t-1] / [id\times(1+id)^t]$

Where

a. ''t'' is the number of payments (years) from the ''present'' date. In all calculations, the ''present'' date is the effective date of proposed servicing actions.

b. ''id'' is the ''discount rate'' (annual decimal equivalent)

example: a series of equal annual installments will be received annually for 30 years.

The discount rate is 7%

id =.07 t = 30

$PVS = [(1+.07)^{30}-1] / [.07\times(1+.07)^{30}] = 7.6031$

if the annual installment is $10,000

$PV= PVS\times 10{,}000 = 76{,}031$

III. JOINT AMORTIZATION FACTOR

This factor is used in the selection of loans for deferral and for write down. It is the weighted average of the amortization factors for interest bearing debt and non-interest bearing debt. When this factor is multiplied by the remaining balance on the loan it yields the equal annual installments for the loan.

A. Calculations

1. Notation: [JAF] (i,t)

2. Formula

[JAF] (i,t) = [(P × [AF] (i,t))+(P_{nc} x [AF](O,t))]/P_T

where:

''P'' is the sum of the principal balance plus the past due accrued interest.

''P_{nc}'' is the non-capitalizable portion of the accrued interest.

''P_T'' is the total debt and equal to P + P_{nc}

''[AF] (i,t)'', ''[AF] (O,t)'', ''t'' and ''i'' are as defined in paragraphs I.A. and I.B. in this attachment.

example: P=5,886 P_{nc}=581 P_T=6,467

i=.05(5%) t=15 (years)

[AF] (i,t)=.09635 [AF](0,t)=.06667

JAF=[(5886×.09635)+(581×.06667)/6467

JAF=.09369

Annual installment=P_T JAF

Annual installment=$606 (always round to next dollar)

IV. Average Month Outstanding

(FmHA or its successor agency under Public Law 103–354 Annual Operating Expense Loan):

This is the average number of months an FmHA or its successor agency under Public Law 103–354 loan of annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, loan(s) for annual operating expenses are estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months
15,000	3
8,000	2
6,000	4

Average Months=(3×15,000)+(2×8,000)+(4×6,000)
15,000 (total loans for annual oper. exp.)

Average Months=(45,000+16,00+24,000)/15,000

Average Months Outstanding=85,000/15,000

Average Months Outstanding=5.7 months
(Round to nearest tenth of month)

V. Partial Deferral

Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payment on that loan. Calculation of the partial deferral proceeds as follows:

Input Data

P: Loan Principal plus capitalizable accrued interest without write down.

N: Non-capitalizable interest without write down.

i: Interest Rate (decimal, annual basis)

t: Loan Term (Years)

n: Deferral period

r: Excess cash flow margin created in the first year with a full deferral of a loan.

Calculated/Formula Variables

R: Full payment on loan without deferral or write down
R=[(p×[AF](i,t)) + (N/t)]

R: Full payment on loan with deferral but no write down.

d: fraction of loan deferred, d=1–(r/R).

Output Information

Non-deferred Portion of Loan

P_1: Loan Principal plus capitalizable interest on nondeferred portion of loan.

N_1: Non-capitalizable interest on non-deferred portion of loan.

Deferred Portion of Loan

P_2: Loan Principal plus capitalizable interest on deferred portion of loan.

N_2: Non-capitalizable interest on deferred portion of loan.

The Process

1. Determine the order in which loans will be deferred based upon the JAF (section III of this attachment.

2. Determine amount of deferral necessary to achieve a feasible plan in the first year (compute variable d).

3. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion
P_1=(1–d) x P=(r/R) x P
N_1=(1–d) x N=(r/R) x N

Deferred Portion
P_2= P – P_1
N2=N – N_1

[53 FR 35718, Sept. 14, 1988]

Exhibit J–1—The Debt and Loan Restructuring System (DALR$)

(For applications filed for restructuring on or after November 28, 1990)

Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) primary loan service programs provide a large number of alternatives for restructuring an FmHA or its successor agency under Public Law 103–354 loan. The number of loans a borrower has increases the number of combinations of possible alternatives. It is difficult and virtually impossible to manually calculate all the potential combinations of servicing actions. To assure that all the various possible combinations of programs are considered, FmHA or its successor agency under Public Law 103–354 has developed the Debt and Loan Restructuring System (DALR$) for operation on the County Office computer system. FmHA or its successor agency under Public Law 103–354 personnel

will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ goes through.

I. WHAT IS DALR$?

DALR$ is a computerized decision support tool. This means that the computer assists the FmHA or its successor agency under Public Law 103–354 loan officer in calculating the various alternatives. For example, FmHA or its successor agency under Public Law 103–354 regulations specify criteria for determining the interest rate when loans are restructured. DALR$ will select an interest rate using the criteria in the regulations. Judgment decisions are made by the FmHA or its successor agency under Public Law 103–354 loan officer in evaluating the Farm and Home Plan and other information entered into the DALR$ system. DALR$ performs a series of mathematical calculations based upon predetermined criteria. These same calculations and procedures would be followed when calculations are performed manually. DALR$ also generates a printed summary of its computations for FmHA or its successor agency under Public Law 103–354 and the borrower.

II. DALR$ OPERATING SYSTEM

DALR$ operates on the AT&T 3B2 computer system in FmHA or its successor agency under Public Law 103–354 field offices. It runs under the UNIX (registered tm, AT&T) computer operating system. DALR$ also utilizes Prelude (registered tm, Venturcom) for data entry and storage functions. To operate DALR$, UNIX System V, version 2.0.5 or later and Prelude version 2.1 are required.

FmHA or its successor agency under Public Law 103–354 developed DALR$ to run under UNIX and Prelude because those systems have the capabilities necessary to allow for relatively rapid development, and are available in all FmHA or its successor agency under Public Law 103–354 offices. DALR$ will not run under DOS on personal computers. Due to lack of resources, FmHA or its successor agency under Public Law 103–354 does not plan to develop duplicate computing capabilities on personal computers. FmHA or its successor agency under Public Law 103–354 will provide copies of program diskettes and/or source code to interested parties upon request.

III. ADVANTAGES OF DALR$

The DALR$ system provides several benefits to FmHA or its successor agency under Public Law 103–354 borrowers:

A. *Speed of calculation*. Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

B. *Consistency*. The use of DALR$ assures that all calculations will be performed in the same way, and that the feasibility of all requests will be evaluated on the same calculation methods.

C. *Full consideration*. DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

D. *Reduction of errors*. Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. It is important to note, however, that DALR$ results are only as reliable as the input data.

IV. OVERVIEW

In arriving at a debt restructuring plan, DALR$ will take advantage of all primary loan service programs to maximize the borrower's ability to repay debt and remain on the farm and avoid loss to the government.

Several combinations of primary loan service programs may be necessary to keep the borrower on the farm and avoid losses to FmHA or its successor agency under Public Law 103–354. DALR$ will examine each combination until a feasible plan is reached or it is determined a feasible plan is not possible with full utilization of primary service programs.

DALR$ considers each primary servicing option order described in this exhibit until an appropriate solution is found. Each step increases FmHA or its successor agency under Public Law 103–354's level of assistance to the Borrower and, when applicable, includes the primary loan service programs provided by previous steps. If a feasible plan cannot be obtained by the use of primary loan servicing options, DALR$ will calculate the net recovery value of collateral. The following is a list of features in DALR$ for both primary loan servicing actions and net recovery value calculation.

A. DALR$ will apply the payment, including proceeds from the sale of non-essential assets, when loans are to be paid in full on the projected effective date shown in DALR$.

B. DALR$ will display a warning message to the operator when the Balance Available is sufficient to pay the account current without debt restructure. However, DALR$ will also continue to proceed with restructure of the debt.

C. DALR$ will reschedule/reamortize loans up to maximum terms with interest rates at

the minimum of original note interest rate or regular loan program rate.

D. DALR$ will reschedule/reamortize loans up to maximum terms with interest rates at the minimum of original note interest rate or applicable limited resource loan program rate.

E. DALR$ will defer loans at the maximum term and minimum interest rate permitted by program regulation until a feasible plan is obtained in the first year. Loans are selected for deferral so as to minimize debt repayments in the years after the deferral period. If deferral of a loan will result in an excess cash flow margin in the first year then a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

F. DALR$ will calculate a debt payment margin level which provides a 5 percent residual of the balance available to repay the restructured debt. If a feasible plan is not found using any combination of Primary Loan Servicing Options, then the calculations are redone using a 4 percent margin. This margin is reduced by whole percentage points until a feasible plan is found or until the margin falls below zero.

G. DALR$ will provide Softwood Timber (ST) loan deferral, when requested by borrower, to the maximum limits permitted by program regulations. Loan deferrals will be recalculated selecting ST loans first so as to:

1. Minimize any decrease in present value caused by conversion to ST loans, and

2. If regular deferrals are still needed to facilitate a feasible plan in the first year, minimize the increase in payments in the year after the expiration of deferral period.

A ST loan deferral has the same effect on current FmHA or its successor agency under Public Law 103–354 debt repayment as a full writedown of the same amount of debt. A ST loan deferral, however, will always have a greater present value. Therefore, after a loan is selected for ST deferral it will not be considered for writedown since this will always reduce present. value.

H. DALR$ will writedown loans in the order, at the interest rates, and in combination with other primary loan service programs to maximize the ability of the borrower to remain on the farm and avoid FmHA or its successor agency under Public Law 103–354 loan losses.

1. Conservation Easements

Conservation Easement writedown (when requested by the borrower) will be considered over debt writedown whenever such FmHA or its successor agency under Public Law 103–354 Instruction 1951–S consideration will not prevent development of a debt structuring plan which will keep the borrower on the farm.

2. Security Considerations

The FmHA or its successor agency under Public Law 103–354 County Supervisor will evaluate each loan and determine its writedown priority considering the degree of collateralization. Loans which are secured but have no collateral value will generally be selected for writedown before loans which are at least somewhat collateralized. There are three writedown security/collateral categories.

a. *Low:* These loans may be secured or unsecured and have no collateral value.

b. *Medium:* These loans are secured but do not have sufficient collateral value to fully protect the Government's interest.

c. *High:* These loans are secured and fully collateralized; the Government's interest is fully protected.

3. Methodology

a. Method 1 (See section IX B of this exhibit) will be used first to develop an acceptable restructuring plan which will keep the borrower on the farm. If a restructuring plan is not found which will keep the borrower on the farm then Method 2 (See section IX C of this exhibit for a full description) will be used to develop a restructuring plan.

b. For both Method 1 and Method 2 loan terms will be the maximum permitted by program regulations. Also, writedown amounts will be calculated so that the ''Balance Available'' to repay debt is equal to or as close as possible to the ''Debt Repayment'' plus a 5 percent cash flow margin.

c. Loans selected for regular deferral will remain deferred, but will be fully or partially written down if needed to obtain positive 5 percent cash flow margin. Loans converted to ST loans (if requested) will remain ST loans and will not be written down because writing down ST loans decreases present value.

I. If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA or its successor agency under Public Law 103–354 County Supervisor, and other Lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell assets, and/or improve security on FmHA or its successor agency under Public Law 103–354 debt. DALR$ will use the new/revised information which will include consideration or reconsideration of ST and/or conservation easement offers provided by the borrower and the FmHA or its successor agency under Public Law 103–354 County Supervisor. This will help to assure that the restructuring of existing FmHA or its successor agency under Public Law 103–354 debt will maximize the potential for the borrower to repay debt and remain on the farm and avoid FmHA or its successor agency under Public Law 103–354 loan losses.

J. DALR$ has the capability to accommodate the lifetime limitation on the number of writedowns/buyouts that a borrower may qualify for and the $300,000 statutory ceiling for debt writedown and debt writeoff.

K. DALR$ will calculate the Net Recovery Value for secured assets and other non-essential assets. In the Net Recovery Value calculation process. DALR$ will add or subtract the applicable liquidation costs to the current market value of the security.

V. Information Needed for the Calculation Process

The following information will be determined prior to running DALR$.

A. Determine Balance Available

Determine balance of funds available for debt repayment in the next planning year. This is the ''Balance Available in Year 1.'' This figure should be obtained from Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan.'' If loan deferrals and/or debt writedown is anticipated or is needed, also determine the Balance Available for debt repayment in the year after the end of the specified deferral period.

B. Determine Total Debt Repayment

Determine total debt repayment in the next planning year. This is the ''Debt Repayment in year 1.'' The total debt repayment should also be obtained from Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan.'' If loan deferrals and/or debt writedown is anticipated or needed, also determine the debt repayment in the year after the end of the specified deferral period. Included in this amount are:

1. *New FmHA or its successor agency under Public Law 103–354 long term loans.* New loans planned may affect repayment in the first planning year and/or the year after the end of the specified deferral period, depending on when the loan will be made and the repayment term. The equal annual payments on these new loans are included in the debt repayment calculations. Regular program interest rates (not limited resource rates) are input for all new loans. If it is determined that it is not possible to develop a feasible plan at regular program interest rates, DALR$ will use applicable limited resource rates in the final calculation process.

2. *FmHA or its successor agency under Public Law 103–354 Loan for annual operating expenses.* The amount of FmHA or its successor agency under Public Law 103–354 loan for annual operating expenses is the amount of annual operating expense loan principal which is due in the applicable planning year. The estimated average number of months the annual operating loan will be outstanding is also input into DALR$.

DALR$ will calculate the interest accrual on an annual production loan by multiplying the principal to be paid in the applicable planning year by the regular loan program interest rate (monthly decimal equivalent) and then by the average number of months the principal will be outstanding. See attachment 1, Formulas, for details.

Repayment of FmHA or its successor agency under Public Law 103–354 loans for annual operating expenses are first based on regular loan program interest rates. If it is determined that it is impossible to develop a feasible plan using regular loan program interest rates, DALR$ will change the interest rate to limited resource rates, if applicable.

If some of the principal will be carried over to future years then that portion is either:

a. Included with the new loan payments computed using the amortization factor over the applicable loan term at regular loan program interest rates, or

b. If the amount to be carried over is already included in an existing loan, it is rescheduled with the existing loan at the applicable term permitted by program regulation.

3. *Non-FmHA or its successor agency under Public Law 103–354 repayment and taxes.* It is necessary to include the total non-FmHA or its successor agency under Public Law 103–354 debt payments (principle and interest) and taxes (income and social security) to be repaid annually. If future loans are planned which will effect the first year or the year after the deferral period, the annual debt repayment for these future non-FmHA or its successor agency under Public Law 103–354 loans should also be included. This information should be obtained from Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan.''

C. Determination and Calculation of Unpaid Balance on Existing Loans

1. Obtain status information on each loan.

The status information date (accrual date) must be a date after the last payment or other transaction on the loan.

a. Principal balance.

b. Accrued interest balance including any deferred interest, if applicable.

2. For each loan DALR$ will compute the interest accrual to the proposed effective date for servicing actions.

Interest Accrual = P × Iex × NDAYS.

Where

a. ''P'' is the outstanding principal balance on the date on which loan status information was obtained.

b. ''Iex'' is the daily interest accrual (decimal equivalent) based on the existing interest rate for the loan. Daily interest accrual is equal to the existing annual interest rate divided by 365.

c. ''NDAYS'' is the number of days between the effective date and the status information date. If February 29 occurs between these two days it is not added to the number of days.

VI. Iterative Calculation Process

Once the Basic Borrower and loan information is determined and input into DALR$, the calculation process can begin. During the calculation process DALR$ will step through a computational procedure in which replication of the cycle will continue in an attempt to find a feasible plan.

A. Loan Payments To Be Made on the Effective Date

DALR$ will apply loan payments which are planned to be made on the effective date of the servicing actions. DALR$ only considers full pay off of loans. If a partial payment is anticipated, this amount must be processed prior to the running of DALR$.

If the balance available is greater than or equal to the 105 percent of debt repayment in year 1 and there are no delinquent loans, then no further servicing action in DALR$ are required.

B. Reschedule/Reamortize Delinquent Loans at Regular Rates

1. *Criteria.* DALR$ will attempt to reschedule/reamortize loans as needed to eliminate any delinquency. All delinquent loans will be rescheduled/reamortized.

The interest rate will be the minimum of:

a. the original note interest rate, or

b. the regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

2. *The Process.* a. Identify delinquent loans.

b. Recompute debt repayment in year 1.

c. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation, unless such maximum term will result in an excess cash flow margin above 5 percent. If such an excess cash flow margin exists, the following procedure will be used to obtain the optimum term for debt repayment.

(1) Loans will be selected in the order of the lowest security first.

(2) For loans with equal security, the secondary selection will be based on the loan with the lowest amortization factor.

(3) The final criteria will be the loan with the lowest present value.

(4) Reschedule/reamortize the loans at the new terms.

(5) Recompute the excess cash flow margin.

(6) Repeat steps (1) through (5) until there is no reduction in term whose increase in payments is less than or equal to the excess cash flow margin.

C. Reschedule/Reamortize Non-Delinquent Loans at Regular Rates

1. *Criteria.* If rescheduling/reamortization of the delinquent loans at regular rates and maximum terms fails to produce a feasible plan, DALR$ will attempt to reschedule/reamortize nondelinquent loans are regular rates.

The interest rate will be the minimum of:

a. the original note interest rate, or

b. the regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

2. *Loan Selection.* a. In selecting the loans for rescheduling/reamortization the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans, then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan, then that loan will not be rescheduled/reamortized.

3. *The Process.* a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation, unless such maximum term will result in an excess cash flow margin above 5 percent. If such an excess cash flow margin exists, loan term(s) will be reduced to minimize cash flow margin according to the process described above in section VI B 2 c of this exhibit.

D. Rescheduling/Reamortizing Non-Delinquent and Delinquent Loans at Limited Resource Rates

1. *Criteria.* If rescheduling/reamortization of all loans are regular rates and maximum terms fails to provide a feasible plan, DALR$ will attempt to reschedule delinquent loans at limited resource rates, if applicable.

New loans will have the maximum term permitted by the program regulation, using the limited resource interest rates (when applicable) which will be effective on the date of the servicing actions.

Interest accrual on the FmHA or its successor agency under Public Law 103–354 loan(s) for annual operating expenses will be at the limited resource rate (when applicable). The interest rate will be the minimum of:

a. The original note interest rate, or

b. The limited resource interest rate which will be in effect on the date the servicing actions are calculated.

2. *Loan Selection.* Refer to section VI C 2 of this exhibit for loan selection criteria.

3. *The Process.* Refer to the process outlined in section VI B 2 c of this exhibit. Loan normally will be rescheduled/reamortized at the maximum terms when limited resource rates are given.

VII. DEFERRALS

A. Deferral Period

1. Deferrals will only be beneficial if the cashflow margin will improve or debt service repayment decreases after the deferral period. This improvement must begin no later than six years after the current planning year, since the maximum deferral period is five years.

2. To determine the appropriate deferral period the County Supervisor and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

3. It is not necessary that deferrals provide a positive cash flow margin after the deferral period because it is still possible to obtain a positive cashflow margin with a combination of deferrals, debt writedown and the other primary loan service programs. However, to maximize the potential for the borrower to remain on the farm and avoid losses on FmHA or its successor agency under Public Law 103–354 loans, a new farm plan must be prepared by the FmHA or its successor agency under Public Law 103–354 County Supervisor and borrower for the year after the end of the selected deferral period.

B. Deferrals

1. *Criteria.*

a. Loans which have been rescheduled/reamortized previously in DALR$ will be rescheduled/reamortized at the same interest and term.

b. Other loans which have not been previously rescheduled/reamortized in DALR$ will be rescheduled/reamortized as follows:

(1) Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

(2) The interest rate will be the minimum of:

(A) The original note interest rate, or

(B) The loan program interest rate (limited resource, if applicable) in effect on the date of the servicing action calculations.

2. *Loan selection.* This selection process will assure that after a positive cash flow margin is achieved in the 1st year, the cash flow margin in the year after the deferral period will be the greatest.

a. Calculate the payment after the deferral period for each loan eligible for deferral. This is only a side calculation to determine the best order of selection. A deferral will decrease the payments in the 1st planning year and increase the payments in the year after the deferral expires.

b. For each loan compute the ratio of the increase in ''after deferral period'' payment to the decrease in 1st year payment.

c. The loan with the smallest ratio is deferred first and so on until the balance available is greater than or equal to debt repayment in year 1.

3. *The Process.* a. Reschedule/reamortize unequal payment schedule loans and other loans not previously rescheduled except ST loans which have not been rescheduled/reamortized in previous steps. Such rescheduling may result in a temporary decrease in cash flow margin.

b. Taking one loan at a time, defer the selected loan, recompute the debt repayment in year 1. Also compute the debt repayment in the year after the end of the deferral period.

c. If a five percent margin exists between the balance available and the debt repayment in year 1 and the five percent margin exists in the year after the end of the deferral period, then no further servicing actions are required.

d. If the margin between balance available and the debt repayment in year 1 is greater than five percent, then this implies that the last loan deferred did not require a full deferral.

(1) For the last loan selected, compute amount of partial deferral necessary to achieve the required margin between balance available and debt repayment in year 1.

(2) Recompute payments for this loan during the deferral period and the years after the expiration of the deferral period.

(3) If in the year after the end of the deferral period, a five percent margin exists between the balance available and the debt repayment, then no further servicing actions are required.

4. *Partial deferrals.* a. Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payments on that loan. A partial deferral is created by splitting an existing loan into two distinct parts (nondeferred and deferred). Within the deferral/writedown module, the two parts are seen as two separate loans. When partial loans are created a new loan entry is added to the deferral/write down module data table. The loan that is split to make the partially deferred loan is split so that the principal and interest are separated by the same amount (percent wise), i.e., a new partially deferred loan may consist of 25% of the original loan principal, 25% of the original interest.

b. Examples:

Case 1: Partial Deferral Without Writedown

Situation: A full deferral is more than is needed to achieve a positive cash flow margin in year 1. A full payment on the loan will produce a negative cash flow margin in year 1.

The Process

(1) Determine amount of deferral necessary to achieve a feasible plan in the first year.

''d'' is the fraction of the loan which must be deferred. This fraction is applied to the principal (P).

''r'' is the amount of cash flow margin in the first year with a full deferral. ''R'' is the debt repayment on the loan in the first year without deferral.

$d=1-(r/R)$

(2) Calculate portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-Deferred portion

$P1=(1-d)\times P=(r/R)\times P$

Deferred Portion

$P2=P-P1$

Case 2: Partial Deferral With Writedown

Writedown is required for a feasible plan. In this situation the writedown and partial deferral must yield a payment which exactly meets the borrower's ability to repay debt. This will maximize the ''Present Value'' and the borrower's ability to remain on the farm.

Situation: The loan is partially deferred to achieve a feasible plan in the first year. The payments in the year after the end of the deferral period exceed the borrower's ability to pay even with a partial deferral. Writedown is necessary to achieve a feasible plan. The loan which is partially deferred has been selected as the next loan to writedown based upon writedown selection criteria.

Writedown Sequence: (A) The principal (on the deferred portion of the loan) is then written down until a feasible plan is achieved or the principal is fully written down.

(B) At this point the deferred portion of the loan has been fully written down, but a feasible plan has not yet been found. The subject loan is now a nondeferred loan with reduced principal and reduced interest. This new loan must now compete for selection for writedown with all remaining loans based on the writedown selection criteria.

VIII. SOFTWOOD TIMBER

A. Criteria

1. Loan terms will be the maximum permitted by program regulation.

2. The interest rate will be the minimum of: a. the original note interest rate, or

b. the Softwood Timber program interest rate which will be in effect on the date of the servicing action calculations.

3. The rescheduled/reamortized principal amount of Softwood Timber loans will not exceed the maximum amount permitted by program regulation or the amount needed to develop a feasible plan, whichever is less.

B. Loan Selection

Loans will be selected for the Softwood Timber loan program to maximize the present value after conversion to Softwood Timber, thus avoiding loan losses.

1. Cancel all previously calculated deferrals.

2. For each loan compute the present value before and after conversion to a Softwood Timber loan. Then compute the decrease in present value (note: for loans in which the present value increases this will be a negative number).

3. For each loan compute the ratio of the decrease in present value to the decrease in first year repayment after conversion to a Softwood Timber loan.

4. Select the loan with the smallest (or most negative) ratio first.

5. If loans have equal ratios, select the loan having the least security among these loans first. Softwood Timber loans will have new security instruments. This will improve the FmHA or its successor agency under Public Law 103–354 security and could increase present value if writedown is required for other loans.

C. The Process

1. Starting with the first loan in the list of loans ordered to minimize decrease in present value, convert the loan to Softwood Timber.

2. Continue this process until the maximum limit for Softwood Timber conversion is reached or a feasible plan is possible in the first year.

3. If a loan is only partially converted then create a new loan identity for the partially converted loan. The portion not converted retains the same interest rate and term prior to the conversion to Softwood Timber.

4. If fully utilizing Softwood Timber loan conversion authorities do not result in a feasible plan in the first year rework the loan deferral calculation described in section IV of this exhibit (if applicable). Do not include the loans selected for Softwood Timber loans in the reworking of the deferral calculations.

5. If conversion to a Softwood Timber loan will permit a feasible plan to be developed (with or without deferrals) no further servicing actions are required.

IX. WRITEDOWN

DALR$ will attempt to find a feasible plan with debt writedown when all primary loan servicing options fail. Writedown of loans will proceed with Conservation Easement

writedown (Method 1 below) first. If Conservation easement writedown does not provide a feasible plan, then regular debt writedown (Method 2 below) will be attempted.

A. Status

Debt repayments are at their absolute minimum, a feasible plan is still not possible in the first year and/or the year after the end of the deferral period (if applicable).

1. At this point consideration of primary loan service programs has had the following result:

a. If the borrower plans to make payments prior to the servicing actions, these payments have been applied to loans to reduce indebtedness.

b. All delinquent loans have been rescheduled/reamortized.

c. All existing FmHA or its successor agency under Public Law 103–354 loans have been considered for rescheduling/reamortization.

d. Deferrals have been computed for borrowers when the cash flow margin in the year after the deferral period was higher than the cash flow margin in the first year.

e. Loans have been converted to Softwood Timber loans (when requested by the Borrower) to the maximum extent permitted by program regulations.

(1) FmHA or its successor agency under Public Law 103–354 loans for annual operating expenses and all proposed new loans have been computed at limited resource rates (when applicable).

(2) All loans are at the lowest interest rate and maximum term permitted by program regulations.

B. Method 1

Provide Conservation Easement writedown on eligible loans, when requested by the borrower, to the maximum limits permitted by program regulations. Conservation Easements will be the first writedown considered in this method. If a feasible plan is not obtained using conservation easements, then the remaining loans will be written down using debt writedown authority.

1. *Criteria.* a. Only loans secured by real estate are eligible for conservation easement writedown.

b. Interest rates, loan terms, loans selected for deferral (if applicable) do not change from the status described in section IX A of this exhibit. That is, debt repayment is at the absolute minimum.

c.Loans converted to Softwood Timber loans will not be written down.

2. *Loan Selection.* Loans will be selected in the following order for full or partial writedown as necessary:

a. Place all loans eligible for conservation easements in a single group. Of these loans, order them for selection as follows:

(1) Least collateralized loans first.

(2) For loans with equivalent collateralization, loans with the largest ''Amortization Factor'' first. (See Amortization Factors in Attachment 1 to this exhibit.)

b. If a feasible plan is not obtained using conservation easements or conservation easement writedown had not been requested, order the remaining loans as follows:

(1) Unsecured and/or least collateralized loans first.

(2) For loans with equivalent security, loans with the largest ''Amortization Factor'' first. (See Amortization Factors in attachment to this exhibit.)

3. *The Process.* Each time a new loan is selected for writedown, deferrals (if applicable) must be recalculated as described in section VII of this exhibit.

a. *Conservation Easement writedown.* (1) Starting with the first loan selected for conservation easement writedown, determine whether a full writedown will permit a feasible plan in the applicable year. The applicable year is the first planning year if deferrals have not been calculated. If deferrals have been calculated, it is the year after the end of the deferral period.

(2) If a full conservation easement writedown will achieve positive cash flow, compute the amount of conservation easement writedown so that a five percent margin exists between the balance available and debt repayment. Reschedule/reamortize the loan for the new principal amount. No further servicing actions are required.

(3) If a full conservation easement writedown does not achieve a positive cash flow margin in the applicable year, recompute the debt repayment in the first planning year and the debt repayment in the year after the end of the deferral period (if applicable). Deferrals will have to be recalculated using the methods described in section VII of this part.

(4) Continue selecting loans for conservation easement writedown and repeat this process until an acceptable cash flow margin is obtained in the applicable year or the maximum conservation easement writedown permitted by program regulation is obtained.

b. *Debt writedown.* (1) Conservation easement writedown (if applicable) did not attain a positive cash flow margin in the applicable planning year. With the remaining loans, reprioritize their selection without regard to eligibility for conservation easements using the criteria described in section IX B 2 of this exhibit.

(2) Using debt writedown authority write down each of these loans until a positive cash flow margin is obtained in the applicable year. Compute the amount of writedown for that loan so that a five percent margin exist between the balance available and the debt repayment.

(3) If the present value of the future payment stream on remaining debt plus the value of conservation easements exchanged for debt writedown equals or exceeds the net recovery value of the collateral for FmHA or its successor agency under Public Law 103–354 loans, then no further servicing actions are required.

C. Method 2

Use this method only if Method I does not find a debt restructuring plan which will allow FmHA or its successor agency under Public Law 103–354 to continue with the borrower.

1. *Criteria.* a. Loan terms are the maximum permitted by program regulation.

b. All other loans (except Softwood Timber loans), including the loan selected for writedown will be at the minimum of the original note interest rate or the limited resource interest rate (if applicable).

2. *Loan selection.* Loans will be selected in the following order for full or partial writedown as required.

a. Unsecured and/or least collateralized loans first.

b. For loans with equivalent security, loans with the smallest present value factor first. (See Present Value Factor in attachment 1 of this exhibit.) Note the Present Value Factor is independent of loan interest rate.

c. For loans with equal present value factor, loans with highest interest rate first.

3. *The process.* Each time a new loan is selected for writedown all loans whose interest rates change according to the criteria in section IX C 1 b of this exhibit will be rescheduled/reamortized using the new interest rate. Deferrals must also be recalculated as described in section VII of this part.

a. Starting with the first loan selected for debt writedown, determine whether a full writedown will result in the appropriate cashflow margin in the applicable year. The applicable year is the first planning year if deferrals have not been used. If deferrals have been used, it is the year after the deferral period.

b. If a full debt writedown results in a positive cash flow compute the amount of writedown so that a five percent margin exists between the balance available and debt repayment. Reschedule/reamortize the loan for the new principal amount and test present value with net recovery value.

c. If the amount of debt writedown calculated in Method 2 exceeds $300,000 in order to obtain a positive cash flow, no other calculations will be computed. The criteria and calculations explained in section X, ''Net Recovery Value,'' will be used.

X. NET RECOVERY VALUE

DALR$ computes the net recovery value of collateral to obtain a value to use for the net recovery value test referred to in section IX 6 3 b of this exhibit, as required in §1951.909 (f) of this subpart. See exhibit I, ''Guidelines for Determining Adjustments for Net Recovery Value of Collateral,'' for guidance in determining the value of specific items in the net recovery value calculations outlined below.

Net recovery value is computed for all FmHA or its successor agency under Public Law 103–354 Farmer Program loan security and other non-essential assets. If FmHA or its successor agency under Public Law 103–354's lien position or the amount of prior liens vary from item to item, separate net recovery values will be computed for each item which has a different lien structure. Example: FmHA or its successor agency under Public Law 103–354 has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-FmHA or its successor agency under Public Law 103–354 credit, and FmHA or its successor agency under Public Law 103–354 has a junior lien subject to the purchase money financing. In the case of the second tractor, FmHA or its successor agency under Public Law 103–354 subordinated its lien to another lender to finance repairs, thus, FmHA or its successor agency under Public Law 103–354 has a junior lien subject to the amount subordinated. In this example there would be three net recovery calculations, one for each tractor and one for the remaining equipment. The sum of the three calculations would be the net recovery value. The same logic applies to real estate security. Thus, the sum of all individual calculations will be the total net recovery value.

A. The general formula for net recovery value is as follows:

market value of security
minus prior liens
minus property taxes while in inventory
minus depreciation on property
minus management charges
minus repairs necessary for resale
minus legal and administrative fees
minus sales costs
minus advertising cost
plus/minus increase/decrease in value while in inventory
minus interest cost while in inventory
minus miscellaneous expenses, if any
plus anticipated income while in inventory
equals net recovery value for security property
total of net recovery value for individua1 property items—net recovery value of collateral

The above formula is modified for non-essential assets and unaccounted for security.

B. The individual items in the net recovery value formula are computed as follows:

1. Market value of security—the market value of the security based upon a current appraisal.

2. Prior liens—the total of all liens preceding FmHA or its successor agency under Public Law 103–354's security interest, including past due taxes and assessments and subordinations.

3. Property taxes and assessments while in inventory—(annual tax and assessments due divided by 12) × average holding period in months.

4. Depreciation on property—Annual amount of depreciation determined by the County Supervisor, divided by 12 × average holding period in months.

5. Management charges—based upon methods of management used, (acres under management × annual rate per acre) divided by 12 × average holding period in months, or (net income on a monthly basis × percentage fee charged) × average holding period in months, or the anticipated monthly management and maintenance expense × average holding period in months, or the total of the appropriate combination of these.

6. Repairs—as determined necessary by County Supervisor.

7. Legal fees—determined with guidance from the State Director.

8. Sales costs—commission rate × market value of security.

9. Advertising—cost of three-week advertisement 1 time × (average holding period in months divided by 6, rounded to the nearest whole number).

10. Value increase/decrease—annual percentage divided by 12 × average holding period in months × market value.

11. Interest cost during inventory period—(interest rate on 90-day T-Bills × current market value) divided by 12 × average holding period, in months.

12. Average holding period for inventory, in months—determined by the State Director in accordance with FmHA or its successor agency under Public Law 103–354 Instructions.

13. Miscellaneous—any unusual or other expenses associated with acquiring, holding, or selling the property which are not covered by itemized expense items, such as hazardous waste cleanup and surveys.

14. Income—income received every month × average holding period in months + (total of non-monthly income received for the year divided by 12) × average holding period in months.

XI. Summary

At this point, DALR$ has finished its calculations. DALR$ will consider service programs to the point where a feasible plan has been achieved, or all farmer program loans have been written down completely. DALR$ will provide a report of the results of the calculations performed, including the present value test.

If DALR$ does not find a solution that will provide a feasible plan, FmHA or its successor agency under Public Law 103–354 will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for net recovery value, and consideration for Preservation Service Programs.

Attachment 1—Formulas Used in DALR$ Calculations

(For Applications filed for restructuring on or after November 28, 1990)

I. Loan Amortization Factors

Loan amortization factors are calculated using the following equations:

A. Non-deferred Loan

$$A=[(i(1+i)^n)/((1+i)^n-1)]$$

A—amortization factor
i—interest rate
n—term

B. Deferred Loan

$$A=[((i(1+i)^{n-t})/((1+i)^{n-t}-1))+((i\times t)/(^{n-t}))]$$

A—amortization factor
i—interest rate
n—term
t—deferral period

C. Deferred Interest $A=1/(n-t)$

A—amortization factor
n—term
t—deferral period

II. Loan Payment Calculations

Loan payments are calculated using the amortization factors rounded to five places. The equations used to calculate the loan payments are:

$$P_1=(p+c)(a_1)$$

P_1—payment
p—loan principal
c—interest
a_1—amortization factor

Note—P_1 (payment rounded up to the next dollar if it is not an even dollar payment.

$P_2=(n)(a_2)$

P_2—payment on the deferred interest
n—deferred interest
a_2—amortization factor for the deferred interest portion

Note—P_2 (payment on the deferred loan portion) is rounded up to the next dollar if it is not an even dollar payment.

$P_3=P_1+P_2$

P_3—final loan payment

P_1—payment on the loan portion
P_2—payment on the deferred interest portion

III. PRESENT VALUE CALCULATIONS

The net present value factors for each loan are calculated using the following equations:

A. Non-Deferred Loan

$P=[((1+i)^n-1)/(i(1+i)^n)]$
P—net present value factor
i—discount rate
n—term

B. Deferred Loan

$P=[[((1+i)^{n-t}-1)/(i(1+i)^{n-t})]/(1+i)^t]$
P—net present value factor
i—discount rate
n—term
t—deferral period

The loan net present is calculated using the following equation:

NPV=(P)(p)
NPV—loan net present value
P—loan net present value factor
p—loan payment

IV. CALCULATION FOR UP TO 105% OF DEBT SERVICE MARGIN

Explanation of Terms:

Original Balance Available is the Balance available established by the Loan Officer.

Debt Service Margin is set by the System initially at 1.05 and reduced incrementally by .01 to 1.00.

Following are the calculation and processing logic.

Debt Service Margin=1.05

While the Debt Service Margin>=1.00 Do The Following

Balance Available=Original Balance Available/Debt Service Margin
Deferral Balance Available=Original Deferral Balance Available/Debt Service Margin

Process all debt restructuring calculation within the While Loop, i.e.

Reschedule/Reamortize Loans
Deferral of Payments
Write-down the Principal of the Loan, No Deferral of Payments
Write-down the Principal of the Loan, with Deferral of Payments

If a Feasible Plan has not been found or Debt Service Margin ≤1.00 Then:

Debt Service Margin=Debt Service Margin−.01
Loop back up to the ''While'' loop
End of While Do Loop

(Break out of the ''While'' loop and complete processing of the DALR$ SYSTEM)

V. CALCULATION AND LOGIC FOR $300,000 DEBT WRITEDOWN AND DEBT WRITEOFF LIMITATION

Explanation of Terms:

Present Value of the Restructured Principal is the value of the debt payments made over the life of the loan in today's dollars.

Principal After Restructuring is the total debt after any outstanding interest is included and any writedown amount is deducted.

Writedown Amount is the amount the principal of the FmHA or its successor agency under Public Law 103–354 debt was reduced to yield a feasible plan.

Debt Service Margin=Balance Available/Total Debt Payments
Net Recovery Value of the Assets=Dollar Value realized by the liquidation of Assets
Writeoff=FmHA or its successor agency under Public Law 103–354 Debt Before Attempting Restructuring (i.e. principal and interest before servicing)−Net Recovery Value of the Assets

Basic Code Logic:

Following are the calculation and processing logic in the program.

If 1st year cash available is less than or equal to 0 and Debt Service Margin is equal to 1.00—

Then
If Writeoff is greater than $300,000
Then
Borrower is not eligible for Net Recovery Buyout
Else
Offer Net Recovery Buyout
Else
If Writedown Amount ≤ $300,000
Then
If Present Value of the Restructured Principal ≥ Net Recovery Value of the Assets
Then
A Feasible Plan has been found to restructure the farmer's debt
Else
If Debt Service Margin is equal to 1.00
Then
If Writeoff ≤ $300,000
Then
Offer Net Recovery Buyout
End Processing of Debt Restructuring
Else
The Borrower is not eligible for debt forgiveness
End Processing of Debt Restructuring
Else
Reduce Debt Service Margin by .01
Retry Debt Restructuring at the lower Debt Service Margin

VI. CALCULATION OF AVERAGE NUMBER OF MONTHS OUTSTANDING FOR AN FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 ANNUAL OPERATING LOAN

This is the average number of months an FmHA or its successor agency under Public

Law 103–354 loan for annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, loan(s) for annual operating expenses are estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months
15,000	3
8,000	2
6,000	4

Average Months=(3×15,000)+(2×8,000)+(4×6,000) 15,000 (total loans for annual operating expense)

Average Months=(45,000+16,000+24,000)/15,000

Average Months Outstanding=85,000/15,000

Average Months Outstanding=5.7 months (Round to nearest tenth of month)

[57 FR 18664, Apr. 30, 1992, as amended at 58 FR 30106, May 26, 1993]

EXHIBIT K—NOTIFICATION OF CONSIDERATION FOR PRESERVATION LOAN SERVICE PROGRAMS

Dear (Borrower's Name):

This notice is to inform you that you are being considered for Preservation Loan Service Programs (Homestead Protection and leaseback/Buyback). You applied for these programs when you applied for Primary Loan Service Programs (debt restructuring).

FmHA or its successor agency under Public Law 103–354 was unable to assist you to restructure your FmHA or its successor agency under Public Law 103–354 loans with Primary Loan Service Programs. We will continue to consider you for Homestead Protection and Leaseback/Buyback. We will, however, need the following additional information to complete our processing of your request:

1.
2.
3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Preservation Loan Servicing and you will be notified of your right to appeal FmHA or its successor agency under Public Law 103–354's adverse decision.

If you wish to withdraw your request for Preservation Loan Servicing Program, please complete and return the enclosed Attachment 1, ''Response to Notification of Consideration for Preservation Loan Service Programs,'' within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—INSERT EQUAL CREDIT OPPORTUNITY PARAGRAPH]

Sincerely,

County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354,

U.S. Department of Agriculture

ATTACHMENT 1—RESPONSE TO NOTIFICATION OF CONSIDERATION FOR PRESERVATION LOAN SERVICE PROGRAMS

TO: County Supervisor, Farmers Home Administration or its successor agency under Public Law 103–354.

FROM: (Please Print your Name and Address).

I have read the Notification of Consideration for Preservation Loan Service Programs which I received with this response form.

I want to withdraw my request for preservation loan servicing.

_____

Borrower's Signature

_____

(Date)

[53 FR 35718, Sept. 14, 1988]

EXHIBIT L—HOMESTEAD PROTECTION PROGRAM AGREEMENT

This agreement is entered into this _____ day of _____, 19___, by and between the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) of the United States Department of Agriculture and _____ (''Borrower'').

Concurrently, with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA or its successor agency under Public Law 103–354 1955–1 to FmHA or its successor agency under Public Law 103–354. The Homestead Protection Program Agreement is subject to the provisions of 7 CFR part 1955, subpart A. If FmHA or its successor agency under Public Law 103–354 acquires title to the Homestead Protection property by foreclosure during the processing of a pre-acquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given Homestead Protection rights pursuant to §1951.911(b) (2)(iii) of 7 CFR part 1951, subpart S.

A. Borrower has received a loan or loans from FmHA or its successor agency under Public Law 103–354 secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FmHA or its successor agency

under Public Law 103–354 loan(s) may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FmHA or its successor agency under Public Law 103–354 loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FmHA or its successor agency under Public Law 103–354 acquires title to it.

D. FmHA or its successor agency under Public Law 103–354 has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FmHA or its successor agency under Public Law 103–354 agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FmHA or its successor agency under Public Law 103–354 agrees to lease the Homestead Protection property, as more particularly described in Attachment 1 attached hereto, to Borrower on the terms and conditions set forth in the lease attached hereto as Attachment 2 (the ''lease''). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FmHA or its successor agency under Public Law 103–354's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FmHA or its successor agency under Public Law 103–354 acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be _____ years. This term will be inserted in the lease.

5. The rent to be charged Borrower during the term of the lease will be determined by FmHA or its successor agency under Public Law 103–354 as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. This amount will be determined prior to execution of this agreement. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA or its successor agency under Public Law 103–354 1955–20. If the Borrower disagrees with the rent determined by the County Supervisor, the borrower can appeal this determination pursuant to 7 CFR part 1900, subpart B.

6. Borrower agrees to cooperate with FmHA or its successor agency under Public Law 103–354 in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FmHA or its successor agency under Public Law 103–354 will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not started on or before 2 years from the date of the agreement, the agreement shall end and be of no further force or effect.

Farmers Home Administration or its successor agency under Public Law 103–354

By:_____

Borrower:

_____

_____

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA or its successor agency under Public Law 103–354 1955–20.

[57 FR 18669, Apr. 30, 1992]

EXHIBIT M—HOMESTEAD PROTECTION PROGRAM LETTER

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Insert Address)

NOTICE OF THE AVAILABILITY OF HOMESTEAD PROTECTION

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FmHA or its successor agency under Public Law 103–354 acquired the property which was security for your FmHA or its successor agency under Public Law 103–354 loan. FmHA or its successor agency under Public Law 103–354 has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm outbuildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 90 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you may contact the County Supervisor at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Homestead Protection Program.

Sincerely,

County Supervisor.

[53 FR 35718, Sept. 14, 1988]

EXHIBIT N—LEASEBACK/BUYBACK AGREEMENT

This agreement is entered into this _____day of_____, 19_____, by and between the Farmers Home Administration or its successor agency under Public Law 103–354 (''FmHA or its successor agency under Public Law 103–354'') of this United States Department of Agriculture and _____(''Lessee'').

Concurrently with execution of the agreement the borrower must deliver a completed Form FmHA or its successor agency under Public Law 103–354 1955–1 to FmHA or its successor agency under Public Law 103–354. This agreement is subject to the provisions of 7 CFR part 1955, subpart A. If FmHA or its successor agency under Public Law 103–354 acquires title to the leaseback/buyback during the processing of a pre-acquisition Leaseback/Buyback Agreement, processing of the agreement will be terminated and the owner will be given leaseback/buyback rights pursuant to §1951.911(a)(1)(ii) of 7 CFR part 1951, subpart S.

A. Lessee is eligible for the FmHA or its successor agency under Public Law 103–354 leaseback program under 7 CFR part 1951, subpart S, for the real property described on the enclosed attachment 2 (the ''leaseback property'').

B. FmHA or its successor agency under Public Law 103–354 has not yet acquired title to the leaseback property but agrees to lease it to Lessee on the following terms and conditions when FmHA or its successor agency under Public Law 103–354 acquires clear title to it:

1. Subject to the terms and conditions set forth below, FmHA or its successor agency under Public Law 103–354 agrees to lease the leaseback property to Lessee on the terms and conditions set forth in the lease, Form FmHA or its successor agency under Public Law 103–354 1955–20. Borrower agrees to enter into the lease of the leaseback property.

2. FmHA or its successor agency under Public Law 103–354's obligation to enter into the lease of the leaseback property is subject to the occurrence of the following conditions.

a. FmHA or its successor agency under Public Law 103–354 acquires clear title to the leaseback property in connection with the liquidation of the owner's interest in that property.

b. If someone other than the Lessee is eligible for and has or may exercise Homestead Protection rights under 7 CFR part 1951, subpart S, the leaseback property will be reduced by the Homestead Protection property. FmHA or its successor agency under Public Law 103–354's obligation to lease the remaining leaseback property is contingent on FmHA or its successor agency under Public Law 103–354's determination that all State and local laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased have been satisfied.

3. The term of the lease will begin on the date the latter of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be _____ years. This term will be inserted in the lease.

5. The rent will be an amount equal to that for which similar properties in the area are being leased. This amount will be determined prior to the execution of this agreement and the agreed upon rent entered in the lease form, Form FmHA or its successor agency under Public Law 103–354 1955–20. If the Lessee disagrees with the rents determined by the County Supervisor, the Lessee can appeal this determination pursuant to 7 CFR part 1900, subpart B.

6. The property, upon acquisition by FmHA or its successor agency under Public Law 103–354, will be subject to any applicable USDA restrictions regarding the use of property containing wetlands, floodplains and/or highly erodible lands.

7. If the lease term has not started on or before 2 years from the date of this agreement, the agreement will end and be of no further force or effect. The borrower may appeal this decision pursuant to 7 CFR part 1900, subpart B.

Farmers Home Administration or its successor agency under Public Law 103–354 Lessee

By: _____

_____

County Supervisor

Date: _____

[57 FR 18670, Apr. 30, 1992]

EXHIBIT O—NOTICE OF AVAILABILITY OF LEASEBACK/BUYBACK

(For use by the County Supervisor to advise a former owner who held title to the property of the availability of leaseback/buyback)

United States Department of Agriculture
Farmers Home Administration or its successor agency under Public Law 103–354

(Location)

Certified Mail
Return Receipt Requested

(Name and Address)

Date: _____

Dear _____:

The farm that you once owned may be available for you to buy or lease under certain conditions set out in Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) leaseback/buyback regulations, 7 CFR part 1951, subpart S. FmHA or its successor agency under Public Law 103–354 acquired this property on _____. The FmHA or its successor agency under Public Law 103–354 leaseback/buyback program may permit you to lease or purchase the property. You may select the terms of the lease which may be from 1 year to 5 years. The purchase may be for cash or under certain circumstances FmHA or its successor agency under Public Law 103–354 may be able to finance the purchase of the property through a credit sale. If you would like to know more about the leaseback/buyback program, please contact the County Supervisor at _____. In order to be considered for leaseback/buyback, you must make application at the County Office not later than (enter the date 180 days from acquisition or period longer than 180 days if applicable State laws prescribe a longer period). We recommend that if you are interested in leasing or purchasing the property, you should immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

[If the borrower was an individual] If you are not interested in purchasing or leasing the property and if you have a spouse or child who are actively engaged in farming, they have a preference to buy or lease the property. It will be your responsibility to notify your spouse and child of their possible rights to lease or buy the property. You should have them contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must make application not later than (enter the date 190 days from date of acquisition or period longer than 190 days if applicable State laws prescribe a longer period). If you have a spouse or child that are interested in leasing or purchasing the property, we recommend they immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

[If the borrower was an entity] If you are not interested in purchasing or leasing the property the shareholders (if the borrower was a corporation owned exclusively by members of the same family), partners (if the borrower was a partnership whose partners are exclusively members of the same family), or members (if the borrower was a joint operation or cooperative whose members are exclusively members of the same family) may have a preference to lease or purchase the farm. In order to qualify for leaseback/buyback the individual must be actively engaged in farming. You must have these people contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the Ieaseback/buyback program they must make application not later than (enter the date 190 days from date of acquisition or period longer than 190 days if applicable State laws prescribe a longer period). If any of these individuals are interested in leasing or purchasing the property, we recommend they immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

Under some circumstances, an operator (lessee) of the property at the time FmHA or its successor agency under Public Law 103–354 acquired it may have a preference in leasing and purchasing the property. Please advise us immediately of the name and address of any lessee of the farm who was operating the farm when FmHA or its successor agency under Public Law 103–354 acquired it.

[If the property has a dwelling] This property has a dwelling which is subject to the FmHA or its successor agency under Public Law 103–354 Homestead Protection regulations 7 CFR 1951, subpart S. If you are eligible for Homestead Protection, you will be notified in a separate letter. If someone else has Homestead Protection rights, then Homestead Protection rights will take priority over leaseback/buyback rights.

Failure to apply for leaseback/buyback by (insert date 180 days from date of acquisition or longer period than 180 days if applicable State laws prescribe a longer period) will terminate any rights that you have to purchase or lease the property under the leaseback/buyback regulations.

Sincerely,

COUNTY SUPERVISOR.

[57 FR 18670, Apr. 30, 1992]

EXHIBIT P—NOTICE OF AVAILABILITY OF LEASEBACK/BUYBACK

(For use by the County Supervisor to advice operators of the availability of leaseback/buyback)

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Date: _____

Dear: _____

The farm that was previously owned by _____ (former owner) and operated (leased) by you may be available for you to purchase or lease under certain conditions set out in Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) leaseback/buyback regulations 7 CFR part 1951, subpart S. The FmHA or its successor agency under Public Law 103–354 leaseback/buyback program may permit you to lease or purchase the property. You may select the term of the lease which may be from 1 year to 5 years. The purchase may be for cash or under certain circumstances FmHA or its successor agency under Public Law 103–354 may be able to finance the purchase of the property through a credit sale. If you would like to know more about the leaseback/buyback program, please contact the FmHA or its successor agency under Public Law 103–354 County Supervisor at _____. In order to be considered for leaseback/buyback, you must make application for leaseback or buyback at the County Office by (enter the date 30 days from date of this letter).

Failure to respond by this date will terminate any rights that you have to purchase or lease the property.

Sincerely.

County Supervisor.

[53 FR 35718, Sept. 14, 1988]

EXHIBIT Q—WAIVER OF LEASEBACK/BUYBACK RIGHTS

(For use by the previous owner, any individual or entity to waive any rights to leaseback/buyback)

I (we) acknowledge that in accordance with the provisions of the Agricultural Credit Act of 1987 and Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) leaseback/buyback program, I (we) have certain rights to lease or purchase the property that [I (we) formerly owned— or [was formerly owned by (name of previous owner)] which was acquired by FmHA or its successor agency under Public Law 103–354 on [date of foreclosure or voluntary conveyance]. I (we) elect not to be considered for leaseback/buyback and hereby waive all rights to lease or purchase the subject property.

_____

Date: _____

_____

Date: _____

[53 FR 35718, Sept. 14, 1988]

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 Credit (FC) Programs borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. FC 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 FC loans.

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FC loans may be permitted to move one scheduled annual installment for each eligible FC 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 the disaster and avoid foreclosure by the Government. DSA is not intended to circumvent the servicing available under subpart S of this part.

§ 1951.953 Notification and request for DSA.

(a) *Notification*. The Farm Service Agency (FSA) servicing office will notify FC borrowers of the availability of DSA and how to apply within 30 days from the date the servicing office is notified of the disaster designation as determined in accordance with subpart A of part 1945. Only FC borrowers who were borrowers at the time of the disaster and operated a farm or ranch in a county designated a disaster area or contiguous county will be notified. Those borrowers whose FC loan has been accelerated, restructured after the disaster, or who only have NP loans will not be notified. Notification of the DSA program will not affect the notification requirements contained in subpart S of this part.

(b) *Deadline to apply*. All FC borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, except borrowers affected by a disaster occurring in years 1994 and 1995 where counties or contiguous counties were designated prior to the date of this subpart will have 8 months from the date of DSA notification. Borrowers may only be considered for DSA one time for each disaster.

(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.

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements.* The following requirements must be met to be eligible for DSA:

(1) The borrower must have operated a farm or ranch in a county designated a disaster area or a county contiguous to such an area. The borrower must have been a borrower and operated the farm or ranch at the time of the disaster.

(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 FC 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 disaster, sufficient income was not available to pay all family living and operating expenses, debts to other creditors, and FSA. This determination will be based on the borrower's actual production and income and expense records for the disaster 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 the disaster. Consideration will also be given to insufficient income for the next production and marketing period following the disaster if the borrower establishes that production will be reduced or expenses increased as a result of the disaster.

(6) After the scheduled installments are set-aside, all FC and NP farm type loans must be current.

(7) The borrower's FC loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the disaster.

(2) Only one unpaid installment for each FC loan may be set-aside. If there is an installment still set-aside from a previous disaster, the loan is not eligible for DSA. If the set-aside is later paid in full, or cancelled through restructuring under subpart S of part 1951, the set-aside will no longer exist

and therefore the loan may be considered for DSA under future disasters.

(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 set-aside shall be limited to the lesser of the amount the borrower is unable to pay FSA from the production and marketing period in which the disaster occurred, or the amount the borrower is unable to pay other creditors and/or expenses rounded up to the nearest whole installment. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of 7 CFR part 1962 or otherwise authorized under subpart B of 7 CFR part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date exhibit A of FmHA Instruction 1951–T (available in any FSA office) is signed.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster occurred, unless that installment is paid, then the next scheduled annual installment after that may be set-aside. For borrowers affected by a 1994 disaster who already paid both of these installments, the third scheduled installment to come due after the disaster 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.

§§ 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 FC 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) [Reserved]

(6) [Reserved]

(7) Payments applied to the amount set-aside will be applied first to interest and then principal.

(c) *Adverse determination*. If the borrower becomes more than one installment behind on any FC 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.

§ 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 net recovery buyout in accordance with subpart S of part 1951, or operating loan assistance in accordance with § 1941.14 of subpart A of 7 CFR part 1941; 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]

§ 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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Sec.

1955.1 Purpose.
1955.2 Policy.
1955.3 Definitions.
1955.4 Redelegation of authority.
1955.5 General actions.
1955.6—1955.8 [Reserved]
1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian Reservation and owned by a Native American borrower-owner.
1955.10 Voluntary conveyance of real property by the borrower to the Government.
1955.11 Conveyance of property to FmHA or its successor agency under Public Law 103–354 by trustee in bankruptcy.