

U.S. Attorney will be informed through OGC of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with Subpart B of Part 1956 of this chapter.

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 45439, Dec. 18, 1986; 53 FR 35787, Sept. 14, 1988; 54 FR 42799, Oct. 18, 1989; 55 FR 35296, Aug. 29, 1990; 57 FR 60085, Dec. 18, 1992]

§ 1962.50 [Reserved]

EXHIBITS TO SUBPART A

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN COMMODITY CREDIT CORPORATION AND FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354

IT IS HEREBY AGREED by and between the Farmers Home Administration or its successor agency under Public Law 103-354 (hereinafter referred to as "FHA") and the Commodity Credit Corporation (hereinafter referred to as "CCC") that the following procedure will be observed in those cases where producers sell to CCC or pledge to CCC as loan collateral under the Price Support Program, agricultural commodities such as, but not limited to, cotton, tobacco, peanuts, rice, soybeans, grains, on which FHA holds a prior lien and the proceeds from such sales or loans are not remitted to FHA for application against the loan(s) secured by such lien:

1. When an FHA County Supervisor learns that an FHA borrower has obtained a loan from CCC on a commodity or sold a commodity to CCC under such circumstances, he shall immediately notify his State Director. The State Director, immediately upon receipt of the notice, shall furnish CCC (see Appendix 1) with the name and address of such borrower, the county of his location at the time the commodity was placed under loan or sold, and the amount of the FHA loan secured by the lien.

2. When CCC receives such a notice from FHA, CCC shall take steps to prevent the making of any further loans on or purchases of the commodity of the borrower. If the CCC loan is still outstanding and CCC calls the loan, CCC shall notify the FHA State director of the demand.

3. If the CCC loan is repaid, whether prior to or after the receipt by CCC of the notice from FHA, the FHA State Director shall be notified immediately, at which time CCC will have discharged its responsibility under this agreement.

4. FHA shall, in each case in which the CCC loan is not repaid or the commodity has been sold to CCC, endeavor to collect from the borrower the amount due on the FHA loan. Such collection efforts shall include the making of demand on the borrower and the following of FHA's normal administrative policies with respect to the collection of debts, but shall not include the making of

demand for payment upon the area peanut producer cooperative marketing associations through which CCC makes price support available to producers. If collection efforts are not successful, the FHA County Supervisor shall make a complete report on the matter to his State Director. If the State Director determines that the amount due on the FHA lien is not collectable by administrative action, he shall refer the matter to the appropriate local office of the General Counsel, with a full statement of the facts, for a determination of the validity of the FHA lien. If it is determined by the General Counsel's Office that FHA holds a valid prior lien on the commodity, the State Director shall furnish CCC with a copy of such determination, together with all other pertinent information, and shall request payment to FHA of the lesser of (1) the amount due on its loan, or (2) the value of the commodity at the time the CCC loan or purchase was made (based on the market value of the commodity on the local market nearest to the place where the commodity was stored). The information to be furnished CCC shall include (a) the principal balance plus interest due FHA on the date of the request, (b) the amount due on the FHA loan at the time the CCC loan or purchase was made, and (c) the amount of the CCC loan or purchase proceeds, if any, applied by the producer against the FHA loan. FHA shall continue to make collection efforts and shall notify CCC of any amount collected from the producer or any other party.

5. Upon receipt of evidence, including a copy of the determination of the Office of the General Counsel, from the State Director of FHA that the proceeds from the CCC loan or purchase have not been received by FHA from the borrower, and that collection cannot be made by FHA, CCC will if the CCC loan has not been repaid or if CCC has purchased the commodity, pay FHA the amount specified in paragraph 4 above or deliver the commodity (or warehouse receipts representing the commodity) to FHA: *Provided*, That if CCC has any information indicating that collection may be made by FHA from the borrower or any other party, it may notify FHA and delay payment pending additional collection efforts by FHA.

6. It is the desire of both FHA and CCC that claims to be processed under this agreement receive prompt attention by both parties and be disposed of as soon as possible. Instructions for the implementation of these procedures at the field office level will be developed and issued by the Washington offices of FHA and CCC.

7. Any question with regard to the handling of any claim hereunder shall be reported by the applicable ASCS office to ASCS in Washington and by the FHA State Director to the National Office of FHA.

This Memorandum of Understanding supersedes the agreement entered into between FmHA or its successor agency under Public Law 103-354 and CCC on November 5, 1951.

Entered into as of this 29th day of May, 1973.

FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354,

FRANK B. ELLIOTT,
Acting Administrator.

COMMODITY CREDIT CORPORATION,
KENNETH E. FRICK,
Executive-Vice President.

APPENDIX 1—FURNISHING NOTICE OR INFORMATION TO COMMODITY CREDIT CORPORATION

Commodity	Direct to
Cotton	Prairie Village, Kansas, ASCS Commodity Office.
Tobacco	Applicable tobacco association.
Peanuts	Applicable peanut association.
All other commodities	Applicable State ASCS office.

[44 FR 4437, Jan. 22, 1979]

EXHIBIT B—MEMORANDUM OF UNDERSTANDING AND BLANKET COMMODITY LIEN WAIVER

The Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA or its successor agency under Public Law 103-354 and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA or its successor agency under Public Law 103-354 and CCC in and without undue inconvenience to producers and FmHA or its successor agency under Public Law 103-354 and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA or its successor agency under Public Law 103-354 State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA or its successor agency under Public Law 103-354 holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA or its successor agency under Public Law 103-354 will try to furnish a complete and current list of the names of such producers; however, FmHA or its successor agency under Public

Law 103-354's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA or its successor agency under Public Law 103-354 and the producer if (a) his name is on the list furnished by FmHA or its successor agency under Public Law 103-354, or (b) he names FmHA or its successor agency under Public Law 103-354 as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA or its successor agency under Public Law 103-354 shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA or its successor agency under Public Law 103-354 and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FmHA or its successor agency under Public Law 103-354 in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Dated: July 20, 1980.

RAY V. FITZGERALD,
Executive Vice President, CCC.

Dated: July 14, 1980.

GORDON CAVANAUGH,
*Administrator, FmHA or its successor agency
under Public Law 103-354.*

[53 FR 35787, Sept. 14, 1988]

EXHIBIT C—MEMORANDUM OF UNDER-
STANDING BETWEEN FARMERS HOME
ADMINISTRATION OR ITS SUCCESSOR
AGENCY UNDER PUBLIC LAW 103-354
AND COMMODITY CREDIT CORPORA-
TION

Rotation of Grain Crops

Under the Commodity Credit Corporation (CCC) Farmer-Owned Grain Reserve Program, a producer may request to rotate or exchange new crop grain for the original crop grain that is in the Farmer-Owned Grain Reserve Program and already encumbered by CCC. The Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency

under Public Law 103-354) may have subordinated their first lien position to CCC on the original grain placed in reserve and/or may have a first lien on the new crop. FmHA or its successor agency under Public Law 103-354 and CCC desire to devise a mechanism whereby the CCC can relinquish its first lien position on the original grain reserve crop to FmHA or its successor agency under Public Law 103-354 and in turn the FmHA or its successor agency under Public Law 103-354 can relinquish its first lien position to CCC on the replacement grain reserve crop.

Now, therefore, it is agreed as follows:

(1) Upon receipt of a memorandum from an Agricultural Stabilization and Conservation Service (ASCS) County Executive Director or other designated county office official requesting the rotation of a grain reserve crop for a producer borrower(s), the FmHA or its successor agency under Public Law 103-354 County Supervisor and the ASCS county office official will jointly indicate approval or rejection of the request on the bottom of the original and a copy of the memorandum (Approval Memorandum) as follows:

"We hereby agree to and authorize the rotation of the subject producer's grain crops in accordance with the provisions of the Memorandum of Understanding between Farmers Home Administration or its successor agency under Public Law 103-354 and Commodity _____ Credit _____ Corporation dated _____,"
FmHA or its successor agency under Public Law 103-354 _____
ASCS _____

In the memorandum, ASCS will include the name(s) of the producer(s) desiring to rotate the grain crops, the approximate number of bushels being rotated, the type of crop, years' crop being rotated and the location of the original grain reserve crop (approximate land and facility description).

(2) Upon execution of the Approval Memorandum by both ASCS and FmHA or its successor agency under Public Law 103-354, the security interest of FmHA or its successor agency under Public Law 103-354 in the new crop grain shall be subordinated to the security interest of CCC in such grain and the security interest of CCC in the original crop grain shall be subordinated to the security interest of FmHA or its successor agency under Public Law 103-354 in such grain. At that point in time it will be the responsibility of each agency and the borrower to account for their respective interests in the grain crops and/or proceeds from the sale of the grain. The crop rotation and subordination of liens will only involve the amount of grain that has been specifically provided for in the memorandum from ASCS.

(3) If there is an intervening third party lien and it is impossible for FmHA or its successor agency under Public Law 103-354 or CCC to have a first lien on their respective

grain crops, the request of the producer to rotate crops will not be granted.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days written notice to the other party.

[44 FR 4437, Jan. 22, 1979]

EXHIBIT D—NOTICE TO BORROWER’S ATTORNEY REGARDING LOAN SERVICING OPTIONS

Procedure Reference: FmHA or its successor agency under Public Law 103-354 Instruction 1962-A.

Purpose: This Exhibit or a version approved by the Regional OGC will be used by a County Supervisor to send the attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter to the borrower’s attorney when the borrower has filed for bankruptcy or is currently under the jurisdiction of bankruptcy court.

RETURN ADDRESS

Borrower’s Attorney’s Address

Dear : This letter provides important information which the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) requests you to provide to your client who has filed a bankruptcy petition. Subject to the applicable provisions of the Bankruptcy Code and FmHA or its successor agency under Public Law 103-354 regulations, FmHA or its successor agency under Public Law 103-354 may take action to enforce its security instrument given by as security for an FmHA or its successor agency under Public Law 103-354 loan(s). However, your client may be able to cure one or all of the problems indicated below so that it will not be necessary for FmHA or its successor agency under Public Law 103-354 to enforce its security instrument.

[] Loan payments are \$_____ past due.

[] Your client has disposed of some of the property used to secure the FmHA or its successor agency under Public Law 103-354 loan(s). Your client did not get written approval for this action. This property is

[] Your client has breached the agreement(s) contained in the security instrument executed by your client in favor of FmHA or its successor agency under Public Law 103-354 by taking the following action(s)

[] Your client has failed to make the required payments under a confirmed bankruptcy plan.

[] Your client has

Before the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) can act to enforce its security instruments, its regulations require FmHA or its successor agency under Public Law 103-354 to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FmHA or its successor agency under Public Law 103-354 has available. In order for FmHA or its successor agency under Public Law 103-354 to ascertain whether your client is eligible for these options, it is necessary for FmHA or its successor agency under Public Law 103-354 personnel to work closely with your client. If your client requests this contact in the manner described below, we hope that we can assist him or her. However, if favorable action is not possible, we will notify you, and provide your client with the opportunity to appeal the decision. We will not accelerate the account or initiate foreclosure until we comply with the applicable provisions of the bankruptcy code.

If your client wants to apply for primary and/or preservation loan servicing relief from FmHA or its successor agency under Public Law 103-354, you must provide FmHA or its successor agency under Public Law 103-354 with a letter evidencing a request for servicing on behalf of your client within 60 days from your receipt of this letter. To apply for servicing, your client must also submit a signed copy of Attachment 2 and complete and return the preliminary application forms within this 60-day period. By this response, you will be acknowledging that when FmHA or its successor agency under Public Law 103-354 processes your client’s application for loan servicing it is not interfering with any rights or protections your client may have under the Bankruptcy Code and its automatic stay provisions. FmHA or its successor agency under Public Law 103-354’s processing of the application may include considering the borrower for primary and preservation loan servicing options, notifying the borrower of FmHA or its successor agency under Public Law 103-354’s decision on the application in accordance with subpart S of part 1951-S of this chapter, and holding any mediation, meetings or appeals requested by your client. If your client

fails to complete and return the required information within the 60-day period, FmHA or its successor agency under Public Law 103-354 will proceed to enforce its security instrument as allowed under the Bankruptcy Code and FmHA or its successor agency under Public Law 103-354 regulations.

If your client has recently filed under chapter 7, in order for FmHA or its successor agency under Public Law 103-354 to provide primary loan servicing to your client after discharge, your client must reaffirm the FmHA or its successor agency under Public Law 103-354 debt in accordance with the provisions of the Bankruptcy Code. No reaffirmation is necessary for your client to be eligible for preservation loan service programs.

If your client is operating under a confirmed bankruptcy plan, and desires to apply for loan servicing and qualifies for servicing under FmHA or its successor agency under Public Law 103-354's regulations, you must also comply with provisions of the Bankruptcy Code practiced in your jurisdiction concerning modification of the plan. If your client's plan has not yet been confirmed by the Bankruptcy Court, you may choose to file a proposed plan which may or may not contain restructuring features similar to those available under FmHA or its successor agency under Public Law 103-354 regulations. The Government, of course, is free to object to the proposed plan in accordance with provisions of the Bankruptcy Code. If a plan is confirmed before servicing and any appeal is completed under FmHA or its successor agency under Public Law 103-354 regulations, FmHA or its successor agency under Public Law 103-354 will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan, if appropriate, in accordance with the advice from OGC.

FmHA or its successor agency under Public Law 103-354's farmer program debt servicing regulation is found at 7 CFR, part 1951, subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA or its successor agency under Public Law 103-354.

Sincerely,
County Supervisor

Attachments

[56 FR 15827, Apr. 18, 1991]

EXHIBIT D-1—NOTICE TO BORROWER REGARDING LOAN SERVICE OPTIONS

Procedure Reference: FmHA or its successor agency under Public Law 103-354 Instruction 1962.47 (c)(3) and (c)(4)

Purpose: After consultation with the Regional OGC on the status of this case, this exhibit will be used by a County Super-

visor to send the attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter to the borrowers who have been discharged under a chapter 7, and to borrowers who have had chapter 11, chapter 12 or chapter 13 bankruptcy plans confirmed but are no longer under the jurisdiction of a bankruptcy court. A courtesy copy of the notices will be sent to the borrower's attorney of record.

RETURN ADDRESS

Borrower's Address

Dear : This letter provides information concerning the Farmers Home Administration or its successor agency under Public Law 103-354's (FmHA or its successor agency under Public Law 103-354) loan servicing programs. If your debt to FmHA or its successor agency under Public Law 103-354 has been discharged, this letter is not intended to violate the discharge order, but merely to inform you about the primary and preservation loan service programs now available as a result of the Agricultural Credit Act of 1987. After FmHA or its successor agency under Public Law 103-354 complies with its regulations, FmHA or its successor agency under Public Law 103-354 may take action to enforce its security instrument which you gave as security for an FmHA or its successor agency under Public Law 103-354 loan(s). However, you may be able to cure one or all of the problems indicated below so that it will not be necessary for FmHA or its successor agency under Public Law 103-354 to enforce its security instrument.

[] Loan payments are \$_____ past due.

[] You have disposed of some of the property used to secure the FmHA or its successor agency under Public Law 103-354 loan(s). You did not get written approval for this action. This property is

[] You have breached the agreement(s) contained in the security instrument which you executed in favor of FmHA or its successor agency under Public Law 103-354 by taking the following action(s)

[] You have failed to make the required payments under a confirmed bankruptcy plan.

[] You have

Before the Farmers Home Administration or its successor agency under Public Law

103-354 (FmHA or its successor agency under Public Law 103-354) can act to enforce its security instruments, its regulations require FmHA or its successor agency under Public Law 103-354 to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FmHA or its successor agency under Public Law 103-354 have available. If you wish to apply for either primary or preservation loan servicing, you must complete and return attachment 2 of exhibit A of subpart A of this chapter and the preliminary application forms within 60 days of your receipt of this notice. All of these forms are attached to this notice.

Depending on your financial situation, your farming operation and the bankruptcy chapter you used as indicated below, you may or may not qualify for primary or preservation loan servicing. Primary loan servicing is described on pages 1-5 of Attachment 1. Preservation loan servicing is described on pages 5-7 of Attachment 1. To apply for these programs, you must comply with the 60-day time period set forth above. If you apply for loan servicing and qualify, you must also comply with any applicable provisions of the Bankruptcy Code practiced in your jurisdiction.

1. Chapter 7 Bankruptcy

If you have received a Chapter 7 discharge, the discharge has released you from personal liability for the FmHA or its successor agency under Public Law 103-354 debt. You are ineligible for FmHA or its successor agency under Public Law 103-354's primary loan service program since you are no longer indebted to FmHA or its successor agency under Public Law 103-354. If you wish to apply for primary loan servicing, you must reaffirm the entire FmHA or its successor agency under Public Law 103-354 debt (which may or may not be possible in your jurisdiction as the bankruptcy case may have to be reopened). If you reaffirm the FmHA or its successor agency under Public Law 103-354 debt, and do not qualify for primary loan servicing, it may be possible to revoke the reaffirmation subject to the provisions of the Bankruptcy Code and its time limitations. However, you may apply for preservation loan servicing without reaffirming the FmHA or its successor agency under Public Law 103-354 debt. If you qualify for preservation loan servicing, you would be able to retain possession of the home or farm.

2. Chapter 11 Bankruptcy

If you have had a Chapter 11 bankruptcy plan confirmed, you have been discharged from personal liability for your FmHA or its successor agency under Public Law 103-354 debt and the bankruptcy case has been closed. However, you are obligated to pay

FmHA or its successor agency under Public Law 103-354 the amount indicated in your plan. You may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your confirmed chapter 11 plan will be affected if FmHA or its successor agency under Public Law 103-354 approves your loan servicing application. If any changes to the confirmed plan are necessary, please see the discussion below under chapter 12.

3. Chapter 12 Bankruptcy

If you have had a Chapter 12 bankruptcy plan confirmed, and the bankruptcy case has been closed, you may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. Despite any discharge of personal liability for your FmHA or its successor agency under Public Law 103-354 debt, you are obligated to pay FmHA or its successor agency under Public Law 103-354 the amount indicated in your plan. If you are considering applying for loan servicing, you should consult with your attorney to determine if your bankruptcy plan will be affected if FmHA or its successor agency under Public Law 103-354 approves your loan servicing application. Depending on the status of your bankruptcy plan and the bankruptcy law in your jurisdiction, you might be required to file an amended plan which may or may not contain restructuring features similar to those available under FmHA or its successor agency under Public Law 103-354 regulations. If amended plans are permitted in your jurisdiction and an amendment is appropriate to your situation, the Government, of course, is free to object to the amended plan in accordance with the provisions of the Bankruptcy Code. If any amended plan is approved before servicing and any appeal is completed under FmHA or its successor agency under Public Law 103-354 regulations, FmHA or its successor agency under Public Law 103-354 will complete the servicing or appeals process, and may consent to the amended plan if appropriate in accordance with advice from FmHA or its successor agency under Public Law 103-354's legal counsel.

4. Chapter 13 Bankruptcy

If you have had a chapter 13 plan confirmed, and the bankruptcy case has been closed, you may be legally obligated to repay some or all of your FmHA or its successor agency under Public Law 103-354 debt despite any discharge resulting from the completion of your chapter 13 plan. You may still be able to cure one or all of the defaults listed above, and also qualify for primary or preservation loan servicing. If you are considering

applying for loan servicing, you should consult with your attorney to determine if your chapter 13 confirmed plan will be affected if FmHA or its successor agency under Public Law 103-354 approves your loan servicing application. If your chapter 13 plan is affected, please see the discussion above under chapter 12.

If you fail to complete and return the required information within the 60-day period, FmHA or its successor agency under Public Law 103-354 will proceed to enforce its security instrument as allowed by the Bankruptcy Code and FmHA or its successor agency under Public Law 103-354 regulations by accelerating your account with the intention of foreclosing or liquidating FmHA or its successor agency under Public Law 103-354's security. After acceleration, you may still be able to apply for preservation loan servicing if FmHA or its successor agency under Public Law 103-354 takes the property into inventory. If this event occurs, you will receive another notice with instructions on how to apply for preservation loan servicing. For information on this aspect of the program, please see item V on page 6 of attachment 1. To expedite any preservation loan servicing application, you understand that FmHA or its successor agency under Public Law 103-354's ability to accept a voluntary conveyance is subject to its regulation which can be found at 7 CFR 1955.10.

FmHA or its successor agency under Public Law 103-354's farmer program debt servicing regulation is found at 7 CFR part 1951, subpart S. We cannot promise you that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA or its successor agency under Public Law 103-354.

Sincerely,
County Supervisor

Attachments
cc: Borrower's Attorney of record

[56 FR 15828, Apr. 18, 1991]

EXHIBIT E—RELEASING SECURITY SALES PROCEEDS AND DETERMINING "ESSENTIAL" FAMILY LIVING AND FARM OPERATING EXPENSES

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA or its successor agency under Public Law 103-354 should release to pay for particular items within

these broad categories. For example, FmHA or its successor agency under Public Law 103-354 has to release for transportation expenses, but should FmHA or its successor agency under Public Law 103-354 release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA or its successor agency under Public Law 103-354 1962-1 can be completed to show that FmHA or its successor agency under Public Law 103-354 plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA or its successor agency under Public Law 103-354 1962-1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for FmHA or its successor agency under Public Law 103-354 to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires FmHA or its successor agency under Public Law 103-354 to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA or its successor agency under Public Law 103-354 should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example,

feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103-354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F OF SUBPART A [RESERVED]

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

Sec.

- 1965.1 Purpose.
- 1965.2 General policies.
- 1965.3 Borrower's responsibilities.
- 1965.4 FmHA or its successor agency under Public Law 103-354's responsibility.
- 1965.5 Servicing certain insured Farm Ownership (FO) loans.
- 1965.6 Consent of lienholders.
- 1965.7 Definitions.
- 1965.8—1965.10 [Reserved]
- 1965.11 Preservation of security and protection of liens.

- 1965.12 Subordination of FmHA or its successor agency under Public Law 103-354 mortgage.
- 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.
- 1965.14 Subordination of FmHA or its successor agency under Public Law 103-354 real estate mortgages to easements to the U.S. Fish and Wildlife Service (formerly the Bureau of Sport Fisheries and Wildlife).
- 1965.15 Subordination of FmHA or its successor agency under Public Law 103-354's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.
- 1965.16 Consent to junior liens.
- 1965.17 Lease of security.
- 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.
- 1965.19 Severance agreement.
- 1965.20 [Reserved]
- 1965.21 Assignment and release of Soil Conservation or similar program payments.
- 1965.22 Deceased borrower.
- 1965.23 Bankruptcy and insolvency.
- 1965.24 Servicing note-only cases.
- 1965.25 Release of FmHA or its successor agency under Public Law 103-354 mortgage without monetary consideration in certain cases.
- 1965.26 Liquidation action.
- 1965.27 Transfer of real estate security.
- 1965.28—1965.30 [Reserved]
- 1965.31 Taking liens on real estate as additional security in servicing FmHA or its successor agency under Public Law 103-354 loans.
- 1965.32 [Reserved]
- 1965.33 Cosigners—SFH loans.
- 1965.34 [Reserved]
- 1965.35 Exception authority.
- 1965.36 State Supplements and reference to the OGC.
- 1965.37 Redelegation of authority.
- 1965.38—1965.49 [Reserved]
- 1965.50 OMB control number.

EXHIBITS TO SUBPART A

- EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 [NOTE]
- EXHIBIT B—NOTIFICATION OF OTHER LIENHOLDERS INTENT TO FORECLOSE [NOTE]
- EXHIBIT C—PROCESSING GUIDE [NOTE]
- EXHIBIT D—EQUITY RECAPTURE AGREEMENT [NOTE]